

A PLAN FOR THE NEXT GENERATION OF AFFORDABLE HOUSING IN NEW YORK.

POLICY BRIEF

REINVENTING THE MITCHELL-LAMA HOUSING PROGRAM

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The Community Service Society of New York (CSS) is an informed, independent, and unwavering voice for positive action representing low-income New Yorkers. CSS addresses the root causes of economic disparity through research, advocacy, and innovative program models that strengthen and benefit all New Yorkers.

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Summary

New Yorkers often respond to the dramatic loss of affordable housing in New York City by calling for a “new Mitchell-Lama” housing program. What they mean is that they want New York State and New York City to create high-quality housing affordable to people with a wide range of incomes—just as they did in the heyday of Mitchell-Lama during the 1960s and 1970s.

Although the city faces somewhat different affordable housing challenges now than it did then, there is no question that circumstances demand an increased commitment to housing production from the city and especially from the state. As a previous CSS report showed, the total number of apartments—including public, subsidized, and private-market housing—affordable to a family with an income at 200 percent of the federal poverty line dropped by 39 percent from 2002 to 2011.

Mayor de Blasio’s housing program calls for a contribution of \$8.2 billion over 10 years in city money for affordable housing production and preservation. This is a substantial amount, more than the Bloomberg administration contributed and more than any other city contributes, but still not enough to provide anywhere near the amount of affordable housing needed, especially for low-income households with incomes below twice the federal poverty threshold. The Cuomo administration has so far committed to smaller scale efforts. Its House NY program received \$100 million in this year’s budget, but is projected to grow to a total of \$1 billion over five years.

For these reasons, CSS is happy join the chorus calling for a new Mitchell-Lama program. This report explores what such a program would have to look like in order to yield Mitchell-Lama results in today’s conditions, while also overcoming the major problem with the original Mitchell-Lama, which was the program’s vulnerability to market conversions. Any new affordable housing production program must avoid a repeat of the massive wave of market conversions that decimated the Mitchell-Lama rental stock during the years from 2001 to 2007.

This CSS Policy Brief:

- ▶ describes the original Mitchell-Lama program as it was understood in its early years,
- ▶ surveys the housing stresses and hardships affecting households at different income levels and the range of current programs addressing those problems,
- ▶ explores subsidy tools that New York State could create in order to help develop a new generation of subsidized housing worthy of the Mitchell-Lama heritage, and
- ▶ concludes that a revived Mitchell-Lama must provide benefits to households with a wide range of incomes who are poorly served by the existing housing market in New York City.

Key goals of affordable housing policy include reducing rent burdens for tenants, improving building conditions, combatting economic segregation, and preventing displacement of people with lower incomes as neighborhoods change. The worst rent burdens are experienced by the households with the lowest incomes—and this remains the case even after the benefits of existing low-income housing programs are taken into account. But middle-income groups, with incomes of up to about \$62,000, also face significant burdens. Households with incomes below \$62,000 experience worse conditions than those with higher incomes as well. These factors suggest a focus on producing apartments for households in this income range, which is described by the federal government as “low income,” but in fact includes 53 percent of the city.

The other policy goals, combatting economic segregation and preventing displacement, might well justify targeting housing for households with somewhat higher incomes in some neighborhoods. These geographic aspects of affordable housing policy have not yet been fully explored, but are likely to become more important in coming years and deserve renewed attention.

New York State could make a major contribution to affordable housing development options with a package of new subsidies that would relieve high rent burdens for both low- and middle-income households while improving apartment and building conditions and preserving existing mixed-income neighborhoods. Such a program would build on the success of Mitchell-Lama as not only a middle-income but a mixed-income program by combining multiple forms of subsidy and by using state and local resources to demonstrate a new approach that the federal government could eventually expand.

Key elements of such a package include:

- ▶ **The creation of new operating subsidies** to make some of the new housing available to households who could not afford to pay rents high enough to operate the apartments without subsidy. Adding an operating subsidy for lower-income families to even a small component of the new program would make it more effective in reducing severe rent burdens and make it into a better model for future programs. Operating subsidies, including tax exemptions, should be renewable as long as they are contributing to affordability.

- ▶ **The use of city- and state-owned land** for affordable housing, including the combination of housing and other public uses on the same site—for example, a subsidized apartment building with a school on its lower floors. The use of public land for housing should be guided by two principles: First, to maximize the impact on severe rent burdens and poor building conditions by steering as much benefit as possible to households with lower incomes. And second, to respond to specifically geographic policy goals, especially by preserving mixed-income neighborhoods where they already exist. Land subsidies should be accompanied by strong permanent affordability provisions.

- ▶ **The creation of a new capital subsidy stream** to construct new housing not supported by existing streams. The policy goals of reducing severe rent burdens and improving conditions are best served by tipping the benefits to lower-income households, while geographic goals most likely call for income mixes. This would require a substantial amount of money for both grants and low-interest loans. Such a large outlay of capital subsidy should certainly be accompanied by strong permanent affordability provisions such as a large government equity stake.

In New York City, the median household can afford a rent of \$1,323 per month. From 2002 to 2011, the city’s supply of apartments renting at that (inflation-adjusted) level fell by 13 percent.

Reinventing The Mitchell-Lama Housing Program

New York State’s Mitchell-Lama program is justly regarded as one of the great successes in housing policy. Passed into law in 1955, it led to the creation of 66,000 subsidized rental apartments and 69,000 coop apartments in New York City from 1955 to 1981, plus many more around New York State. It also served as an important prototype for the federal housing programs created during President Lyndon Johnson’s Great Society.

Unfortunately, however, the program was vulnerable to market-driven conversions of Mitchell-Lama to market housing after 20 years, and today half of the rentals and 7 percent of the coops in the city have been lost as affordable housing. The program also became much harder to implement over the years as the city and state’s housing market evolved. That, along with changes in federal tax law, is why Mitchell-Lama development ceased in 1981, though the law remains on the books.

In recent years, calls for a “new Mitchell-Lama” program have become increasingly common. This rhetoric contains many messages. First and foremost, it is a very appropriate call for action on the city and state’s urgent housing needs. Because Mitchell-Lama was so successful, it provides a positive image for affordable housing production and a banner for those who want to see housing policy revitalized.

Second, because Mitchell-Lama was a state and local program, the call to bring it back is a demand for New York State and New York City to fill the gap created by insufficient federal action on the issue. This is also justified, because the city and, especially, the state could and should be providing more resources for housing. New York City Mayor de Blasio recently announced an affordable housing plan that calls for \$6.7 billion in city capital funding for affordable housing over ten years, but New York

State Governor Cuomo and legislative leaders announced only \$1 billion in state capital funding over five years for the House NY program—much of that devoted to refinancing existing Mitchell-Lama developments rather than creating new housing.

And finally, the call for a new Mitchell-Lama is a call for a housing program that would benefit a “middle income” group that is said to fall into the crack between low-income programs such as public housing and a private market that is focused on serving a small, high-income, and ever higher-income subset of the population. This contains an important element of truth, in that the private market does in fact do a poor job of serving people with incomes near the city’s median. In New York City, the median household can afford a rent of \$1,323 per month. From 2002 to 2011, the city’s supply of apartments renting at that (inflation-adjusted) level fell by 13 percent.

But there are also problems with the call for a new Mitchell-Lama. First, any new affordable housing production program must avoid a repeat of the massive wave of market conversions that has decimated the Mitchell-Lama rental stock. And second, the claim for a “middle income” priority in housing policy needs to be treated carefully. It is not middle groups that face the worst housing hardships in New York City. Instead it is the lowest-income households who face the worst burdens by far—even after the benefits of public housing and other subsidies are taken into account.

What’s more, present-day affordable housing production programs, notably including the previous administration’s New Housing Marketplace, are already targeted to households near the city’s median income. The successor to that plan, Mayor de Blasio’s Housing New York, continues to target a large share of housing to that range. It also includes 16,000 apartments targeted to households with much lower incomes, but that number must be increased substantially in order to truly address the city’s most severe housing needs.

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A new Mitchell-Lama program should fix the old program’s major flaw—the limited time period of its affordability protections—while building on its success as part of a policy system that delivered real benefits to families at a range of income levels, all of them poorly served by the private housing market.

In this report we describe the original Mitchell-Lama program as it was understood in its early years, survey the housing stresses and hardships affecting households at different income levels and the range of current programs addressing those problems, and explore subsidy tools that New York State could create in order to help develop a new generation of subsidized housing worthy of the Mitchell-Lama heritage.

The Original Mitchell-Lama Program

In 1955, the original “limited-profit housing companies law” (as Mitchell-Lama is formally titled) recognized “a seriously inadequate supply of safe and sanitary dwelling ... accommodations for families and persons of low income”¹ and responded with a program that rested on two forms of subsidy: mortgage loans for Mitchell-Lama developers at favorable interest rates and property tax abatements. In return for these benefits, owners were subject to a 6 percent ceiling on annual return on equity, and the city and state housing agencies supervised the buildings, reviewing rent increases to ensure that they were consistent with the profit limit.

The Mitchell-Lama law originally made no provision for conversion to market rentals, but a broad “buy-out” provision was added in 1959 as part of a package of changes instigated by the newly elected Rockefeller administration. Rockefeller wanted to emphasize rental housing production at a time when all Mitchell-Lama developments thus far were coops, mostly with union backing, and he wanted to increase the incentives for private investors. His reform package included the buy-out provision, a reduction in the minimum owner equity contribution from 10 percent to 5 percent, and, probably most important, the creation of the New York State Housing Finance Agency in 1960.² HFA financed 64 percent of the apartments created in the first five years of Mitchell-Lama rental housing production from 1962 through 1966.

Given the relatively low level of risk undertaken by Mitchell-Lama investors, it should have been possible to incentivize them without a broad right to convert to market rentals. Today, when there is a substantial industry of nonprofit developers, it should be even easier to do so.

Although the original legislative language contained only the vague specification of “families and persons of low income,” Mitchell-Lama developments were from the start targeted for tenants with incomes higher than the public housing incomes of the day. In 1964, this middle-income standard was \$6,000 to \$10,000 for a family of four,³ equivalent to \$45,000 to \$75,000 today.

The actual income targeting of specific Mitchell-Lama developments was not based on this standard, however. Instead, families were eligible for apartments if their income fell below a multiple of the rent. Rents in turn were based on the actual cost of building and operating the development, subject to the 6 percent profit limit. Because costs turned out to be higher than anticipated, rents and therefore incomes also ended up higher than the middle-income standard would suggest, leading some people to question the appropriateness of the subsidy.⁴

Given the relatively low level of risk undertaken by Mitchell-Lama investors, it should have been possible to incentivize them without a broad right to convert to market rentals. Today, when there is a substantial industry of nonprofit developers, it should be even easier to do so.

The state and city housing agencies responsible for implementing the Mitchell-Lama program responded to the problem of high construction and operating costs by adding more subsidies to Mitchell-Lama housing, including both already-developed buildings and new ones in the pipeline. These new subsidies often came from federal programs created during the 1960s: Section 221d3 and Section 236 mortgage subsidies, rent subsidies under those sections, and eventually rent subsidies under Section 8, enacted during the Ford administration. These additional subsidies made it possible to offer rent lower than those based on costs, and this enabled people with incomes *below* the original standard to live in Mitchell-Lama housing.

Costs continued to rise, and federal subsidies dwindled and then dried up completely during the Reagan administration, leading to the cessation of Mitchell-Lama housing development. The last building to open in New York City was Winthrop Gardens in the Bronx in 1981.

Fast forward to the present, and Mitchell-Lama incomes are spread far beyond the 1964 middle-income standard. In Mitchell-Lama rentals in 2011, 52 percent of tenant households had incomes *below* the inflation-adjusted standard, 19 percent had incomes *within* the standard, and 28 percent had incomes *above* it.⁵ This wide spread is primarily due to the policy drift described above, plus the reduced incomes of the many retired tenants in Mitchell-Lama housing. The program's actual income pattern is consistent with good policy, however, given the severe rent pressures experienced by unsubsidized tenants at a wide range of income levels, especially the lower ones.

The original Mitchell-Lama was designed with a relatively narrow middle-income group in mind, but as the program evolved it came to provide housing for a diverse group of people with a wide range of incomes. This income diversity is in fact an important part of the program's success and should be replicated in future programs. A new Mitchell-Lama program should be designed to interact well with existing programs and housing resources in order to make new benefits to a wide range of people and to promote income mixing within new developments.

Low-Income Households Bear The Worst Rent Burdens

Improving affordability is not the only goal of housing policy, but it is a central one, and the dramatic decline of housing affordability in New York City in recent years should make it even more central.

Housing affordability is often evaluated in terms of rent burden—the share of a tenant household’s income that is spent on rent. The standard of affordability reflected in federal law is that rent should not exceed 30 percent of a household’s income.⁶ This standard does not work that well for people with extremely low incomes, for whom the remaining 70 percent of income still falls far short of supplying non-housing needs.⁷ Nevertheless, the 30 percent standard is a useful tool for a fairly wide swath of the income distribution.

In New York City today, low-income households with incomes below 200 percent of the federal poverty line typically experience very high rent burdens, unless they have access to subsidized housing. The median rent burden for low-income households without a rent subsidy in New York City is 47 percent, but that drops to 30 percent for households that live in public or subsidized housing or have a Section 8 voucher.⁸ But because only 300,000 of the city’s 1 million low-income households receive a rent subsidy, the overall picture remains very bad for low-income tenants as a whole; their overall median rent burden is 42 percent.

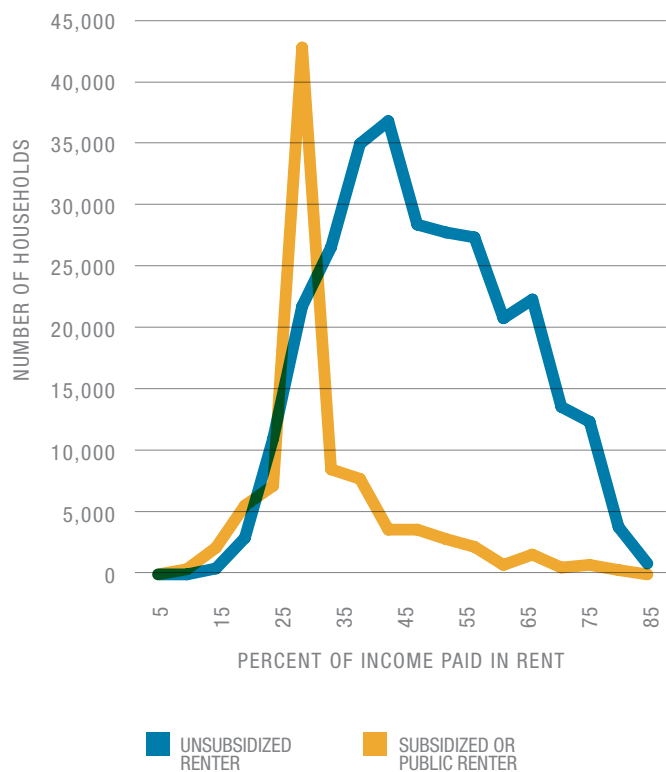
Figure 1 shows the distribution of rent burdens for low-income households with and without subsidies in more detail. The wide range of rent burdens for subsidized tenants reflects the fact that some programs, including Mitchell-Lama, allow rents above or below 30 percent of income, as well as the fact that rents and incomes reported to the Census Bureau may differ from those used by housing agencies in their calculations. This graph makes clear both the importance of subsidy in reducing rents for some low-income tenants and the enormous weight of high rents that others are shouldering without the assistance of subsidies.

Figure 2 shows the distribution of burdens for several income categories (subsidized and unsubsidized together). Low-income

households are those with incomes below 200 percent of the poverty line, or about \$37,500 for a family of three. Middle-income households are those at up to 399 percent or \$75,000. Upper middle households are those at up to 799 percent or \$150,000. And high-income households are those at 800 percent or higher. It is worth noting that both of these charts show the rent burdens of households that already exist and have found housing. As new households form or move to the city, they can expect to face a more difficult housing situation than the incumbent households, and probably end up with higher rent burdens. This is true at all income levels.

These graphs demonstrate that affordable housing efforts focusing on households with the lowest incomes will have the greatest impact on severe rent burdens. Most of the households with very high burdens, showing up on the right side of Figure 2,

FIGURE 1: RENT BURDENS FOR LOW-INCOME HOUSEHOLDS WITH AND WITHOUT SUBSIDIES



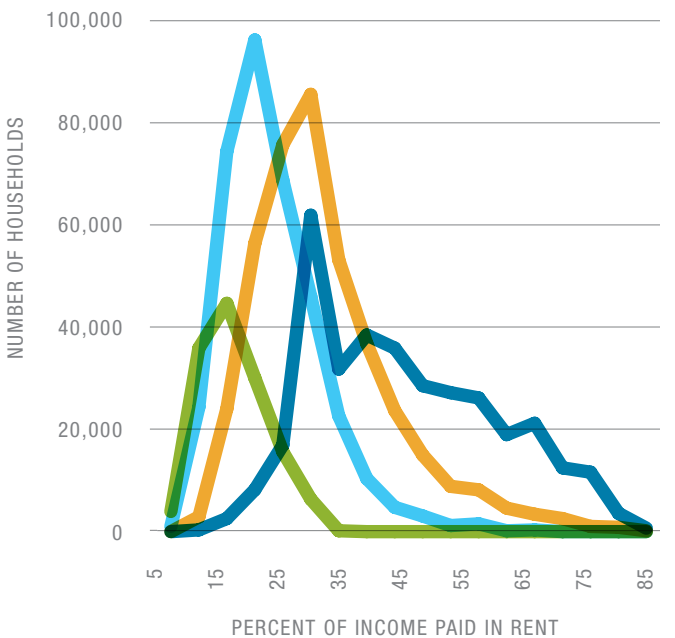
POLICY BRIEF REINVENTING THE MITCHELL-LAMA HOUSING PROGRAM

are low-income households, although a considerable number of middle-income households experience high rent burdens as well. This remains the case even after considering the effects of housing programs already targeted to lower-income groups.

Similar analyses can be developed using other income categorization schemes. Many of the affordable housing programs that are actively producing housing today use income standards based on the so-called “Area Median Income” or AMI, a figure constructed by the federal Department of Housing and Urban Development based on a combination of city incomes, suburban incomes, and housing construction costs. The current (2013) AMI for a family of three in New York City is \$77,310, compared to an actual median income for all households in the five boroughs of \$50,895 in the 2012 American Community Survey, conducted by the U.S. Census Bureau.

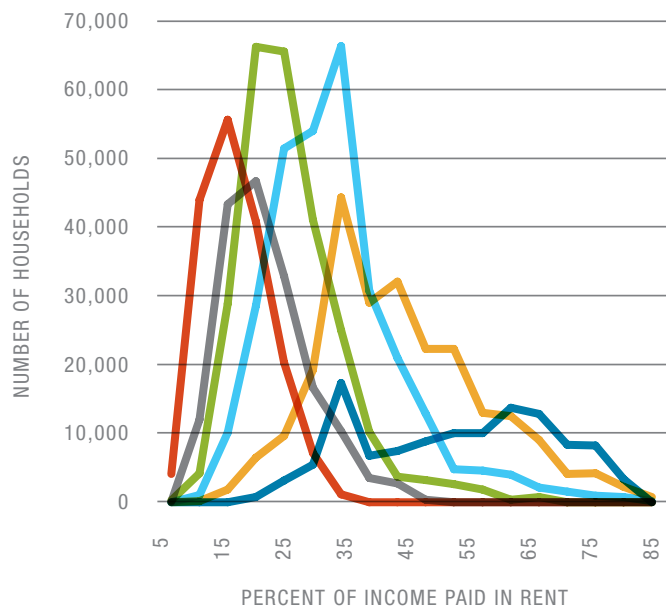
Figure 3 shows rent burdens for households at selected income levels based on the AMI. (These are the same income categories used in Mayor de Blasio’s Housing New York plan.) Its message is consistent with that of Figure 2, implying a strong case for focusing affordable housing efforts on households with the lowest incomes. The lowest income categories face the greatest rent burdens, even after the benefits of existing housing subsidies are taken into account. Most of the households with burdens over 50 percent are in the two lowest income groups, “under 30 percent of AMI” and “30 to 50 percent of AMI,” with incomes of up to about \$39,000 for a family of three. Most of the households with burdens from 30 percent to 50 percent are in either those groups or the “50 to 80 percent” group, with incomes from \$39,000 to \$62,000 for a family of three.

FIGURE 2: RENT BURDENS FOR HOUSEHOLDS AT INCOME LEVELS BASED ON FEDERAL POVERTY LINE



■ LOW INCOME: BELOW 200% OF POVERTY
 ■ MIDDLE INCOME: 200% TO 400% OF POVERTY
 ■ UPPER MIDDLE: 400% TO 800% OF POVERTY
 ■ HIGH INCOME: 800% OF POVERTY OR MORE

FIGURE 3: RENT BURDENS FOR HOUSEHOLDS AT INCOME LEVELS BASED ON “AREA MEDIAN INCOME”



■ UP TO 30% OF AMI (\$23,000 FOR A FAMILY OF THREE)
 ■ 30% TO 50% OF AMI (\$23,000 TO \$39,000 FOR A FAMILY OF THREE)
 ■ 50% TO 80% OF AMI (\$39,000 TO \$62,000 FOR A FAMILY OF THREE)
 ■ 80% TO 120% OF AMI (\$62,000 TO \$93,000 FOR A FAMILY OF THREE)
 ■ 120% TO 165% OF AMI (\$93,000 TO \$128,000 FOR A FAMILY OF THREE)
 ■ MORE THAN 165% (\$128,000 FOR A FAMILY OF THREE)

Improving Conditions, Combating Segregation, and Preventing Displacement

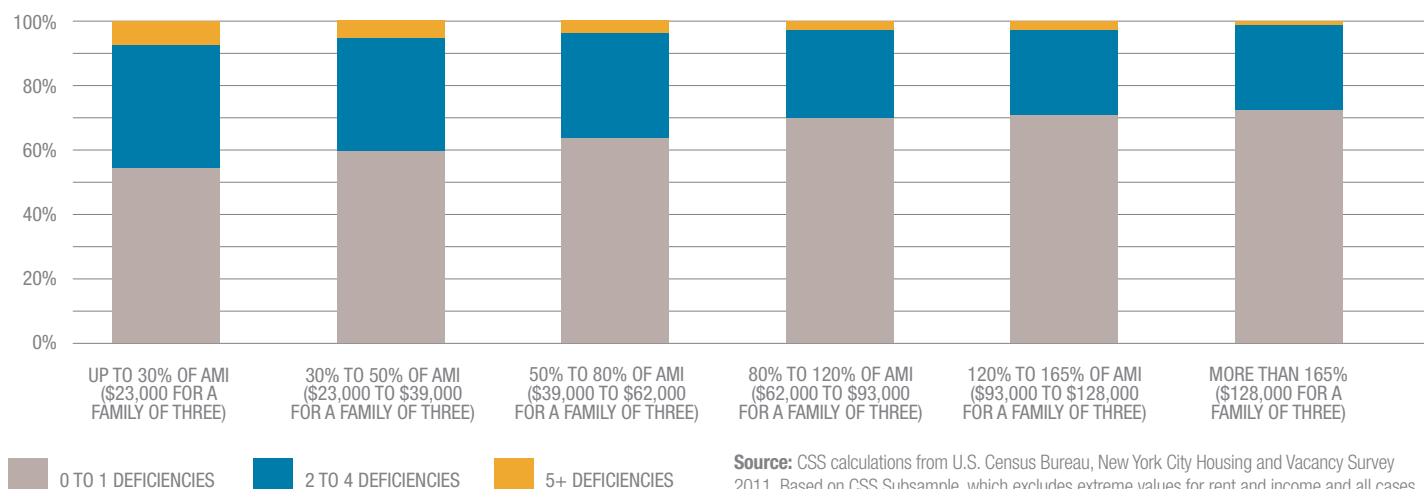
Severe rent burdens are not the only problem that housing programs are trying to solve. Other symptoms of New York City’s chronic housing shortage include poor conditions in buildings and apartments, a high degree of economic segregation, and the displacement of tenants as neighborhoods change and become less affordable. Improving the physical condition of the housing stock has historically been an important goal in housing policy; promoting mixed-income neighborhoods has become a focus more recently; and preventing displacement is an increasingly important popular demand from low-income communities. These goals could also help justify a new Mitchell-Lama program.

The condition-improving goal for housing policy is relatively straightforward. As Figure 4 shows, the worst apartment conditions in New York City are experienced by households in the lowest income band based on AMI (those with incomes below \$23,000 for a family of three), followed by those in the

next two bands (with incomes from \$23,000 to \$62,000). On average, conditions for higher-income tenants were better by a considerable margin.⁹ Thus the income targeting suggested by the goal of improving conditions is the same as that suggested by an emphasis on affordability.

The income-mixing goal is more complex and has been a controversial one for several reasons. In high-income areas, especially the suburbs, plans to promote income mixing have run up against considerable opposition and made little headway. In low-income areas, on the other hand, mixed-income development has sometimes resulted in the removal of low-income people from desirable locations to undesirable ones,¹⁰ possibly hastening gentrification that ultimately reinforces economic segregation. Efforts to promote income mixing through the use of vouchers have not produced very impressive results. A national experiment in which public housing residents were given vouchers found that they often ended up in neighborhoods that were only a little better off than the public housing ones.¹¹ In New York City, vouchers are heavily concentrated in a few low-income areas,¹² although that is partly because of the city’s use of vouchers as a support for low-income housing development in those areas.

FIGURE 4: APARTMENT CONDITIONS FOR HOUSEHOLDS AT INCOME LEVELS BASED ON “AREA MEDIAN INCOME”



Another approach to promoting income mixing, however, might involve protecting tenants at a variety of income levels in a neighborhood that is already home to people with a range of incomes. If a new Mitchell-Lama program could contribute to this version of income mixing, it could garner political support from these neighborhoods.

The anti-displacement goal is a new one, closely related to income mixing and requiring the use of different tools in different neighborhoods. Because private rents are rising especially fast in gentrifying neighborhoods like East Harlem, it stands to reason that the threat of displacement is reaching households with higher incomes there than in other places. This could conceivably justify affordable housing targeted to higher-income groups in such neighborhoods. But it could also be argued that subsidizing middle-income people in gentrifying neighborhoods will actually hasten displacement if it indirectly causes an increase in high-income demand. New York City's policy of setting aside half of new affordable housing units for local residents could be seen as an attempt to maximize the effectiveness of the new housing against displacement.

There are no easy answers to the question of housing policy's role in preventing displacement, but the geographic aspect of affordable housing policy deserves renewed attention—especially now that New York has essentially used up the once-vast stock of land and buildings seized for non-payment of taxes in the 1970s and 1980s.

Existing Housing Programs

The great majority of the subsidized apartments in New York City's housing stock are the legacy of past affordable housing programs that are no longer producing new units. In addition to Mitchell-Lama, these legacy programs include public housing, the HUD mortgage subsidy programs, and Section 8. In many cases, neighborhoods have changed around these developments, giving them an income-mixing and anti-displacement role that may never have been contemplated at the time they were planned and built.

Most, though not all, of the city's legacy affordable housing units are designed to be affordable to households at very low income levels. Public housing tenants pay 30 percent of adjusted income, down to a minimum rent of \$75, theoretically making it affordable to households with incomes of \$3,000 a year or more. (The median income in public housing is about \$18,000.) Project-based Section 8 housing is privately owned but receives a federal operating subsidy and charges rents on a basis similar to that of public housing. Section 8 vouchers also allow tenants to pay a public housing-like rent in a private apartment while the government pays the remainder of the total contract rent. The Mitchell-Lama program, as we have seen, reaches tenants with a wide range of incomes, reflecting the wide range of subsidies that are combined within that program. Together, the legacy programs account for the large number of low-income households with rent burdens of 30 percent.

The programs that are still creating new housing now reflect very different priorities. The central supports for affordable housing production today are the federal Low Income Housing Tax Credit and loans from government agencies at favorable rates. These subsidies are designed to produce housing for families who can afford rents of around \$800 or more—enough to pay for the operation of the apartments plus a little more for debt service.¹³ (There is also a National Housing Trust Fund, targeted to lower income levels, but Congress has never put any money into the fund.)

The primary reason why these programs focus on households with what could be considered “middle” incomes rather than the poor and near-poor is cost. It costs much less to provide housing subsidies to families with higher incomes for the simple reason that they can afford to pay a greater share of the cost of building and operating their housing. By focusing on households in a somewhat higher income range, policy makers can reach more households, point to more apartments built as evidence of success, and rebuild more abandoned neighborhoods. This, and not the existence of an affordability gap between low and high-income groups, is almost certainly the real reason for current housing policy's middle-income emphasis.

In New York City, the tax credit and other housing programs are providing the greatest benefits to families roughly from 40 to 60 percent of AMI—that is, with incomes from \$31,000 to \$46,000 for a family of three. This is a group with lower incomes than the Mitchell-Lama program was originally intended for, but well within the range that Mitchell-Lama actually ended up benefitting, and with higher incomes than most public housing or Section 8 tenants. Other subsidies are used for households with incomes up to 80 percent of AMI (\$62,000 for a family of three) or for those even higher up the income scale.

Thus one reasonable response to the call for a “new Mitchell-Lama program” is to say that that is what New York City already has. Nevertheless, current efforts to serve this income band fall short of the need, and new resources from state and city government could have a significant impact.

As Figure 3 makes clear, households from 40 to 60 percent of AMI are very poorly served by the housing market, even with the more than 80,000 tax credit apartments developed since 1987. Sixty percent of households in that income band are paying unaffordable rents of more than 30 percent of income. This compares to 30 percent of households paying unaffordable rents in the band from 60 to 80 percent of AMI (\$46,000 to \$62,000 for a family of three) and only 12 percent in the band from 95 to 130 percent of AMI (\$74,000 to \$100,000 for a family of three). Thus there is ample justification for a new program to improve affordability for people with Mitchell-Lama incomes, as well as those with lower incomes.

Tools For Making Housing More Affordable

What sorts of subsidies could benefit households with incomes in the Mitchell-Lama range, without excluding lower-income households while enabling the city to respond to other concerns besides affordability?

The Mitchell-Lama heritage provides two key lessons: the value of combining subsidies in order to make housing that works for people with a range of incomes, and the need for permanent affordability. The original Mitchell-Lama arrived at its income-mixing strategy unintentionally. New subsidies were added to overcome financing difficulties, not to build mixed-income communities, but the results still tell us that a program can succeed based on a multi-subsidy model.

A new state or locally funded housing production program should center on a group with a clear need for better and more affordable housing, such as those within the band from \$31,000 to \$46,000 for a family of three, while making provision for the inclusion of families from lower or moderately higher parts of the income spectrum. This will require a combination of subsidies.

For the purpose of exploring a possible new Mitchell-Lama program, we can divide housing subsidies into three types: land subsidies, capital subsidies, and operating subsidies.

Land subsidies have historically played a major role in housing policy. During the urban renewal era, government often condemned and cleared land, then sold it to housing developers for less than the acquisition cost. And since the end of New York City’s housing abandonment era of the 1970s and 1980s, many neighborhoods have been rebuilt with new housing on land that the city seized for non-payment of taxes, then sold to developers for nominal amounts.

The Mitchell-Lama heritage provides two key lessons: the value of combining subsidies in order to make housing that works for people with a range of incomes, and the need for permanent affordability.

These subsidies have a special significance because of their relevance to the geographic location of affordable housing developments. The value of buildable land varies widely within New York City. In low-income neighborhoods, it is probably still below \$50 for each square foot of housing that can be built on the site, considering lot size and zoning limits. In gentrifying areas, land often sells for \$250 to \$500 per buildable foot, while the most desirable sites trade for far more than \$500 per foot. This translates into costs from \$25,000 to the hundreds of thousands per unit, but government can also support affordable housing development by directly providing land from its own holdings.

A key function of land subsidies, then, is to influence the geographic distribution of subsidized housing. Where the government provides high-value land, there should be a clear rationale for the very valuable implicit subsidy, such as a need to mitigate severe displacement pressures.

Capital subsidies cover part of the cost of creating a new apartment, taking the form of either grants or loans. For this purpose, we are excluding land costs, so capital subsidies for new housing correspond roughly to the cost of construction. A recent industry source places the cost of residential construction in New York City at well over \$200 per square foot or perhaps \$200,000 per apartment once common areas are considered,¹⁴ but costs in subsidized developments are somewhat higher, and various fees and non-construction costs help raise that to around \$300,000 per apartment.¹⁵ (Reducing the high costs for subsidized housing would make a major contribution to affordability. One small step would be to set developers' and other fees at a flat rate rather than as a percentage of other project costs.)

The key function of capital subsidies in housing policy is simply getting units built. Costs are relatively similar regardless of the location of the development or the income level being targeted, so dollars in capital subsidy translate straightforwardly into units built.

The full cost need not be covered by a capital grant, if either the tenant's income or another subsidy can provide a monthly rent that is large enough to service debt as well as operate the apartment. Either private lenders or government agencies can also provide capital in the form of a loan. If government provides a below-market loan, then a given amount of debt service will stretch to cover a larger share of initial capital costs. It is also a common practice to combine below-market and market loans in the financing of one development, which has the effect of stretching capital subsidies further but increasing the rents that will need to be charged.

Operating subsidies are necessary to provide housing for families with incomes too low to afford the actual operating expenses of an apartment, typically \$800 per apartment per month including taxes. (Costs in private market buildings are often lower than in subsidized developments, possibly reflecting a lesser standard of maintenance.) Tax abatements or exemptions are the most common operating subsidy, reducing costs by perhaps \$200 per month in almost all of the city's subsidized housing.

A large share of the city's population needs an operating subsidy of some kind. Consider that a household with a fulltime worker at the minimum wage of \$8.00 per hour can afford a rent of \$400 a month—barely half the cost of operating an apartment. Until wages and income supports rise to a level commensurate with housing costs, operating subsidies will be a necessary part of the housing policy picture (though one could also say that policies to raise incomes are essential to housing policy).

The key function of operating subsidies, then, is to extend affordability to households with incomes less than about \$32,000 a year. Operating subsidies can also serve several housing policy goals, including the improvement of conditions, promotion of income mixing, and reduction of displacement. (In practice, operating subsidies are also used to pay debt service.)

The original Mitchell-Lama program commonly included moderate amounts of all three of these types of subsidy: free or reduced-price land, below-market loans, and tax exemptions. Today, much larger amounts of subsidy are needed to provide similar results. Unfortunately, more than Mitchell-Lama resources are needed to produce Mitchell-Lama results under today's conditions.

Tools for Making Affordability More Permanent

In order to avoid a repeat of the massive loss of Mitchell-Lama rental housing that has occurred over the last 20 years, future housing production programs should use a combination of tools for permanent affordability that relate to the different subsidy tools used to create and operate the housing. Perhaps the simplest tool for permanent affordability would be public ownership of the housing, which is outside the parameters of a new Mitchell-Lama. But the limitations of that approach are clear when we consider the experience of the many cities that have eliminated very large shares of their public housing stocks. The tools presented here are designed to work within the now-dominant framework of privately owned affordable housing. Permanent affordability is inevitably more an ideal than a guarantee.

In order to avoid a repeat of the massive loss of Mitchell-Lama rental housing that has occurred over the last 20 years, future housing production programs should use a combination of tools for permanent affordability.

Where a land subsidy is provided for the production of new housing, there should also be a long-term restriction on the use of the land. Plans made during the heyday of urban renewal often included restrictions on the use of land condemned as part of the renewal process, and these restrictions sometimes lasted longer than restrictions attached to the apartment buildings sitting on the land. But in hindsight, the lengths of these land restrictions were also much too short.

One better alternative would be to retain public ownership of the land, with a 99-year lease to the private affordable housing developer. This approach is widely used in some European

countries. Another way would be to create a Community Land Trust to own the land that is contributed by government to new affordable housing developments, vesting long-term stewardship of the land in a non-profit organization controlled by tenant and community representatives. It would be up to the trust to determine the best use of the land as the developments reach the end of their initial subsidy periods.¹⁶ These more restrictive approaches are appropriate whenever government is giving up pieces of its scarce supply of buildable land—and even more so if the land is already connected to an affordable housing mission, such as properties belonging to the New York City Housing Authority.

Capital investments such as buildings have long useful lives, though they are not permanent by nature as land is. Buildings also need to be recapitalized as their major systems, such as roofs and heating systems, age and need to be replaced. Restrictions related to capital subsidies should reflect these facts. Owners need the freedom to recapitalize, often after 20 or 30 years, but at that point they still retain significant value from the initial capital subsidy. In many cases, a government offer to assist with recapitalization in return for continued affordability will be very attractive and a good tool for preserving the stock. But if the neighborhood around the development has changed and market rents are high, market conversion will be more attractive and the owner will be able to remove a substantial government investment from its intended purpose.

The federal project-based Section 8 program deals with this problem by allowing owners to receive an increased subsidy after their initial commitment ends—a process described as “marking up to market.” This approach has worked reasonably well in New York City, but the cost of meeting a booming market with increased subsidy is often very high.

A better way to address this problem is with a purchase option for government or a nonprofit buyer at the time that initial affordability restrictions expire, but this option must be carefully designed to allow for a purchase price that represents a viable choice for the buyer at the time the option goes into effect. Another approach would be for government to retain an equity stake in subsidized affordable housing as a kind of silent partner. Private owners who decide to convert to market use at the end

of affordability restriction would have to return a portion of the proceeds to fund a new generation of affordable housing. (The use of tax credits to finance a development would make it harder for state or local governments to retain equity, however.)

Operating subsidies do not have any life cycle to speak of, and so they do not provide as strong a rationale for long-term restrictions. One exception is when government commits to provide an operating subsidy over a period of time, as with a project-based Section 8 contract. These commitments enable owners to obtain mortgage credit for capital investments, so there is some justification for requiring a fairly long-term affordability commitment from the owners as well. Conversely, it is important for government to be able to continue providing operating subsidies in the long term where they are needed to continue affordability, and this should include targeted tax abatements and exemptions.

Moving toward permanent affordability should be a top priority in housing policy.

Another tool for extending affordability for all kinds of subsidized housing is rent stabilization. All apartments in subsidized developments should be subject to rent stabilization in the event that they leave their subsidy programs.

Moving toward permanent affordability should be a top priority in housing policy.

It should be pursued even if it proves necessary to increase other incentives for investors in affordable housing, in order to compensate for the loss of long-term windfalls through market conversion. By combining long-term restrictions appropriate to the combination of subsidies used in each affordable housing development, a new Mitchell-Lama program should be able to approach the goal of permanent affordability and avoid the buy-out disaster of the original Mitchell-Lama.

Interaction with other subsidy programs

It is common for housing to be developed using multiple subsidies, including those that were not initially designed to work together. Sometimes conflicting requirements make these combined-subsidy developments difficult. In other cases, the unjustified use of multiple subsidies can amount to double-dipping. But combinations of subsidies can also provide efficient solutions for creating affordable housing. The original Mitchell-Lama program in particular was very often combined with federal subsidies.

In this Policy Brief, we focus on new subsidies that New York's state and city governments can introduce to increase the city's total capacity for affordable housing development. But given the importance of multiple subsidies in housing policy for the past several decades, we point out some other subsidies, both existing and proposed, which could be combined with new local resources for land, capital, and operating support.

- ▶ **Tax-exempt bond financing and the federal "4 percent" tax credit.** Federal law allows state and local governments to issue bonds for which interest payments are exempt from the bond holders' income tax. These can be sold at lower interest rates than other government bonds, because of the tax benefits, and thus represent a form of subsidy that is effectively paid for by the federal government although distributed by local governments. Naturally, it behooves these governments to make the maximum use of this resource which they don't have to pay for. What's more, housing developments funded by tax-exempt bonds are eligible for additional tax credits, known as "4 percent" credits, which would make it possible to raise even more capital based on federal resources. Both of these resources can be combined with new subsidies proposed here, although there is a potential conflict between the use of tax credits to raise capital and the retention of a government equity stake in a development, since governments don't pay income taxes and can't benefit from tax credits.
- ▶ **National Housing Trust Fund.** This trust fund was established as a provision of the Housing and Economic Recovery Act in 2008, but it has never been funded. The original plan was for it to be capitalized by contributions from the two federally sponsored mortgage enterprises, Freddie Mac and Fannie Mae, but they became insolvent and were taken over later that year. Housing advocates led by the National Low Income Housing Coalition are now looking for new ways to support the trust fund, which would provide dedicated support for housing targeted to households with incomes below 30 percent of the HUD Area Median Income, or \$22,000 a year for a family of three in New York. The funding would be primarily for capital subsidies but some could be used for operating subsidies.
- ▶ **Federal renter tax credit.** Congressman Charles Rangel of New York has introduced the Renters' Tax Credit Act of 2014 (H.R. 4479), a bill that would provide new operating subsidies for affordable housing through the tax code. Based on a proposal by the Center for Budget and Policy Priorities, this legislation would enable state governments to allocate set amounts of tax credits to offset housing costs for low-income households through several different mechanisms. In one scenario, landlords would receive credits in return for accepting reduced rent payments, which they could use to offset federal income. As with a Section 8 subsidy, the tenants would pay 30 percent of their income as rent, while the remainder of the rent, up to a low cap, would be offset by the tax benefit. The renter tax credit could be tied to either the apartment, similar to project-based Section 8, or to the tenant household, similar to Section 8 vouchers. The renter tax credit could also be combined with the existing Low Income Housing Tax Credit or other capital subsidies to make newly developed housing affordable to people with incomes far lower than capital subsidies alone would support. Given the present shortage of Section 8 subsidy, a federal renter tax credit would be an especially valuable complement to any new program providing land and capital subsidies.

A Flexible Subsidy Package to Serve a Range of Tenant Households

New York State could make a major contribution to affordable housing development options with a package of new subsidies that would relieve high rent burdens for both low- and middle-income households while improving apartment and building conditions and preserving existing mixed-income neighborhoods. Such a program would build on the success of Mitchell-Lama as not only a middle-income but a mixed-income program by combining multiple forms of subsidy and by using state and local resources to demonstrate a new approach that the federal government could eventually expand.

Land: The strategic provision of building sites should continue to be a key part of affordable housing policy. New York City no longer has a large stock of tax-seized land to use as a resource for housing, but the city and state governments, together with many public authorities, still have land that could be turned to housing purposes. In some cases, affordable housing could be added to a site that is also being used for something else—for example, a subsidized apartment building with a school on its lower floors.

Usable land from these sources will probably not turn out to be concentrated in poor neighborhoods like the tax-seized land. As a result, the geography of affordable housing development may well become a more prominent policy question. The use of public land for housing should be guided by two principles: First, to maximize the impact on severe rent burdens and poor building conditions by steering as much benefit as possible to households with lower incomes. And second, to respond to specifically geographic policy goals, especially by preserving mixed-income neighborhoods where they already exist. Land subsidies should be accompanied by strong permanent affordability provisions such as public ownership with a long-term lease or the use of a community land trust.

Capital subsidies: The amount of capital subsidy is the main determinant of the total amount of affordable housing that can

be developed. More is better. It does require a good deal more capital subsidy to create housing for a family with \$31,000 or \$46,000 a year in income than one with \$62,000 or higher, but the temptation to raise the number of apartments created by tipping benefits higher on the income scale should be resisted. The policy goals of reducing severe rent burdens and improving conditions are best served by tipping the benefits to lower income households, while geographic goals most likely call for income mixes.

Each 100 apartments affordable to families with incomes up to \$46,000 a year in New York City would require a one-time cost of about \$20 million in grants, assuming the apartments also received free land and tax exemptions, but did not use any existing capital subsidy programs such as the federal Low Income Housing Tax Credit. Some of that could be reduced with low-interest loans.

Costs would be somewhat lower outside New York City, but incomes are lower there as well, requiring lower rents for equivalent targeting. A program designed to benefit all areas of the state would still involve a substantial amount of money. Such a large outlay of capital subsidy should certainly be accompanied by strong permanent affordability provisions such as a large government equity stake.

Operating subsidies: Operating subsidies, other than tax exemptions, are generally not part of the discussion of “middle income” housing development. But a new Mitchell-Lama program would be considerably strengthened if it included a component for families with incomes too low for housing that lacks operating subsidies. Adding an operating subsidy for lower-income families to even a small component of the new program would make it more effective in reducing severe rent burdens and make it into a better model for future programs. Housing agencies that administer federal Section 8 vouchers could contribute to this by attaching some of their vouchers to new developments, but this may require an improvement in the federal funding picture for Section 8.¹⁷ A new operating subsidy for 250 apartments affordable to families with \$23,000 a year, within buildings already subsidized at the \$46,000 a year level, would involve an ongoing commitment of \$2 million

TABLE 1: A 1,000-UNIT PACKAGE OF NEW AFFORDABLE HOUSING IN NEW YORK STATE

NEW YORK CITY			REST OF NEW YORK STATE		
Income targeting	Subsidies	Affordability protections	Income targeting	Subsidies	Affordability protections
125 apartments for households with incomes averaging \$23,000 a year	<i>Land:</i> Direct provision from government-owned stock <i>Capital grant:</i> \$80 million	Community land trust or ground lease Government ownership stake in 375 apartments	125 apartments for households with incomes averaging \$19,000 a year	<i>Land:</i> Direct provision from government-owned stock <i>Capital grant:</i> \$75 million	Community land trust or ground lease Government ownership stake in 375 apartments
250 apartments for households with incomes up to \$46,000 a year	<i>Subsidized mortgage:</i> \$55 million	Government purchase option on 125 apartments	250 apartments for households with incomes up to \$37,000 a year	<i>Subsidized mortgage:</i> \$30 million	Government purchase option on 125 apartments
125 apartments for households with incomes up to \$62,000 a year	<i>Tax exemption</i> <i>Operating subsidy:</i> \$1 million per year		125 apartments for households with incomes up to \$50,000 a year	<i>Tax exemption</i> <i>Operating subsidy:</i> \$750,000 per year	

a year to make up the distance. Operating subsidies, including tax exemptions, should be renewable as long as they are contributing to affordability.

Table 1 shows how these tools can be put together in a package of 1,000 units, an ambitious but not impossible annual output for a “new Mitchell-Lama” program. (The original Mitchell-Lama produced apartments at approximately that rate from 1962 to 1976 in New York City alone, even excluding housing built with federal subsidies.)

This package would include 250 apartments affordable to households with incomes of \$62,000 a year in New York City or \$50,000 elsewhere in the state, 500 affordable to households with incomes of \$46,000 or \$37,000 a year, and 250 with operating subsidies for lower-income households averaging \$23,000 or \$19,000 a year. This could be accomplished with roughly \$155 million in grants (resulting in a significant government stake in at least 750 of the apartments and a purchase option on the remaining 250), subsidized mortgages totaling \$85 million, direct provision of land (resulting in a community land trust or a land lease arrangement), tax breaks, and an ongoing commitment of rent subsidy for the lower-income tenants costing less than \$2 million a year.

That would represent a considerable investment of public resources to be sure, but it would result in a permanent housing resource that would help the city respond to some of its most urgent needs. The current low interest rates and slack economy mean that there is truly no time like the present to undertake this important work. With a combination of subsidy tools such as these, a new affordable housing program worthy of the Mitchell-Lama heritage is not out of reach.

The current low interest rates and slack economy mean that there is truly no time like the present to undertake this important work.

POLICY BRIEF REINVENTING THE MITCHELL-LAMA HOUSING PROGRAM

Methodology: CSS calculations from U.S. Census Bureau, New York City Housing and Vacancy Survey 2011. Based on CSS Subsample, which excludes extreme values for rent and income and all cases where reported rent is greater than income. This reduces the total number of low-income households considerably. Due to the limitations of the survey, tenants in federal Low Income Housing Tax Credit developments are treated as unsubsidized in this analysis.

1. Private Housing Finance Law, Article II, Section 11.
2. Hilary Botein, "New York State Housing Policy in Postwar New York City: The Enduring Rockefeller Legacy," *Journal of Urban History* 35(2009): 833-852.
3. Barbara M. Woodfill, *New York City's Mitchell-Lama Program: Middle-Income Housing?* The New York City Rand Institute, June 1971.
4. Woodfill, op cit.
5. These estimates are derived from the 2011 New York City Housing and Vacancy Survey. In Mitchell-Lama coops, the figures were 24 percent below the standard, 28 percent within, and 48 percent above.
6. The 30 percent standard is used in many different contexts, most notably the 1969 "Brooke amendment" to the Housing Act of 1937, which limited public housing rents to 25 percent of income until the number was raised to 30 percent in 1981.
7. It may also not be a completely appropriate standard for people with very high incomes. For them, a rent burden of 50 percent of income might well represent a luxurious indulgence, akin to collecting sports cars, rather than any kind of hardship. But in fact, there are very few cases of high-income households with high rent burdens for any reason.
8. Due to the coding used in the New York City Housing and Vacancy Survey, this analysis treats tenants in Low Income Housing Tax Credit developments as unsubsidized, unless they also have a Section 8 voucher. Rent burdens for voucher holders are assumed to be 30 percent exactly, while those for other subsidized and public tenants are based on reported rent and income, which may be different from those used in rent-setting. Cases with reported rent higher than reported income are omitted, as are those with extreme reported values for rent and income.
9. Based on the number of reported maintenance deficiencies in the 2011 New York City Housing and Vacancy Survey.
10. See Lawrence J. Vale, *Purging the Poorest: Public Housing and the Design Politics of Twice-Cleared Communities* (University of Chicago Press 2013), and Mary Pattillo, *Black on the Block: The Politics of Race and Class in the City* (University of Chicago Press 2007).
11. Xavier de Souza Briggs, Susan J. Popkin, and John Goering, *Moving to Opportunity: The Story of an American Experiment to Fight Ghetto Poverty*, Oxford University Press 2010.
12. James De Filippis and Elvin Wyly, "Running to Stand Still: Through the Looking Glass with Federally Subsidized Housing in New York City," *Urban Affairs Review* 43(2008):777-816.
13. For a fuller discussion of these capital subsidies, see the CSS Policy Report *Good Place to Work, Hard Place to Live*, Tom Waters and Victor Bach, April 2013.
14. From Reed Construction Data at www.reedconstructiondata.com/rsmeans/models/apartment3/new-york/new-york/
15. HR&A Advisors, *Cost of Rehabilitation versus the Cost of Replacement across NYCHA's Portfolio, prepared for the New York City Housing Authority*, August 16, 2013. Available at www.nyc.gov/html/nycha/downloads/pdf/hra-advisors-nycha-rehabilitation-replacement-20130816.pdf
16. John Krinsky and Sarah Hovde, *Balancing Acts: The Experience of Mutual Housing Associations and Community Land Trusts in Urban Neighborhoods*, Community Service Society, March 1996.
17. Section 8 vouchers are normally attached to tenants, who may move from their apartments and take the voucher subsidy with them, but federal law allows the "project-basing" of vouchers in specific developments under some circumstances.



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