NEW YORK HOUSINGCONFERENCE

THE IMPACT OF REFORMING THE PRIVATE ACTIVITY BOND 50 PERCENT TEST FOR NEW YORK

New York is facing a severe housing affordability crisis that is particularly acute for low-income households due to a shortage in the supply of affordable rentals. Recent analysis found that the state lacks almost 650,000 units of housing for very low-income households, contributing to soaring rents and a homelessness emergency.[1] Nationally, new housing construction over the past 20 years is 5.5 million units less than long term historical production.[2] There are many steps the federal government can take to increase and preserve the supply of affordable housing.

In this brief, we will explain how a simple legislative change to tax-exempt private activity bond "PAB" rules can spur the creation of more than 100,000 new affordable homes in New York over the next ten years.[3]

PRIMARY FINANCING BARRIER TO AFFORDABLE HOUSING

PABs are an important tool to generate affordable housing and finance most affordable housing development in New York. They finance both new construction and rehabilitation of affordable housing, producing about 10,000 units annually.[4] They are also instrumental to accessing Low Income Housing Tax Credits[5], which in turn raises private equity for affordable housing development. Through a bond issuance, affordable multifamily rental housing projects are typically offered low-interest financing and automatically generate as of right 4% Low Income Housing Tax Credits, if they meet the "50 percent test".

The "50 percent test" requires that 50 percent of a development's qualified development costs (50 percent or more of the aggregate basis of any building and the land on which the building is located)[6] be financed by PABs, to be eligible for Low Income Housing Tax Credits, which are necessary for financial feasibility. To meet this requirement for affordable housing projects, more bonds must be allocated during the construction period than are needed to finance the project over the long-term. **The "50 percent test", a statutory program rule, limits states and localities from maximizing the use of private activity bonds through an unnecessarily high threshold for LIHTC generation.**

This limitation is further exacerbated by the state "volume cap". The federal government caps the volume of tax-exempt private activity bonds each state can issue, making these bonds a finite resource. New York State's "volume cap" was $2,042,623,905 in 2020.[7] New York uses essentially uses all of its cap on affordable housing. **The state limit on PABs is one of the main barriers to expanding production of affordable housing and increasing supply in New York.**

LEGISLATIVE RELIEF TO INCREASE HOUSING SUPPLY

The Affordable Housing Credit Improvement Act (AHCIA) includes a provision (Sec. 313. Tax-Exempt Bond Financing Requirement) that would allow states to use less private activity bonds in each affordable housing project to qualify the project for 4 percent Low Income Tax Credits. The bill lowers the project coverage threshold from 50 percent to 25 percent, making it more efficient and allowing states to finance more affordable housing.

A new 25 percent threshold would unlock up to $94 billion and finance up to 1.5 million new affordable homes nationwide[8] – including 100,000 units in New York, over the next decade.[9] If enacted, NY could double the number of affordable units financed by PABs annually.

While recent legislation brought stability to the program by requiring a fixed 4 percent rate for the LIHTC credit, additional legislative action could help to reduce barriers created by the State's volume cap and boost production of affordable housing.

PROMOTING EFFICIENCY AND INCREASING PRODUCTION

In total, states issued $24 billion in private activity bonds in 2018, with 91 percent of the bonds going to single and multi-family housing.[10] In many states, including New York, demand for private activity bonds exceeds supply. According to Novogradac,[11] 14 states including New York are using close to or using all of their private activity bond allocations. Lowering the threshold for generating Low Income Housing Credits will allow states to spread private activity bonds over more projects, leverage more private equity, and meaningfully increase the supply of affordable homes across the state over the next decade:[12]

Lowering the threshold will "free" up those bonds for use on additional projects, further stimulating production.

ECONOMIC STIMULUS

Increasing housing supply will not just help meet demand for affordable housing but it will also help stimulate the economy and generate jobs. New York is still reeling from the impact of the pandemic-induced economic crisis, and experts project it will take years before the state gets back to its pre-pandemic economic level. At the same time, affordable housing investment is a countercyclical tool that has a positive multiplier effect, creating jobs and generating new tax revenue – in the process, shortening the economic crisis and reducing its severity. A boost to affordable housing production will help unlock New York's economic future and pave the path of recovery.

IMPACT OF REFORMING THE 50 PERCENT PAB TEST TO 25 PERCENT FOR NEW YORK[13]

10,000 **additional units** of affordable housing per year in New York

$4.3 **billion** of economic activity

25,680 **jobs** in construction and related industries

3,650 **ongoing jobs** and

$820 **million** of economic activity per year

[1] "The Gap: A Shortage of Affordable Homes," National Low Income Housing Coalition, May 2021. https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2021.pdf

[2] Kenneth T. Rosen et al, "Housing is Critical Infrastructure: Social and Economic Benefits of Building More Housing," Rosen Consulting Group, June 2021. https://cdn.nar.realtor/sites/default/files/documents/Housing-is-Critical-Infrastructure-Social-and-Economic-Benefits-of-Building-More-Housing-6-15-2021.pdf

[3] This estimate is provided by NYC's Housing Development Corporation & NYS Homes & Community Renewal and assumes a continuation of current housing policy and a commitment of the city, state, and federal resources needed to create the new units made possible by the bonds saved.

[4] Ibid.

[5] The Low-Income Housing Credit (LIHTC) is responsible for more than 3.3 million affordable apartments and served 8 million households since its 1986 implementation. The credit has two components – a 9 percent credit awarded through a competitive process and a 4 percent credit that comes as-of-right for projects that use tax-exempt private activity bonds – that collectively finance 90 percent of all affordable housing developments across the country annually.

[6] Subparagraph (B) of section 42(h)(4), Internal Revenue Code of 1986, http://uscode.house.gov/view.xhtml?req=(title:26%20section:42%20edition:prelim)

[7] Brian Tumulty, "PAB volume caps decline in New York, 4 other states," The Bond Buyer, January 6, 2020. https://www.bondbuyer.com/news/pab-volume-caps-decline-in-new-york-4-other-states

[8] "Analyzing the impact of Lowering the 50% Test for 4% Tax-Exempt Bond Financed Properties," Novogradac. 2020. https://www.novoco.com/products/analyzing-impact-lowering-50-test-4-tax-exempt-bond-financed-properties

[9] This estimate is provided by NYC's Housing Development Corporation & NYS Homes & Community Renewal and assumes a continuation of current housing policy and a commitment of the city, state, and federal resources needed to create the new units made possible by the bonds saved.

[10] "CDFA Annual Volume Cap Report", Council of Development Finance Agencies, October 2019. https://www.cdfa.net/r/VolumeCapReport2018.html

[11] "Analyzing the impact of Lowering the 50% Test...," Novogradac.

[12] Kathryn Brenzel, "Stimulus deal includes major change to affordable housing financing," The Real Deal, December 21, 2021. https://therealdeal.com/national/2020/12/21/stimulus-deal-includes-major-change-to-affordable-housing-financing/

[13] NYHC analysis of Economic Impacts of Affordable Housing on New York State's Economy. By HR&A Advisors, for NYSAFAH. Feb. 10, 2017.