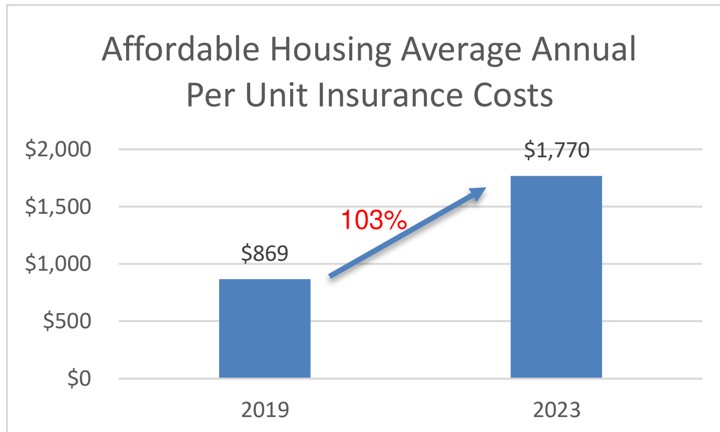
The Alarming Risk of Rising Insurance Costs for Affordable Housing

March 2024

Rapid increases in insurance costs are adding pressure to increase rents and putting the financial viability of affordable multifamily rental housing at risk. To better understand the extent of skyrocketing insurance costs for affordable housing in recent years, the New York Housing Conference examines cost escalation, market discrimination, and decreasing coverage and outlines recommendations for action in this policy brief.

KEY TAKEAWAYS



- Insurance premiums are increasing an average of 26% annually, while coverage is decreasing or difficult to find. Steep and rapid cost escalation is putting existing affordable housing under serious financial strain and making it more difficult to finance new affordable housing.
- The average cost to insure an affordable apartment is $1,770. This is a 103% increase from 4 years ago when the average annual per unit premium was $869.
- Insurance costs represent 22% of monthly rent for an extremely low-income household's Low Income Housing Tax Credit 1-bed affordable apartment. Rising insurance costs are a growing threat to affordability.
- Costs are skyrocketing due to a number of factors, including climate change, fewer insurance companies offering multifamily coverage, changes in the reinsurance market, inflation and discrimination.
- NYHC found that insurance carriers discriminate against affordable housing based on income source and income level and that many insurance providers will not consider insuring developments in New York City.
  - Affordable housing providers shared examples of applications that ask how much of the building is affordable housing, how many households help pay their rent with Section 8 rental assistance, or how many tenants are low-income or formerly homeless.
  - Providers also shared examples of insurers declining to offer coverage because the portfolio includes affordable housing or because the buildings are in New York City and, in some cases, because buildings are located in the Bronx. This is simply a new version of redlining, which undermined affordable housing development and low- and moderate-income communities prior to the passage of the Community Reinvestment Act ("CRA").

Based on these findings, NYHC provides recommendations for intervention to reduce alarming cost escalation, including:

- Ban discrimination of coverage or costs for property and liability insurance based upon the income source and income level of residents.
- Require reporting to better understand how insurance companies are serving or failing to serve the commercial multifamily market in New York City.
- Reduce costs by supporting affordable captive insurers, create an excess liability fund for affordable housing providers, invest in resilient infrastructure, and reform the scaffold law to remove absolute liability.
- Explore new frameworks including CRA-type requirements and public options.

INTRODUCTION

Insurance costs for affordable housing have been skyrocketing in recent years, putting financial strain on this critical housing stock and making it more expensive to develop new affordable housing. This has gained the attention of policymakers, press and advocates, leading the New York State Legislature to pass legislation requiring a report on the issue from the New York Department of Financial Services ("DFS"), which was released in November 2022. To better understand the extent of the issue, the New York Housing Conference collected data on pricing and insurance coverage from our partners developing, owning, operating, managing and lending to affordable and mixed income housing representing over 130,000 rental units. We also conducted interviews with owners and insurance experts in addition to reviewing declinations and communication with brokers. The cost increases in this sample, as this report will show, are so significant they are affecting the profitability and sustainability of affordable housing, and depleting cash flow that should be contributing to building reserves and repairs. This policy brief examines the alarming trends related to cost escalation, market discrimination and decreasing coverage with recommendations for action and further exploration.

BACKGROUND

Like other multifamily housing, lenders of affordable housing require owners to purchase commercial liability insurance, including excess liability or umbrella coverage, and property insurance to fully insure the replacement value of the buildings. Typically, owners purchase commercial property and liability insurance policies in the form of commercial multiple peril ("CMP") policies that bundle several different types of coverage together. Insurers licensed to issue policies in New York are supervised by DFS. However, when owners can't find insurers willing to provide coverage, they may turn to the excess line market to purchase insurance. The insurers in this market are not regulated by DFS and take on risks that are more unusual or unpredictable, making these policies even more costly. Insurers are not required to insure every kind of risk and are free to determine what kind of risks to underwrite as long as it is not "unfairly" discriminatory or could be considered geographical redlining.

FINDINGS

RISING COSTS

Data collected from 18 partners on insurance policies and pricing covering over 130,000 units of housing indicate that insurance premiums are skyrocketing while coverage is decreasing or difficult to find.

More specifically, we received detailed multiyear data from 12 owners totaling 55,000 units of affordable housing. We found these owners are paying an average premium of $1,770 per unit in 2023-2024. This is a 103% increase from the 2019-2020 average premium of $869. Some owners are experiencing even larger increases. One owner with more than 10,000 units saw their premiums increase 168%, while another, with more than 3,000 units, saw their premiums increase 175% over four years. These increases are severely eroding the cash flow of these developments, threatening the ability of owners to maintain their properties, pay debt service, and secure a reasonable rate of return on their investment.

On average, $148 of rent each month is going towards insurance. Rates as high as $3,081 per unit per year were seen in The Bronx. In other terms, it means that $257 of monthly rent was paid towards insurance, far higher than what the original project underwriting was designed to support. For example, for a new construction apartment built in 2019, its budget for insurance was likely less than $700 per unit in 2024 or $58 per month per unit.

We also received data on mixed-income housing, which is seeing significant increases. The Community Preservation Corporation, a nonprofit multifamily lender and investor, reported that across their multifamily housing portfolio of 60,000 units in New York City, insurance costs average $940 per unit, and they have increased 58% over three years. While rate increases in mixed income housing are nearly 20% per year, mixed income housing (portfolios that include market and affordable apartments) are reporting lower costs than portfolios that are 100% affordable. This contrast in pricing has been observed by owners of mixed income housing in our interviews as well. This difference in pricing for mixed income housing versus income restricted housing strongly suggests affordable housing price discrimination.

DECREASING COVERAGE

Affordable housing providers also told us that even as costs are dramatically increasing, coverage is decreasing. In both new policies and renewal options, owners are being forced into higher deductibles or lower coverage amounts. This is particularly common for excess liability policies. One owner said their excess liability coverage declined from $100 million to $50 million, while another said their excess liability decreased from $50 million to $25 million. In both cases, excess liability premiums continued to increase while coverage dwindled.

Owners also reported that more items are being excluded from coverage, deductibles (paying a portion of claims) or self-insured retention levels (amount of a claim owners have to handle) are increasing. For example, one owner said their self-insured retention increased from $100k to $250K in 2023.

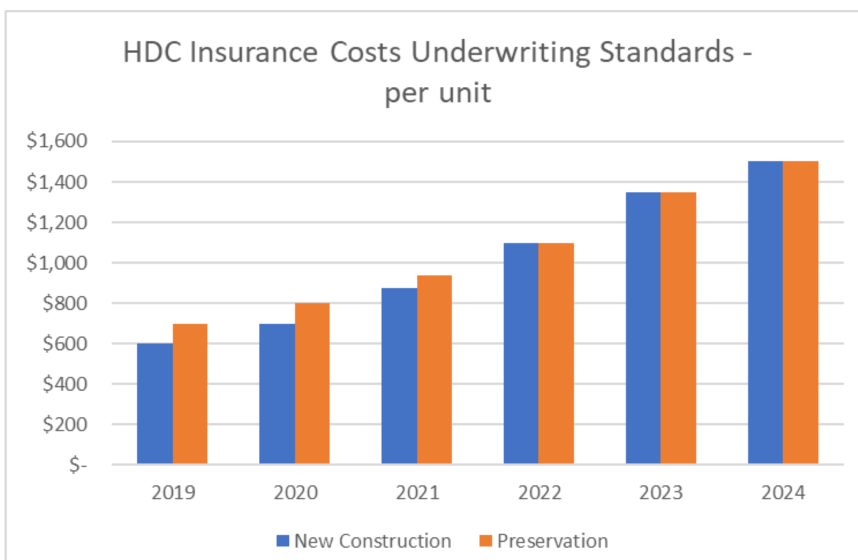
Owners also reported that they are forced to take lower rated carriers due to the lack of carriers writing policies while some housing providers reported that they have been unable to secure excess liability insurance.

In addition, owners reported that insurance carriers are adding new requirements that are increasing their operating costs, including requiring additional security cameras, minor but expensive repair work, and/or requiring approval of contractors or requiring contractors with higher insurance limits. One provider said the requirements for contracts means that it is more difficult for them to hire local or MWBE contractors.

Owners currently seeking insurance coverage for next year are reporting that, based on current quotes, next year's rates will increase significantly again. One provider reported that one building that had coverage at $1,350 per unit recently got a renewal for $3,500 per unit. **There is no reason to think that increases will slow down in the near future without government action. And there is no evidence to suggest that this increase is necessary.**

EFFECTS OF RISING COSTS

Rapid increases in insurance costs are impacting new construction underwriting, with dire consequences for the financial viability of exiting affordable housing. The cost of insurance during construction is also a growing concern, however, it is not covered in this brief.



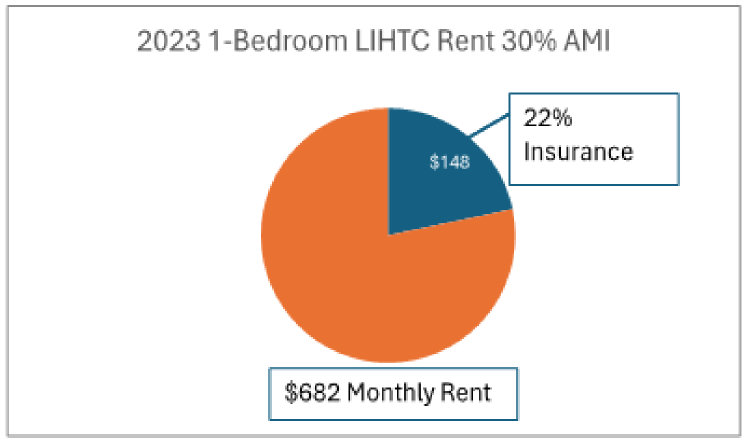
Government agencies have been adjusting their standards for insurance prices as prices have increased, but they have not fully kept up. New York City's Housing Development Corporation's ("HDC") underwriting standards for property and liability insurance (including excess liability) in the Extremely Low & Low-Income Affordability

(ELLA) Program increased from $600 per unit for new construction and $700 per unit for preservation five years ago in 2019 to $1,500 per unit for both in 2024 – increases of 150 and 114%, respectively. However, the HDC limit is $270 less than $1,770, the average annual per unit insurance cost found in our analysis.

New Construction Impact
For new affordable housing developments, rising insurance costs are being absorbed by higher subsidy rates at initial underwriting but as insurance rates continue to relentlessly rise, they may eventually impact affordability and rent levels. **A $900 increase in annual per unit insurance costs increases subsidy by $10,700 per unit.** A decrease in net operating income means owners can borrow less and rely on subsidy more. Moreover, the increased subsidy requirement will inevitably reduce the number of affordable housing units produced as subsidy needs grow.

In 2019, insurance was 5% of a low-income tax credit (LIHTC) rent for a 1-bedroom apartment at 50% Area Median Income ("AMI") but by 2023, insurance was 9% of the rent for the same apartment according to HDC's standards. However, insurance is an even higher share of rent (12%) when using NYHC's average annual cost of $1770.

For extremely low-income households at 30% AMI in 2023, our analysis shows that 21% of LIHTC rent goes towards insurance or $148 a month out of $682 of monthly rent.



FINANCIAL RISK FOR EXISTING AFFORDABLE HOUSING
For a project that closed on financing in 2019, based upon HDC's underwriting standards, insurance costs would have initially been set at $600 per unit and were budgeted to rise to $698 per unit by 2024. **Our analysis shows that most affordable housing providers are paying 2.5 times this amount.** If increases continue at the current rate, underwriting assumptions will soon be out of date again and the financial sustainability of developments will be put at risk.

When affordable housing is originally financed, the building income is based on affordable rent levels fully covering the costs of debt service on a commercial mortgage, taxes, and building maintenance and operating ("M&O") costs, with limited but required excess cash flow. M&O costs are approved by financing agencies such as HDC and include the costs of administration, utilities and maintenance per dwelling unit. M&O costs are typically expected to increase by 3% annually, with a 2% increase in building income for the mortgage term, while maintaining a positive cashflow of 8% to 10%. This cashflow funds building reserves and capital repairs, while providing a reasonable return to the owner, whether they are nonprofit or for profit. It is necessary to meet lending guidelines.

In a 100-unit low-income building meeting its underwriting guidelines, it could expect roughly $150,000 per year in positive cashflow. As noted above, insurance costs have increased on average by $900 per unit over the past 4 years, which for a 100-unit building would mean an increase in costs of $90,000, decreasing cash flow by 60% and undermining the building's financial viability.

Significantly reduced cash flow means less money for building reserves, repairs and difficulty refinancing or selling the property. Owners are often required to maintain a debt service coverage ratio (the ratio of income to debt service) of 1.15 or greater. When cash flow decreases, it will lead to buildings having a debt service coverage ratio below the required amount, which can put an owner's building on a watch list, making it difficult to refinance or borrow to develop new buildings.

To make matters worse, cashflow in affordable housing has already been severely impacted by rent arrears, an outcome of the pandemic and its lingering effects. NYHC has written about the ongoing arrears crisis in affordable housing, where 34% of tenants are more than two months in arrears and owe an average of $7,260. **As a result of decreased building income and increased insurance costs, many affordable housing providers have negative cash flow, threatening the quality and financial viability of New York's affordable housing.**

DISCRIMINATION: AFFORDABLE HOUSING, LOCATION, AND INCOME

NYHC partners shared communications and data that show insurance companies discriminate against affordable housing resulting in failure to underwrite policies, declination of policies or dramatically higher prices for affordable housing. Affordable housing providers shared examples of applications that ask how much of the building is affordable housing, how many households help pay their rent with Section 8 rental assistance, or how many tenants are low-income. We reviewed five applications for insurance and all asked what share of the building or portfolio is affordable or subsidized housing. One of the applications also asked what share of the building or portfolio is low-income housing.

Owners also shared examples of insurers declining to offer coverage because the portfolio includes affordable housing and/or because the buildings are in New York City and, in some cases, even more egregiously, because buildings are located in The Bronx. These practices are reminiscent of bank redlining practices which contributed to the destruction of New York City's low- and moderate-income communities during the 1970's and 1980's.

In a marketing summary shared by a provider, nine of 23 insurance carriers declined to offer coverage due to Section 8 or subsidized affordable housing. In another list, three providers declined because of affordable or Section 8 housing, while a fourth said, "Needs $5 MM attachment due to Section 8," meaning additional liability insurance would be required at a greater cost to the affordable housing provider. It should be noted that discrimination against renting to a household who uses a Section 8 voucher is illegal in New York.

Reviewing email communications between affordable housing owners and their insurance brokers or directly from insurance carriers, the following reasons were given for rejecting to offer coverage:

- "The reason for nonrenewal is risk no longer meets our underwriting guidelines due to affordable housing exposure"
- "No longer writing new in NY, no section 8, no churches"
- "No schedules over 5 locations, no section 8, no senior, no non profit"
- "I am unable to consider NYC Habitational and / or Affordable Housing risks at this time."
- "No commercial, no senior housing, no section 8, no open HPD violations, no Bronx"
- "We are only a market for senior housing. No multi-family. No section 8."

Carriers are also declining coverage in New York City:

- "Do not write in five boroughs of New York"
- "Declination due to habitational NYC exposure"
- "Declination due to habitational exposure in down state NY [5 boroughs / LI]"
- "We were just advised by [carrier] that anything with over 10% New York is an auto decline now."

And we saw two examples specifically declining to cover in The Bronx – the one mentioned above and another that said:

- "Shared limits except NY – per policy aggregate in NY, no longer writing new business in the Bronx."

The shrinking number of carriers offering coverage in New York City gives outsized market power to the few that remain, allowing them to raise rates further with little competition. Declining to cover New York City, especially the Bronx, along with declining to cover affordable housing, suggests discrimination and modern-day redlining.

The New York State Department of Financial Services issued a report in the fall of 2022 called "Affordable Housing and Insurance," looking at rising prices of insurance for affordable housing and allegations of discrimination. DFS wrote in the report that "the Insurance Law explicitly prohibits the use of certain factors in underwriting or rating, such as race, color, creed, national origin, disability, and status as a victim of domestic violence. The Insurance Law does not explicitly prohibit consideration of whether a property is comprised of, in part, affordable, subsidized, or Section 8 units when making underwriting or rating determinations," so long as these factors are "reasonably related to actual or anticipated losses to ensure that rates are adequate and that policyholder claims will be paid."

DFS did say, "These insurer inquiries about affordable housing raise legitimate concerns from stakeholders about the potential for unfairly discriminatory results." At the time, DFS issued a request for information from insurance carriers about their practices. They concluded by saying that if they have enough time and resources, they will issue a report based on the information they collect. **This complacent response is utterly inadequate given the gravity of the situation.**

DFS oversees the financial condition and market conduct of property and casualty insurance companies in order "to monitor the financial solvency of licensees and maintain an equitable marketplace for policyholders". However, this regulator has not taken any meaningful action to address discrimination and price gouging in affordable housing. Furthermore, it supervises more than 1,167 regulated entities with total assets of approximately $2.4 trillion writing net premiums totaling more than $666 billion, yet several affordable housing providers told us that only 3 companies will write insurance policies in the Bronx. **State regulators should be actively working on solutions to protect consumers from unfair and discriminatory pricing for affordable housing.**

INSURANCE LOSSES / PAYOUTS
Affordable housing owners and property managers have reported that they do not see evidence of any pattern between rising claims and rising rates. NYHC received data from several owners showing insurance losses over time. The data we reviewed shows little relationship between changes in losses and rising costs.

Data from one owner with nearly 7,000 units shows decreasing losses in their liability coverage between 2019 and 2024, while their liability premiums per unit doubled over that time. Another owner with over 2,100 units reported that their liability losses decreased over 3 years while their premiums per unit doubled over that time. Similarly, they had property losses in just one year of three in an amount equivalent to 40% of their premium, but their premium increased 50% over that time.

But the most telling examples come from excess liability or umbrella policies, which provide additional coverage above the general liability policy. **In the data we received for over 13,000 units, there were no losses or de minimis losses ($500 or less in a given year) for excess or umbrella, while their premiums per unit doubled or tripled over that time.** This data suggests that there is opportunity for DFS to establish parameters around data to be used for increases in premiums to protect consumers from price gouging.

EXPLANATIONS FOR RISING COSTS

NYHC talked with industry experts about the reasons for the increases, including affordable housing owners and managers applying for and purchasing insurance and brokers helping obtain insurance for affordable housing owners and managers. The main explanations were:

- Climate Change: Our changing climate is causing more frequent and more powerful storms, which can cause damage to property. This issue affects different regions in different ways and impacts insurers' approach to pricing. There are no wildfires in New York, but there has been substantial and frequent flooding. Increasing and more powerful storms are leading to increasing payments for damage.
- Reinsurance Market: Insurers find it more difficult and costly to secure reinsurance on the global market, in part due to concerns about payouts from climate change damage. This makes it harder and more expensive for primary insurance carriers to provide coverage, leading them to raise rates.
- Discrimination: As this policy brief shows, insurers are asking about and declining coverage – possibly even raising rates – for affordable housing providers.
- Fewer Insurers: Partners have told us that there are fewer insurers that are willing to provide coverage for multifamily housing in New York City, and in The Bronx in particular. With fewer carriers, those that will give coverage have more market power and can charge higher prices because of less competition.
- Outsized Payouts: We heard from brokers that insurance companies believe that there have been bigger payouts in New York City, particularly The Bronx, for liability through jury awards. We were unable to verify this with data.
- Scaffold Law: New York state's scaffold law assigns absolute liability to owners in gravity-related injuries (falls from a height or objects falling from a height). New York is one of only a few states in the country with absolute liability for owners. While this law has been on the books for 100 years, brokers told us that the law causes many carriers to decline to offer coverage in New York.
- Inflation: Inflation has increased 11% total in 2022 and 2023 in the New York City region, and this leads to higher costs of building replacement, which is a factor in property insurance prices. However, this does not account for dramatic increases in liability insurance.

RECOMMENDATIONS FOR ACTION & FURTHER EXPLORATION

Government intervention is required to reduce the alarming cost escalation documented in this report. If left unchecked, skyrocketing insurance premiums will make rental housing even more unaffordable in NY and put affordable housing at financial risk. In our research, we came across a wide range of possible policy interventions, some of which can be adopted immediately and some of which must be further explored.

PREVENT DISCRIMINATION

- Ban Discrimination of Affordable Housing: New York State law allows pricing and coverage decisions based on actuarial evidence. It should be illegal to discriminate in coverage or costs for property and liability insurance based on the income source and income level of building residents. Allowing insurers to assess risk by asking how many Section 8 vouchers are used in a building allows for modern-day redlining and clear cases of disparate impact for a borough like The Bronx, where 70% of its rental housing is rent-regulated or subsidized and a majority of its renters are people of color. **The NY State Legislature should pass and the Governor should immediately enact legislation prohibiting insurance carriers from discriminating against affordable housing with steep penalties for failure to comply.**
    - The Executive Budget and the Senate One-House bill (Ted Part FF) propose an affordable housing discrimination ban. If passed in the final budget, it would prohibit insurers from canceling, refusing to insure or renew or increasing premiums based on the source of income of residents, the number of affordable

units, or government housing subsidies. Further, insurers would be prohibited from asking about these factors on applications.

UNDERSTAND THE SCOPE OF THE PROBLEM

- Publish Findings Related to Affordable Housing: NYS Department of Financial Services should move quickly in issuing the follow-up reporting committed to in the 2022 Affordable Housing and Insurance Report. Specifically, DFS committed to requesting information on:
    - whether New York licensed property and casualty insurers ask about affordable housing or Section 8 units, an explanation of how those questions are used and whether they refuse to insure affordable housing.
    - restrictions or limitations on the underwriting of affordable housing, rates being offered to them compared to market-rate housing with the same risk characteristics and the potential impact on premium and availability of insurance coverage for affordable housing if such underwriting and rate considerations were prohibited.

  This information is critical in understanding factors driving up premiums and identifying limitations that can be imposed on insurance companies by regulators to rein in cost escalation. Further, the New York State Homes and Community Renewal agency ("HCR") committed to obtaining information from state-funded housing providers, detailing their insurance premiums, declinations and non-renewals, and actions that affordable housing owners are taking to mitigate some of the losses giving rise to increasing insurance premiums.

- Require New State Reporting from Insurance Companies: DFS should adopt new reporting requirements to better understand how insurance companies are serving the commercial multifamily market in New York. Data on policy issuance by Census tract, cost of coverage and total units covered would shed an important light on insurers' practices in the state. It would give a clear picture of market participation and help to highlight any redlining practices or discriminatory risk assessment. Due to the prevalent use of brokers, often building owners are not issued policy declinations, they are simply told that companies will not offer a quote. By requiring reporting on where insurance companies are writing multifamily housing policies, we can begin to understand how companies participate in the market.

- Require New Federal Reporting from Insurance Companies: At the federal level, the U.S. Department of the Treasury's Office of Insurance should examine market participation and cost escalation of commercial multifamily policies across the country. Congress should require new reporting procedures on policy issuance by census tract, cost of coverage and total units. The federal Home Mortgage Disclosure Act ("HMDA") has provided clear data showing patterns of discriminatory lending practices that banks have been forced to correct.

REDUCE RISING COSTS

- Support Insurance Captives: Affordable housing providers may be able to secure lower rates by creating their own insurance coverage through a captive insurer. To the extent that rising costs are due to unfair market power from the few remaining carriers and a drive for excessive profit, a captive can provide lower costs. City, state and federal agencies should support developing captives such as the Milford Street affordable housing insurance captive.

- Create a State Excess Liability Fund: Excess liability costs have been increasing dramatically over the past five years, doubling or tripling costs for some owners, even while those owners have seen no excess liability claims. The State should create an excess liability fund for affordable housing providers.

- Reform NY's Scaffold Law: New York State should reform the scaffold law to remove absolute liability and instead assign comparative liability for gravity-related injuries to workers. At minimum, affordable housing should be exempt from the Scaffold Law.

- Make Strategic Resiliency and Infrastructure Improvements: Weather events from climate change are causing costly and catastrophic claims that can be at least mitigated by public infrastructure investment. One provider told us of flood damage that was due to sewer infrastructure that could not handle storm drainage. This and other resiliency efforts could prevent flooding and damage from major storms and thereby decrease insurance payouts and costs. While this isn't a way to immediately reduce insurance costs, it should be a complementary, long-term approach.

EXPLORE ALTERNATIVE FRAMEWORKS

- CRA Framework for Insurance: Require an affirmative obligation to serve the affordable housing market. While insurance profits are based on reducing risk and exposure, this approach wholly fails the consumer in the case of affordable housing. A framework similar to the banking industry's obligations under the Community Reinvestment Act should be explored for the insurance industry.

- Public Reinsurance: After the Sept. 11 attacks, insurers and reinsurers generally stopped covering terrorism risk in commercial property and casualty policies. In response, the Terrorism Risk Insurance Act (TRIA) was passed to require that certain policies cover terrorism risk. In exchange, the federal government shares in the risk by reimbursing certain losses that result from acts of terrorism. A new program modeled after the TRIA could ensure that affordable housing developments receive the coverage they need at a reasonable rate.

- State Affordable Housing Insurance Fund Based on Workers Comp Model: The New York State Insurance Fund (NYSIF) is a governmental insurance carrier that provides workers' compensation and disability benefits for employers in New York State. NYSIF consists of two separate "funds" — the Workers' Compensation Fund and the Disability Benefits Fund. It is required by law to provide the lowest possible premiums to maintain its solvency. NYSIF is a not-for-profit agency of the state of New York. If the private market is unwilling and/or unable to provide reasonably priced coverage for affordable housing, the State should step in with a public option.