



OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN
THE CITY OF NEW YORK

1 Centre Street, 19th floor, New York, NY 10007
(212) 669-8300 p (212) 669-4306 f
431 West 125th Street, New York, NY 10027
(212) 531-1609 p (212) 531-4615 f
www.manhattanbp.nyc.gov

Gale A. Brewer, Borough President

**Gale A. Brewer, Manhattan Borough President
Testimony to NYS Assembly Standing Committee on Housing
And to NYS Assembly Subcommittee on Mitchell-Lama
On the State of Mitchell-Lama Housing Developments
May 25, 2016**

My name is Gale A. Brewer and I am the Manhattan Borough President. Thank you to Assembly Member Keith Wright, Chair of the Housing Committee; to Assembly Member Michael Blake, Chair of the Mitchell-Lama Subcommittee; and to Assembly Members of both committees for the opportunity to testify today.

In my 12-year tenure as NYC Council Member of District 6 on the Upper West Side, and now as Manhattan Borough President, I have seen numerous Mitchell-Lama developments exit the program once they became eligible to privatize under the provisions of Article II of the NYS Private Housing Finance Law. Tom Waters and Vic Bach, Housing Analysts at Community Service Society of New York, noted in their April 2015 policy brief that “half of the [Mitchell-Lama] rentals and 7 percent of the [Mitchell-Lama] coops in the city have been lost as affordable housing” as a result of developments exiting from the program.¹

Challenge: Long-Term Affordability

Not included in the CSS-NY calculation is the latest privatization-in-progress of Westview, a 361-unit State-supervised Mitchell-Lama rental development on Roosevelt Island. Members of the Westview Task Force, which has been involved in negotiations for the exit with the owner, are eager to purchase their units upon the development’s exit and conversion into a co-op. Tenants who choose not to purchase, or cannot afford to purchase, their units face an initial rent increase of 14.9% upon privatization.

Despite agreement on an Affordability Plan with the owner and with NYS Homes and Community Renewal (HCR), I am convinced that Westview will not remain affordable for long. We can draw from the example of Island House, a neighboring rental-turned-coop that exited Mitchell-Lama in 2012. According to Don Lewis, Roosevelt Island Operating Corp’s Acting President at the time, the Island House Affordability Plan was said to ensure that “Island House, a 400-unit affordable housing development on Roosevelt Island, will continue to remain affordable to its residents for the next 30 years.”² But the promise of affordability only extended to residents for as long as they remained in their apartments — units sold after the co-op conversion and apartments vacated by renters immediately became market rate. In one 2016

¹ Tom Waters and Vic Bach, *Reinventing the Mitchell-Lama Housing Program*, April 2015, Community Services Society, p. 3.

² *Roosevelt Islander*, October 20, 2012, http://rooseveltislander.blogspot.com/2012/10/report-from-acting-rioc-president-don_20.html.

listing, the asking price of a 3-bedroom Island House apartment is \$1.12 million for a three-bedroom unit.³ This is a 13% price increase for the same apartment from a year ago.⁴ I have no doubt that the same will happen to Westview, and that even families who cash out by selling their apartments will realize there are limited options for stable, affordable housing elsewhere.

The affordability challenges that Westview and many other current and former Mitchell-Lama developments face are detailed in my testimony to the New York City Council on February 29, 2016 (see Appendix).

MBPO Mitchell-Lama Forum

On May 9, 2016, I hosted a Mitchell-Lama Forum that was attended by over 100 people at my office at 1 Centre Street. I brought together a panel of State and City agencies: NYC Department of Housing Preservation and Development (HPD), NYC Housing Development Corporation (NYC HDC), and NYS Homes and Community Renewal (HCR), which is the umbrella agency for both the regulatory oversight arm under the Division of Housing & Community Renewal (DHCR) and the financing division under the Housing Finance Agency (HFA). Representatives from each agency spoke on preservation and financing tools available to Mitchell-Lama developments and answered audience questions.

The forum highlighted several issues that have increasingly become concerns for Mitchell-Lama residents:

Article II to Article XI Conversion. Some New York City-supervised Mitchell-Lama co-ops have reconstituted as Article XI co-ops and incorporated as HDFCs. HPD uses this as a preservation tool, offering an alternative to unregulated privatization for Mitchell-Lama co-ops already intent on exiting the program. Under Article XI, converted co-ops retain affordability for at least 30 years. Those who wish to purchase a unit in a converted building would need to meet income guidelines (currently set at 130% of Area Median Income). Units that sell for over \$100,000 would have to be reviewed by HPD.

HPD, and HCR if State-supervised Mitchell-Lama co-ops are approved for a similar conversion process, must reserve Article II to Article XI conversion only as a last resort to preserve the affordability of a development. As members of the Housing Committee know from my testimony on HDFCs in January, Article XI HDFCs have their own set of challenges. Enforcement of Article XI's mandate to maintain HDFCs as housing affordable to low-income families has been inconsistent at best. Furthermore, Article XI HDFCs are more market-driven than Mitchell-Lama housing. Many neighborhoods in Manhattan are considered "hot" markets with very high real estate values. In those areas, I have seen HDFC units sell for \$500,000 or more — including a few over \$1 million — even *while the buildings are still HDFCs* governed by Article XI. Will Mitchell-Lamas that become HDFCs go the same way if they are also located in high-priced zip codes? I urge the Committee on Housing and the Subcommittee on Mitchell-Lama to closely examine the implications of an Article II to Article XI conversion and consider

³ Corcoran listing, retrieved May 23, 2016, <http://www.corcoran.com/nyc/Listings/Display/3461974>, at \$1.12 million for unit 909, a three-bedroom unit.

⁴ May 29, 2015 Corcoran listing, <http://ny.curbed.com/2015/5/29/9955740/roosevelt-islands-newest-co-ops-ask-from-just-392900>, at \$1.007 million a year ago for the same unit (909).

ways to better safeguard Mitchell-Lama affordability under Article II before a development is taken out of the program and converted into an HDFC.

Succession Policy. At the MBPO Mitchell-Lama Forum, both HPD and HCR provided clarification on rules that govern the Mitchell-Lama succession process and how residents can ensure their children or other family members meet the program's succession criteria. Determining the assets of a successor with disabilities, however, remains outside of the purview of the Mitchell-Lama program. For example, a daughter receiving a disability subsidy that has an asset limit may lose her eligibility for that subsidy if, upon succeeding her parents as owner of a Mitchell-Lama co-op apartment, she exceeds the prescribed asset limit. This would effectively force a choice between housing and receiving the subsidies she needs for her care.

Some residents in this situation are looking into establishing a special needs trust for their heirs with disabilities. Both HPD and HCR advised consulting an attorney based on the complexity of the matter. Since this issue impacts how eligibility may be determined for certain State subsidies, I believe this should also be an issue for the Subcommittee on Mitchell-Lama to consider, particularly on how assets might need to be calculated differently for State benefits under special circumstances triggered by the succession of limited-equity housing such as Mitchell-Lama.

Financing Capital Improvement Needs. As Mitchell-Lama buildings age, low-cost financing becomes imperative for the rehabilitation and preservation of the housing stock. To date, HDC's Mitchell-Lama Preservation Program has issued over \$900 million in bonds and over \$454 million in subordinate financing to preserve more than 60 developments totaling 36,000 Mitchell-Lama units across the five boroughs of New York City.⁵ Additional financing via the Program for Energy Retrofit Loans and \$96 million available through the NYC Build it Back Program offer preservation incentives coupled with structural upgrades to increase energy efficiency and resiliency.

On the State level, in April 2016, HCR released an RFP offering resources to finance "high quality projects that address the needs of low- to moderate-income individuals, families, seniors."⁶ Of the total available funding amount, up to \$42 million is allocated for the House NY Mitchell-Lama Program and up to \$13.25 million for the Mitchell-Lama Loan Program. HCR's Housing Finance Agency will work with HDC and HPD to finance eligible projects.

I thank my colleagues at the State level for allocating funding for Mitchell-Lamas in the FY2016-2017 State budget. This should be only the starting point for increasing resources toward Mitchell-Lama preservation. The total capital improvement needs among Mitchell-Lama developments far exceed the financing that has been made available. I can provide two illustrations from Manhattan: Lakeview Apartments, a State-supervised Mitchell-Lama rental in East Harlem, is estimated by its owner to have between \$25 million and \$30 million in capital needs; Gouverneur Gardens, a City-supervised Mitchell-Lama co-op, received \$350,000 in financing from HDC several years ago to repair its stairwells but estimates that it still has another \$7-\$8 million's worth of rehab work, including repairing its water tanks and upgrading its water

⁵ Presentation by Jonah Lee, Vice President & Director of Preservation at NYC HDC, at the MBPO Mitchell-Lama Forum on May 9, 2016.

⁶ <http://www.nyshcr.org/Funding/OpenWindow/2016/2016-Multifamily-Open-Window-RFP.pdf>

mains and piping. The \$32–\$38 million of capital needs between these two developments alone is almost the entire amount of the House NY Mitchell-Lama Program. As both New York State and New York City continue to allocate resources to fund various affordable housing needs, adequate funds must be directed toward the rehabilitation and preservation of Mitchell-Lama housing.

Summary

In light of the decreasing supply of Mitchell-Lama housing in New York City and the challenges of preserving the affordability of what remains, I urge members of the Committee on Housing and the Subcommittee on Mitchell-Lama to:

- Examine Article II to Article XI conversion and consider the full impact on long-term affordability of this policy when a development is taken out of Mitchell-Lama and reconstituted as an HDFC;
- Examine apartment succession as an issue that increasingly concerns Mitchell-Lama residents; look into different scenarios that may affect a successor's eligibility to receive other subsidies; and
- Advocate for increased resources toward repairing and preserving Mitchell-Lama housing.

Thank you for the opportunity to testify today.

Appendix



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**Gale A. Brewer, Manhattan Borough President
Testimony to New York City Council Committee on Housing
and Buildings
For the Public Hearing on Mitchell-Lama
February 29, 2016**

My name is Gale A. Brewer and I am the Manhattan Borough President. Thank you to Chair Williams and to members of the Committee on Housing and Buildings for the opportunity to testify today.

When I was Council Member of District 6 on the Upper West Side, Mitchell-Lama developments exited the program one after another. Of the 24 Mitchell-Lama developments that were built within District 6, only 10 remain in the program today. At the height of the Mitchell-Lama program in the 1980s, the borough of Manhattan had 93 co-op and rental developments in the program. Today, we are down to half that number—only 46 Mitchell-Lama developments remain according to data from the NYU Furman Center’s SHIP database.

Even though the circumstances surrounding each Mitchell-Lama exit are different, the program’s most common challenges can be grouped via the type and current status of a development. In the past two years as Manhattan Borough President, I have worked with buildings that fall into each of these groups.

Co-ops Exiting the Mitchell-Lama Program

Southbridge Towers, Lower Manhattan

Southbridge Towers is a 1,651-unit complex located in the prime real estate area of Lower Manhattan near the Brooklyn Bridge. In September 2014, shareholders voted—by only a 10-vote margin—in favor of exiting the Mitchell-Lama Program.¹ The vote met the two-thirds requirement for privatization. Since Mitchell-Lamas that have been in the program for over 20 years are eligible to exit, Southbridge Towers’ supervising agency, NYS Homes and Community Renewal (“HCR”), had no authority to stop the privatization.

The exit put an end to tax abatements that Southbridge Tower received as Mitchell-Lama housing. In exchange, shareholders now have the opportunity to sell their units at market rate. For families who do not want to move, remaining at Southbridge Towers means steep maintenance increases needed to cover the difference between \$1.64 million of property taxes per year with abatements to over \$8 million per year after privatization. Regardless of how long

¹ The exit was delayed due to an Article 78 proceeding filed against NYS Homes and Community Renewal by some of the shareholders, challenging the legitimacy of the vote. In August 2015, the NYS Supreme Court ruled in favor of HCR, upholding the shareholder vote to exit Mitchell-Lama as valid.

current shareholders and/or their children remain in their units, every unit will inevitably lose affordability at the moment of its next sale.

Westview Apartments, Roosevelt Island

Westview Apartments, a 361-unit development located at 595-625 Main Street on Roosevelt Island, is in the process of withdrawing from the Mitchell-Lama Program. It is the last remaining Mitchell-Lama development on Roosevelt Island after two other developments exited Mitchell-Lama within the past few years. Like its Roosevelt Island counterparts, upon privatization, Westview Apartments will convert into a co-op. Even though Westview is currently a rental, the prospect of co-op homeownership for current residents provided the impetus for tenants who plan to purchase their units to support privatization.² Another reason that residents want to privatize is to fund the development's capital improvement needs, which tenants expect to secure from initial unit sales.

Non-purchasing tenants face a 14.9% initial rent increase upon co-op conversion, and while an Affordability Plan negotiated by the owner and HCR, the supervising agency, outlines future rent increases in accordance with Rent Guidelines Board plus an additional percentage based on a household's AMI level, the protection only applies to existing tenants. Once vacated, these units will be sold as market-rate co-op apartments.

Problem: Though privatization of Mitchell-Lama co-ops is rare—only seven percent have exited the program compared with over half among former Mitchell-Lama rentals³—the loss of affordability is immediate: shareholders become owners of market-rate apartments that can be sold at any time. Renters in developments that convert into co-ops do not have the same level of protection as Mitchell-Lamas that privatize as rentals.

Action Needed: Mitchell-Lama co-ops were never intended to become private co-ops. The 20-year provision for program exit was added to the program as an incentive to attract developers to build Mitchell-Lama rentals.⁴ If the City or State pursues a new limited-equity homeownership program for moderate-income households, all units must be permanently affordable, with no provision for privatization.

Co-ops Deteriorating

Gouverneur Gardens, a Mitchell-Lama co-op in the Lower East Side, consists of six buildings that are over 60 years old and operating with antiquated water main and piping infrastructures. The development has \$7–\$8 million of capital improvement needs, ranging from old water tanks to cracked sidewalks and parking lot surface, and deteriorated park space. Gouverneur Gardens has already taken on \$350,000 of financing with NYC Housing Development Corporation (“HDC”) to repair its stairwells and corridors and is still repaying this loan. With aging buildings, a depleting reserve, and limited capacity to take on new debt, Gouverneur Gardens does not have the resources to fund much needed repairs.

² Members of the Westview Task Force, who worked with Westview's owner and HCR on the co-op conversion's offering plan, informed Assembly Member Seawright, State Senator Serrano's office, and my office that a survey conducted among Westview residents yielded "big majority" support for privatization.

³ *Reinventing the Mitchell-Lama Housing Program*, Tom Waters and Victor Bach, Community Services Society of New York, April 2015, p. 1.

⁴ *Ibid.*, p. 4.

Problem: New York City's Mitchell-Lama housing stock is aging. Capital grants are rare, and tax exemption programs such as J-51 can reduce a development's tax burden but does not provide upfront resources for Mitchell-Lamas to perform the eligible capital improvements. For buildings already receiving financing with HDC or the State's Housing Finance Agency, taking on additional debt will make monthly maintenance unaffordable—especially as a co-op's tenancy ages and become reliant on fixed income.

Action Needed: The Administration's goal of reaching 200,000 units of affordable housing includes preserving 120,000 existing units. In the past, City Council Reso A money and Borough Presidents' capital grants—funds that can be awarded to eligible Mitchell-Lamas—were structured as forgivable loans as long as resources are used toward building or preserving affordable housing. Maintaining Mitchell-Lama co-op units is preservation. HPD must make forgivable loans available again to fund affordable housing preservation, including Mitchell-Lamas.

Former Co-ops Losing Affordability

West Village Houses, a privatized co-op that used to be a Mitchell-Lama rental, was granted a J-51 tax abatement upon co-op conversion. When the abatement expires in 2018, West Village Houses' property taxes will increase from \$500,000 per year to an expected \$6 million per year. It also means that units will be released from regulation and can be sold at market rate. Affordability can be extended via a new Regulatory Agreement tied to additional tax abatement or exemption. This will require the co-op Board's buy-in and shareholders' willingness to delay their ability to sell their units at market price.

Those who will be most impacted beginning 2018 are about 40 units of remaining renters. These are families who could not afford to buy their units at the time of co-op conversion and were unable to subsequently purchase. My office is working closely with Council Member Johnson and staff from Congressman Nadler, State Senator Hoylman, Assembly Member Glick, as well as HPD, to keep as many renters in their homes as possible.

Problem: West Village Houses illustrates why affordable housing must be permanent. Time-limited Regulatory Agreement and tenant protection plans only delay the inevitable. After 12 years (as in West Village Houses' case), or even 35 or 50 years, the end result will still be a complete loss of affordability for all units, and the most vulnerable tenants will have nowhere to go.

Action Needed: I urge HPD, HDC, HCR, HUD, the AG's Office, and agencies at all levels of government to pursue outside-the-box uses of existing financing tools to help preserve the affordability of current and former Mitchell-Lamas. I understand that HPD and the AG's Office have worked on several "cond-op" deals—keeping units in a co-op under affordability and tax exemption via a Regulatory Agreement, while shareholders adamant about selling their units at market are carved out of the agreement and are assessed full property taxes. Instead of taking whole developments out of affordability, can a cond-op idea be applied to current or former Mitchell-Lamas? I am also a strong proponent of partnering with nonprofit developers and CDCs to preserve affordable housing. For example, HPD can facilitate the pooling together of housing subsidies so that mission-driven developers can purchase the shares of a co-op's rental units and manage the units as affordable housing. HPD and other agencies have the financing tools. They must use them creatively to maintain the affordability of all housing.

Rentals Exiting

Lakeview Apartments, a 446-unit, 4-building development with two of its towers overseeing Central Park North and the Harlem Meer (the “lake” view) along Fifth Avenue between E 106th and E 107th Streets, is the last remaining Mitchell-Lama rental in East Harlem. In September 2014, Lakeview’s Tenants Association President informed me that its new owner, a developer based in Portland, ME, plans to privatize Lakeview. The owner does not believe remaining in Mitchell-Lama is viable for Lakeview, which has an estimated \$25–\$30 million of capital improvement needs. I have been working with Assembly Members Keith Wright and Robert Rodriguez, and with HUD, HCR and HPD, on how to keep Lakeview in Mitchell-Lama.

Problem: For Mitchell-Lamas located in prime neighborhoods such as Lakeview, existing subsidies are not attractive to owners who expect to profit from lucrative units like Lakeview’s top-floor, 4-bedroom apartments overlooking Central Park. Currently, HUD provides Enhanced Housing Choice Section 8 Vouchers to households at 95% AMI or lower, subsidizing the difference between 30% of a household’s income toward rent and the HUD-approved market rate. The State’s Rental Assistance Demonstration Program subsidizes differences between rent paid and rent charged, but the price ceiling is often lower than free market rent. Financing via Article XI requires preserving two-thirds of the units as affordable. To Lakeview’s owner, only Enhanced Vouchers match the level of rental income he expects to earn in free market rent.

Action Needed: Same as Mitchell-Lama co-ops, I am calling for permanent affordability for rental developments should a new moderate-income program similar to Mitchell-Lama be created. Supervising agencies such as HPD and HCR must also be diligent in enforcing Mitchell-Lama program requirements while a development is still in the program. Lakeview did not accumulate \$30 million of capital needs overnight—scaffolding around the development has been in place for over 12 years. In cases where previous mismanagement has increased the cost of keeping buildings like Lakeview affordable, HPD and HCR must strengthen enforcement and monitor all Mitchell-Lamas’ financial health, management compliance including the administration of wait lists, and intervene with corrective action plans and fines when owners are in violation.

Rentals Losing Affordability

My office has worked with at least three Mitchell-Lama rentals that faced steep rent increases within the past year and a half.

Tenants from Independence House, a 120-unit Mitchell-Lama rental located at 176 West 94th Street on the Upper West Side, faced a three-year rent increase proposal that would raise their rent by 45%. The owner justified the steep increase by claiming higher operating costs and an anticipated jump in real estate taxes with the NYC Department of Finance’s new way of assessing taxes on commercial units. Tenants were not initially aware of their right to re-evaluate the owner’s proposal. Congressman Nadler, Council Member Rosenthal, and my office assisted the TA to retain a CPA, approved by HPD and paid for by the owner as permitted under Mitchell-Lama rules.⁵ The TA also secured pro bono legal representation from the Legal Aid Society. After evaluating the owner’s rent increase proposal, the CPA determined that Independence House has under-realized revenue sources from warehoused units, and has under-charged commercial rents that would more than cover the proposed rent increase.

⁵ Title 28, §3-10(h)(1), Rules of the City of New York.

Tanya Towers, a Mitchell-Lama rental complex located at 620 East 13th Street in the East Village, has 50 set-aside units for the elderly and the hearing impaired. On June 2, 2015, Tanya Towers residents were notified by the management company that it has filed for a 28% rent increase with HUD, and that the increase would take effect starting in July. However, as a city-supervised Mitchell-Lama, the management did not follow proper procedure to apply for the rent increase, and HPD later confirmed to my office that Tanya Towers residents would not have their rents go up on July 1. Understanding that tenants were confused due to inaccurate information disseminated by the management company, I sent notice to each apartment to explain management's error and to inform tenants of their rights should a rent increase proposal be filed with HPD in the future.

Tenants of Clinton Towers, a Mitchell-Lama rental located at 790 11th Avenue, are facing a 20% rent increase. While modest increases may be necessary to cover rises in operating expenses, an estimated 5% of the units in Clinton Towers have been left vacant, and the development has a commercial storefront that has been left vacant for two years at a loss of \$5,627 per month, or \$67,524 per year. HPD should take all of Clinton Towers' potential revenue streams and potential cost savings into consideration when assessing the rent increase request.

Problem: In all three cases cited above, if the tenants or elected officials had done nothing, rent increases would have moved forward upon the supervising agency's signoff (illegally, in Tanya Towers' case). I appreciate the dedication and commitment to preserving affordable housing by Assistant Commissioner Julie Walpert and Director Gary Sloman at HPD's preservation division, but a critical problem remains: tenants are often uninformed of their rights and options when faced with news of a pending rent increase.

Action Needed: These cases demonstrate the benefits of technical assistance and professional support in challenging a rent increase. The Administration has allocated \$46 million in the current fiscal year and a proposed \$61.8 million in the next fiscal year for legal aid and tenant protection services. The city must also raise awareness among Mitchell-Lama renters about the availability of legal, professional, and tenant organizing assistance for them.

Other Issues

I have identified two other key issues that affect Mitchell-Lama residents. First, HPD appears to have stopped adding names to shareholder stock certificates. While I understand that this prevents violation of the Mitchell-Lama wait list policy by adding relatives or friends as an owner ahead of other households, exceptions must be made to allow for special cases such as when a family member was mistakenly left out of the stock certificate at the time of purchase.

Second, some of Housing Choice Voucher tenants of former Mitchell-Lama developments still face the issue of downsizing. While I am glad that HPD has stopped all downsizing of single-person households from one-bedroom apartments to studios, HPD continues to downsize families by assigning smaller apartments based on the calculation of two people to a bedroom. Over the past year, I have raised concerns about this policy, for example, mixed-gender teenaged siblings forced to share a bedroom when the family's religious beliefs prohibit this kind of room sharing. HPD enacted downsizing in 2012 as a cost-saving measure. Today, there is no longer a federal funding shortfall for HPD's Section 8 programs. I urge the City Council to require HPD to produce a summary of actual cost savings from downsizing to

date—something I and my colleagues have repeatedly asked for. The policy needs to be examined against its financial benefits – i.e., HPD’s justification for the downsizing program.

Summary

New York City’s Mitchell-Lama housing stock remains a consistent source of affordable housing for moderate-income families. Unfortunately, the provision to exit the program led to the loss of affordability for tens of thousands of units that have been privatized. Any future limited-equity housing program must contain 100% permanently affordable units. For existing Mitchell-Lamas:

- City and State oversight agencies must monitor Mitchell-Lama developments for compliance in financial reporting, wait list administration and apartment allocation, and contracting, intervening with corrective action where necessary;
- City, State, and Federal agencies’ subsidies and financing options must match the reality of New York City’s real estate market: subsidies should offer enough of an incentive for owners to stay in the program, and financing should not overburden a development;
- HPD and HCR, along with other agencies, should employ available subsidy and financing tools creatively to preserve affordability for a maximum number of units;
- Mitchell-Lama renters must be provided with information and resources on how to organize, understand their rights, and how to secure professional services when faced with rent increases; and
- HPD policies that negatively impact Mitchell-Lama residents, such as downsizing and changes to stock certificate guidelines, must be evaluated individually and take each case’s unique circumstances into consideration.

Thank you for the opportunity to testify today.

