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***CSS Policy Memorandum:***

**WHY THE MAYOR'S LEGISLATION SHOULD PROTECT BOTH  
MITCHELL-LAMA RENTALS AND HUD-SUBSIDIZED HOUSING**

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In late October 2003, Mayor Bloomberg proposed State legislation to protect Mitchell-Lama rental housing at risk of owner buy-out and conversion to market rents. The bill would include tax benefits and other incentives for owners to remain in the program, in return for rent stabilization measures to assure rents remain affordable and tenants are protected against large increases and potential eviction.

The proposal will be a major step forward if it succeeds. But, as it stands, it does not address similar losses in the City's HUD-subsidized developments—built largely with federal Section 8 subsidies—that are outside the Mitchell-Lama program. There are several important reasons to extend the Mayor's proposed bill to include the at-risk HUD-subsidized stock:

**(1) HUD-subsidized developments outside the Mitchell-Lama program are a major affordable housing resource for the City.**

The City's HUD-subsidized stock contains over 92,000 units in 500 developments, built largely under Section 8. Only 84 developments also fall under the City or State Mitchell-Lama program. But, because of their size, the federally subsidized Mitchell-Lama developments make up close to half (45% or 41,000 units) of the HUD-assisted stock.

(See Victor Bach, "The Future of HUD-Subsidized Housing: The New York City Case", in *Housing and Community Development in New York City*, Michael H. Schill, ed., SUNY Press, 1999.)

There remain 51,000 HUD-subsidized units in over 400 developments outside the Mitchell-Lama program. Any legislative initiative to address potential market conversions should take the potential loss of these affordable housing resources into account.

**(2) HUD-subsidized housing is subject to similar conversion risks.**

The HUD-subsidized housing development programs are based on the Mitchell-Lama model innovated in New York. As a result, the two have similar characteristics: private

development and ownership under public subsidies, limited but assured return on equity to owners, government regulations restricting rent levels and eligible incomes for admission.

Both HUD-subsidized and Mitchell-Lama developments also run the risk of expiring subsidies—after a certain point, usually 20 years, an owner can opt out of HUD subsidy arrangements and convert the property to market-rate housing.

The HUD-subsidized stock has experienced substantial recent losses, about 14 percent of the stock (12,000 units) has been lost due to owner or HUD conversions that terminated the project-based subsidies.

(See the CSS Policy Brief: *Keeping the Doors Open: HUD Subsidized Housing in New York City*, James DeFilippis, May, 2003.)

**(3) Tenants of HUD-subsidized housing currently have some special protections against market conversions in the form of “enhanced” or “sticky” vouchers. But these protections do not cover all at-risk tenants and their federal future is uncertain. Moreover, they do not prevent the loss of these affordable housing resources.**

If a HUD-subsidized development undergoes market conversion, under federal law “sticky” or “enhanced” vouchers are allocated to enable lower income tenants to afford resulting rent increases. But there is no assurance that the federal budget will continue to fund these high-cost vouchers from one year to the next. (Major budget and policy reforms were proposed by the Bush administration this past year.)

Not all at-risk tenants are protected from displacement pressures. Vouchers are available only to low and moderate-income tenants—those with incomes up to 95 percent of the HUD area median income. (A New York City family of three, for example, must have an income under \$54,000.) In properties with escalating post-conversion rents, moderate-income tenants may still face unaffordable rent hikes. Even some low-income tenants fall through the cracks when they apply for the vouchers, because they are disqualified under federal criteria, for instance, because of prior rent payment records or criminal background checks.

Federal vouchers do not prevent the loss of affordable rental housing over the longer term. Once a vouchered tenant vacates an apartment, the market rent applies. The voucher, as long as it lasts, belongs to the in-place tenant, it does not remain with the unit once the tenant is gone.

**(4) Rent stabilization protects residents and maintains affordability of the development, but these protections are not available to the many HUD-subsidized developments completed after 1973.**

The Mayor’s bill recognizes rent stabilization as a key element in protecting tenants facing market conversions and keeping the development in the affordable stock. Under State law, rent stabilization is mandatory when assisted developments transit from government-regulated rents, but *only for those built prior to 1974*.

The Mayor’s initiative proposes extending rent stabilization to the post-1973 Mitchell-Lama stock. The City estimates post-1973 Mitchell-Lama rentals at 32,000 units. Virtually all of these units are also HUD-subsidized.

Yet there is an even larger stock—over 36,000 units—of post-1973 HUD-subsidized housing outside of Mitchell-Lama that is also at risk of conversion

**POST-73 HUD-SUBSIDIZED HOUSING**

<u>Program Built Under</u>	<u>No. Developments</u>	<u>No. Units</u>
Mitchell-Lama with federal subsidies	55	31,900
Older mortgage subsidy programs (Section 236, 221)	44	5,700
Section 8 New Construction/ Substantial Rehab	264	30,500

Moving forward the deadline date for rent stabilization protection of former assisted housing makes sense, particularly when matched with owner incentives to stay in the program. But the date-shift needs to apply to HUD-subsidized as well as Mitchell-Lama developments.

**(5) Not including HUD-subsidized developments outside the Mitchell-Lama program will permanently exclude them from similar conversion protections.**

Provisions in the federal law—the 1990 Low Income Housing Preservation and Resident Homeownership Act (LIHPRHA)—prohibit states and localities from pre-empting federal prerogatives by enacting additional protections specifically targeted at the HUD-subsidized housing stock.

If a Mitchell-Lama conversion protection bill is enacted in Albany, without including the HUD-subsidized stock outside of Mitchell-Lama, the pre-emption provision will make it virtually impossible to extend similar protections to HUD-subsidized developments at a later point in time.

Because the New York Rent Stabilization Law applies to *all assisted housing exiting from government regulation*, a change in the deadline date from 1973 to the present would not be pre-emptive. The same stroke of a pen would protect both these critical sectors in the City's limited and dwindling supply of affordable housing.