Affordable Housing in New York City: The Role of Government Agencies and Incentives

by

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Abstract

This study examines the role of government agencies and incentives in New York City's affordable housing realm. Overall, it will show how crucial these government agencies and incentives have been in shaping New York City's current affordable housing landscape. This is accomplished through analyzing data available on the websites of the pertinent government agencies, as well as evidence to support this claim found in textbooks; newspaper and magazine articles; articles in academic review and other scholarly periodicals; and industry journals and newsletters.

Table of Contents

I. Introduction

As trendy, hot topics go, “affordable housing” is all the rage. Everywhere one turns, there are newspaper stories, opinion and editorial pieces, scholarly journal articles and cocktail party discussions about the lack of affordability in the housing markets, especially for low-income persons and families. This affordability gap is driven by the ever-increasing scourge of wealth and income inequality that is rampant throughout the nation. Many of the major cities in the U.S. - from Denver to San Francisco and Seattle to New York - have a visible manifestation of this problem in the burgeoning numbers of homeless people living openly on public streets and in train stations and bus stations, in city parks and on beaches, and in a variety of other public spaces. The open sore of homelessness in these metropolitan areas exists in stark contrast to the ostentatious wealth displayed in the inner-city luxury condominiums and suburban mansions of the Wall Street and Silicon Valley set.

This paper examines the issue of the affordability of low-income housing in the context of the tools that have been used by the governmental and quasi-governmental agencies in the City of New York over the past 40 years to combat the persistent problems of overpriced, substandard, rental housing and high levels of homelessness that have plagued the City many decades. These agencies, led by the NYC Department of Housing Preservation and Development, the NYC Housing Development Corporation and the United States Department of Housing and Urban Development, are charged with the responsibility of fostering the creation and preservation of housing that is affordable to low-income residents and have brought to bear on the problem a wealth of creative policy ideas and substantial financial resources in an effort to create, and to promote the perpetual affordability of, residential rental housing stock that is occupied by the neediest of the City’s residents.

Chief among these tools and resources is the low-income housing tax credit, a mechanism that has driven the creation and/or rehabilitation of millions of housing units that are affordable to persons and families that are in the lowest income bands of the population of our nation – many of whom subsist below the poverty line and have total household incomes ranging from 30% to 60% of the median income of the area in which they reside.

Prior to the enactment of the low-income housing tax credit, nearly all of New York City's affordable housing consisted of government-sponsored "housing projects". Since the introduction of the low-income housing tax credit, private developers and investors have become actively engaged in the new construction, rehabilitation and preservation of privately-owned and operated, affordable, low-income housing. This has been a literal sea of change in the New York City affordable housing landscape.

II. Thesis Statement and Research Questions

Thesis Statement:

With rents and the cost of living rising faster than wages, government incentives such as the Low-Income Housing Tax Credit and government agencies such as the New York City Department of Housing Preservation and Development ("HPD"), the New York City Housing Development Corporation ("HDC") and The United States Department of Housing and Urban Development ("HUD") are crucial for creating and preserving affordable rental apartments for New York City's low-income families and persons.

Research Questions:

1. What is the history of government involvement in affordable housing in New York City?
2. How does the Low Income Housing Tax Credit attract investors to build affordable units?
3. 3.What is deemed to be "affordable housing"?

III. Methods

In the conduct of the research a variety of sources were examined. These sources included statutes and codes pertaining to affordable low-income housing; websites of governmental agencies involved in the production of affordable low-income housing; reference books and handbooks published by professional practitioners and hands-on participants in the affordable housing industry; newspaper, magazine and other periodical articles; and peer reviewed academic and real estate law journals. The examination of these sources was undertaken to answer and expand on the initial research questions outlined earlier. This was then used in preparing the review of the literature and in drafting the analysis in which the research questions are answered and sources reviewed.

Because the burgeoning field of affordable low-income housing seemed to be a relatively new, having undergone a sea change with the passage of the 1986 Tax Reform Act, which introduced the Low-Income Housing Tax Credit, sources were sought that described the differences between the manner in which the low-income housing industry operated before the adoption of the LIHTC and the evolution of the industry since its enactment. This included a review of prior practices in the industry and a review of sources describing conditions that led to the enactment of the LIHTC.

Both qualitative and quantitative methods were used in examining the sources. The qualitative methodology took the form of articles that offered examples of the success of government agencies and incentives in affordable housing. The quantitative came in the form of data and statistics collected from the various sources.

These appeared to be the best practices for a field such as this, with a relatively short history and a wealth of practical and anecdotal evidence about the success of the programs.

IV. Literature Review

With rents and the cost of living rising faster than wages, government incentives such as the Low-Income Housing Tax Credit and government agencies such as the New York City Department of Housing Preservation and Development ("HPD"), the New York City Housing Development Corporation ("HDC") and The United States Department of Housing and Urban Development ("HUD") are crucial for creating and preserving affordable rental apartments for New York City's low-income families and persons. To understand why these agencies and incentives are crucial to the creation and preservation of affordable housing, one first must understand: what "affordable housing" is; the history of government involvement in affordable housing in New York City; and how the Low-Income Housing Tax Credit attracts investors to create and preserve affordable units.

Defining Affordable Housing

According to HPD, "housing is considered affordable if it costs about one-third or less of what the people living there make. This stock includes publicly subsidized units, rent-regulated units, public housing operated by NYCHA, and privately-owned units" (About HPD). This one-third test is supported by the policies of HUD's Section 8 rental assistance program, which subsidizes the rent payable by a low-income tenant to a private landlord in such a manner that the tenant does not pay more than 30% of its gross income toward rent and utilities for the housing accommodations (Policy Basics). The difference between what is called "the tenant share" of the rent and the rent payable under the lease agreement is paid by the HUD subsidy.

History of Government Involvement

Prior to the overhaul of the Internal Revenue Code accomplished by the Tax Reform Act of 1986 ("TRA '86"), virtually no private equity capital was invested in new construction of housing projects that were affordable to persons and families of low-incomes, resulting in almost all development of new affordable housing being undertaken directly by government agencies or government-sponsored entities. In New York City, this took the form of virtually all low-income housing being built, owned and managed by the New York City Housing Authority (Narron 18).

There were very few incentives for investment in building low-income housing prior to the adoption of TRA ’86; and those that existed did not guarantee affordability of rents to low-income occupants. Those incentives were completely tax-driven revenue code provisions that allowed more rapid amortization of the cost of assets, accelerated depreciation provisions and provisions granting beneficial treatment of loan interest and real property taxes during the period of construction of a project. These provisions were coupled with a simple requirement that a minimum number of the apartment units in a project be rented to low-income tenants, but did not have any limitations on the rental rates that could be charged. As stated by Novogradac, “building owners were free to charge any rental amount that low-income individuals were willing to pay” (3). The result was the tax-loss driven churning of older, substandard housing stock in the outer boroughs of the City of New York by slumlords that were more interested in milking every last penny from their multi-family properties than in providing safe, decent, affordable housing, leading to the notorious 70’s banner headline “The Bronx is burning!”

> As the neighborhoods faced blight and violence through the 1960s into the 1970s, the social and physical fabric of the area also began to unravel. Bronx landlords turned to abandonment, destruction and arson in response to their undesirable and unprofitable properties. Between 1970 and 1980, the Bronx lost more than ⅕ of its housing units. (Nuta 6)

With the enactment of TRA ’86 the low-income housing tax credit (“LIHTC” or “credit”) came into being, effective as of January 1987. The credit began as an indirect federal-only subsidy (some states (notably New York have adopted analogs of the LIHTC that provide credits against state income taxes) used to finance low-income housing by virtue of credits against federal income tax which eligible taxpayers received by claiming a credit on their tax returns. Congress intended the credit to more effectively incentivize private developers and investors to create and provide more affordable rental housing that would serve the needs of its tenants by requiring both income-eligibility limits and rental rate limits (Novogradac 1).

Demand for Affordable Housing

Experts agree that there is a housing crisis in New York City. Walker says that “in a new report on the state of rent affordability in New York, … a look at the progression of rent prices and wages from 2010 to 2017 … finds that rent has been increasing twice as fast as wages”(1). The demand for affordable housing is extremely high and the only way that this demand can be met is through the work of government agencies such as HPD, HDC and HUD, and programs such as the Low-Income Housing Tax Credit and Mayor William DeBlasio’s Housing New York Plan.

Kaysen illustrates just how high this demand is, “The demand for affordable units is intense, with tens of thousands of people applying in lotteries for just a few hundred spots - as at the Rollins, a mixed-use building on the Lower East Side, where last year nearly 94,000 people applied for 104 affordable units” (90).

Kaysen notes further that “New York City’s population is growing and expected to reach 9 million by the year 2030 and that, while nearly 25,000 new units are constructed each year, the demand for housing remains extremely high” (89). According to Fossum, “many developments currently being built are “A+” projects targeting the top 20 percent of the population’s income level” (53). In addition to this, “a StreetEasy report found that although rents rose 31 percent citywide between 2010 and 2018, the spike was far greater in poorer neighborhoods” (Kaysen 89).

Success of the LIHTC

Industry experts are in virtually unanimous agreement that the Low-Income Housing Tax Credit is the single most important and successful governmental subsidy program ever created for the production of rental housing that is affordable to persons and families of low-income.

> The Low-Income Housing Tax Credit (LIHTC) is a true success story providing America’s workforce, seniors and veterans with high quality, affordable apartment housing. The LIHTC was the bipartisan creation of the Tax Reform Act of 1986, and it’s been hailed by many in the industry as the most successful affordable housing initiative ever. (Fossum 52)

Kaysen expands on how the low-income housing tax credit works by setting rents that tenants pay on affordable units to be no more than a third of their total earnings. “In New York, where the Area Median Income, or AMI, is $93,900 a year for a family of three, this translates to a family spending no more than $2,608 a month on rent, but at the same time, the median rent for a two bedroom apartment in Manhattan is $4,050” (89).

Fossum also speaks of the importance of keeping the LIHTC in place, “If we don't preserve the LIHTC program, we will continue to see the disparity between rent and income levels grow in markets across the nation” (53). Fossum also makes another compelling argument in favor of the LIHTC, “Without the LIHTC, affordable housing will become increasingly scarce, and America's working-class families will be priced out of home - that is something our country truly can't afford" (Fossum 55).

Fickes goes on to extol the benefits of the LIHTC program:

> For those who have studied the issue, LIHTC projects represent an elegant answer to the question of how to finance housing for working families who cannot afford to pay market prices.
>
> The 1986 Tax Reform Act supplied this solution, while eliminating the traditional affordable housing incentives based on depreciation write-offs. Under the Tax Reform system, states can define their own affordable housing needs and offer LIHTCs as incentives for development teams to satisfy those needs. (124)

Government Agencies Role in Affordable Housing Today

LIHTC are awarded to a housing project by an "allocating agency" – either HPD, within the City of New York, or the New York State Division of Housing & Community Renewal ("DHCR") for areas of the State outside the City, with respect to projects not financed with tax-exempt bonds. With respect to bond-financed projects HDC, within the City limits, or the New York State Housing Finance Agency ("HFA"), outside the City limits, provides credit authority in an amount required to make the project feasible. Each state in the nation has a finite amount of allocating authority annually (based upon a formula derived by congress) and each state must reallocate its authority among allocating agencies within the state (Novogradac 193). "The amount of HPD's authority is negotiated annually with the State. Typically, HPD allocates $12-14 MM in credits per year to 20 or more projects creating approximately 1,000 low income units" (Low Income Housing Tax Credits). These programs have created many thousands of affordable units throughout the City and have led to revitalizations of many communities.

Oppositional / Conflicting Views – Demand Side Voices

The low-income housing tax credit, and other, related affordable housing tools such as the tax-exempt bonds issued by HDC and the low-interest loans provided by HPD and HDC, and the Project-Based Section 8 Vouchers from HUD (Project Basics), provide capital funds to private developers for the acquisition of land and/or buildings and either the demolition of existing buildings and construction of new buildings or the substantial rehabilitation / renovation of those existing buildings. In this regard, these are said to be "supply-side" based subsidy programs (i.e., targeted at specific places / locations where housing will be produced). This is contrasted against "demand-side" based subsidy programs, such as the Section 8 Housing Choice Voucher Program, which grants a subsidy to a particular tenant that needs a rent subsidy in order to lease an apartment (Zeidel 135).

Zeidel claims that "superstar cities" such as New York, in developing affordable housing policy, mistakenly disfavor demand-side subsidies, in favor of supply-side programs. Zeidel defines a "superstar city" as one

> [in which] demand exceeds supply and supply growth is limited … [in which] residents are willing to pay a premium to live and into which high-income superstar-earners disproportionately sort… [which does] not allow for increasing density through construction, cannot infinitely expand [its] border, and [has] few close substitute locations. (135)

He states that there is evidence that for some local affordable housing goals, demand-side subsidies may be more efficient, effective, equitable, flexible, and transparent than supply-side subsidies. Yet, taking the example of the prototypical superstar city, New York City has invested billions of local dollars in supply-side programs since the 1980's (136).

Zeidel also theorizes that the reflexive rejection of demand-side programs in favor of the customary utilization of supply-side solutions leads to over-subsidization and to the loss of control by taxpayers and consequent over-taxation (147). In conclusion, he states

> The key balance to strike is between ensuring that there is sufficient affordable housing for the economic health of the local jurisdiction and monitoring that the costs of providing this housing do not become too great a burden for taxpayers. Supply-side subsidies upset this balance by taking away the voice of the taxpayer and erring on the side of paternalism to avoid market failure. Given the resources necessary to fund affordable housing programs, it is at least worth considering that demand-side subsidies, with the attributes of greater flexibility and transparency, may provide taxpayers with a tool to precisely balance the necessary amount of affordable housing and the burden to taxpayers that this housing requires. (168)

V. Analysis

The critical research question to answer in approaching this project was that of defining "affordability." The seemingly simple question of "*What is deemed to be affordable housing?*" is an enigma wrapped in a riddle and cannot be answered in a vacuum. Where is this affordable housing? What is thought to be affordable in San Francisco, California or New York City may differ from what is deemed to be affordable in Mobile, Alabama or Enid, Oklahoma.

Trickier still is the question "Affordable to whom?" For President Trump, housing in any market in the world, at any price, may be "affordable." For the ordinary person making the median wage of people living in the area, that wouldn't be the case.

The quantitative research into affordability indicates that housing is considered truly "affordable" when the monthly rental payment made by the occupant does not exceed 30% of their monthly income (Policy Basics).

That research question has deeper layers, however. For purposes of determining affordability of housing to low income persons and families, it is necessary to consider the definition of "low income persons and families." In general, the accepted standard is that a tenant whose household income (adjusted for family size as per guidelines published periodically by HUD) does not exceed 60% of what is referred to as "Area Median Income" (also established as per HUD guidelines periodically published) is considered to be a low-income tenant (Area Median Income). As if that quantitative measure doesn't suffice, the State of New York has a more qualitative statutory definition, providing that "Persons of low income" and "families of low income" are defined as "persons or families who are in the low income groups and who cannot afford to pay enough to cause private enterprise in their municipality to build a sufficient supply of adequate, safe and sanitary dwellings" (Private Housing Finance Law, §2(19)). That definition relates directly to the policy espoused by the State in its Private Housing Finance Law, in which is it stated

> § 571. Statement of legislative findings and purposes. The legislature hereby finds and declares that there continues to exist in the state a seriously inadequate supply of safe and sanitary dwelling accommodations within the financial reach of families and persons of low income. This condition is contrary to the public interest and threatens the health, safety, welfare, comfort and security of the people of the state. (Private Housing Finance Law, §571)

To complicate matters, there are gradations of low-income. The same HUD guidelines that tell us that a low-income household is one that has income not exceeding than 60% of AMI tells us that households with incomes not exceeding 50% of AMI are "very low income" and that households with incomes not exceeding 30% of AMI are extremely low income (Area Median Income). Thus, housing that is affordable to a low-income family may not be affordable to a very low-income household and, likewise, housing that is affordable to a very low-income family may be out of reach of an extremely low-income household. In New York City, where the median income is $93,900 annually (for a family of three) and the median rent for a two-bedroom apartment in Manhattan was $4,050 per month in July 2018, a 60% AMI low income family of three would be paying 86% of its household income for rent (Kaysen 89). Obviously, this is not a sustainable model.

Thus, we see that the research question *What is deemed to be "affordable housing"?* has been answered in both a quantitative and a qualitative manner. Government agencies provide guidelines to tell us not only what the measure of affordability is, but also how that measure relates to the condition of being a low-income person residing in a jurisdiction in which the legislature has declared that there is insufficient affordable housing available to low income persons and families (Private Housing Finance Law, §571). Housing is affordable to low-income persons and families with household incomes not exceeding 60% of AMI if they are paying no more than 30% of their income toward rent. Thus, a 60% AMI low-income family can afford an apartment costing not more than $1,410 per month (Kaysen 89).

The next research question to be answered in order to understand why government incentives such and government agencies are crucial for building affordable rental apartments for

New York City's low-income families and persons is "*What is the history of government involvement in affordable housing in New York City?*".

As stated above, very little private equity capital was invested in new construction of housing projects that were affordable to persons and families of low-incomes in the period prior to enactment of the LIHC, and almost all development of new affordable housing being undertaken directly by government agencies or government-sponsored entities. In New York City, this took the form of virtually all low-income housing being built, owned and managed by the New York City Housing Authority (Narron 18).

The incentives that existed, being tax-driven revenue code provisions that allowed more rapid amortization of the cost of assets, accelerated depreciation provisions and provisions granting beneficial treatment of loan interest and real property taxes during the period of construction of a project, did not guarantee affordability of rents to low-income occupants. While there were simple requirements for the renting of a stated minimum number of units in a project to low-income tenants, there were no limitations on the rental rates that could be charged. As stated by Novogradac, "building owners were free to charge any rental amount that low-income individuals were willing to pay" (Novogradac 3). The result was the tax-loss driven churning of older, substandard housing stock in the outer boroughs of the City of New York by slumlords that were more interested in milking every last penny from their multi-family properties than in providing safe, decent, affordable housing, leading to the notorious 70's banner headline "*The Bronx is burning!*" which was picked up from an excited utterance by the sportscaster Howard Cosell, who was doing color commentary on a nationally televised broadcast on the second game of the 1977 World Series, between the New York Yankees and the Los Angeles Dodgers.

> It was game two of the 1977 World Series, a chilly, blustery October night in the South Bronx. The Yanks were already down 2-0 in the bottom of the first inning when ABC's aerial camera panned a few blocks over from Yankee Stadium to give the world its first live glimpse of a real Bronx Cookout. "There it is, ladies and gentlemen," Howard Cosell intoned. "The Bronx is burning." (Flood)

The deterioration of the Bronx at this time was palpable and monumental in scope:

> As the neighborhoods faced blight and violence through the 1960s into the 1970s, the social and physical fabric of the area also began to unravel. Bronx landlords turned to abandonment, destruction and arson in response to their undesirable and unprofitable properties. Between 1970 and 1980, the Bronx lost more than ⅕ of its housing units. (Nuta 6)

Congress intended the low-income housing tax credit to more effectively incentivize private developers and investors to create and provide more affordable rental housing that would serve the needs of its tenants by requiring both income-eligibility limits and rental rate limits The credit began as an indirect federal-only subsidy (some states (notably New York) have adopted analogs of the LIHTC that provide credits against state income taxes) used to finance low-income housing by virtue of credits against federal income tax which eligible taxpayers received by claiming a credit on their tax returns (Novogradac 1).

As stated above, the need for more focus on the provision of affordable housing for low income persons and families was explicitly recognized in a policy statement included by the New York state legislature in its statute dealing explicitly with private housing for low income persons and families (Private Housing Finance Law, §571). As state and local governments became more familiar with the workings of the LIHTC and more aware of the possibilities and opportunities opened up by the enactment of the LIHTC, they expanded the available programs and began to combine their own resources with the LIHTC to better leverage their own resources for the creation of more and better affordable low-income housing (Novogradac 4).

Thus, the answer to the question "*What is the history of government involvement in affordable housing in New York City?*" We can see that prior to the enactment of the LIHTC the role of the City of New York was more paternalistic, entailing the construction of massive public housing projects by the New York City Housing Authority, which became one of the largest owners and managers of rental housing in the nation (Bloom 419). Since the enactment of the LIHTC, both the New York State and New York City governments have fostered the construction, ownership and management of low-income housing in New York by private developers and owners, from both the for-profit and not-for-profit sectors.

The final research question posed was "*How does the Low-Income Housing Tax Credit attract investors to build affordable units?*." The answer to this question seems to be inextricably related to the question of demand. Because the LIHTC rewards positive investment of equity capital, and because the local government agencies in New York have committed their policies and resources to capitalizing on the benefit of the LIHTC by combining it with their own resources to create greater public-private leverage, the very problem that New York City faces (a severe shortage of affordable housing) appears to be the engine that is driving the creation of more housing designed to solve the scarcity.

Experts agree that there is a housing crisis in New York City. Walker says that "in a new report on the state of rent affordability in New York, … a look at the progression of rent prices and wages from 2010 to 2017 … finds that rent has been increasing twice as fast as wages" (1). The demand for affordable housing is extremely high and the only way that this demand can be met is through the work of government agencies such as HPD, HDC and HUD, and programs such as the Low-Income Housing Tax Credit and Mayor William DeBlasio's Housing New York Plan. Kaysen illustrates just how high this demand is, "The demand for affordable units is intense, with tens of thousands of people applying in lotteries for just a few hundred spots - as at the Rollins, a mixed-use building on the Lower East Side, where last year nearly 94,000 people applied for 104 affordable units" (90).

As noted above, the City's population is growing, rents are rising, demand is outstripping the creation of new supply and the skyrocketing rents of market-rate units are far exceeding the growth in wages of the low-income populace most in need of affordable housing.

Industry experts are in virtually unanimous agreement that the Low-Income Housing Tax Credit is the single most important and successful governmental subsidy program ever created for the production of rental housing that is affordable to persons and families of low-income.

Support for the success of the LIHTC program comes from many areas, including the following statement from the NYU Furman Center:

> LIHTC development in lower-income neighborhoods, those with median incomes below $24,000, increases housing prices, lowers crime rates, and attracts more racially and economically diverse populations. According to the authors' estimates, the benefits to lower-income neighborhoods significantly outweigh the cost to higher-income neighborhoods. They conclude that "[a]ffordable housing development acts like a place-based policy and can revitalize low-income communities." (Diamond 1)

As stated by Agnew:

> Ellen and Voicu (2006) had the most robust methodology. This study found consistent positive impacts for for-profit affordable projects in New York City. This was true for small, moderate, and large scale projects. An additional finding of this study was that the positive impacts of for-profit projects tend to be initially larger than the impacts of nonprofit projects, but also less sustained over time. While the initial impact of a for-profit project may be greater than that of a nonprofit-developed project, the positive property value impacts of nonprofit projects are more likely to last longer than a few years. (6)

The Editorial Board of the New York Times, in a cautionary warning to lawmakers who were considering simplification of the tax code in 2012, advised:

> Created by Congress in 1986, the credit is available to investors prepared to sink money into new or rehabilitated low-income housing. It is responsible for about 90 percent of all the affordable housing that is built in this country, and has provided more than 2.5 million rental units since its inception. It also produces as many as 100,000 jobs each year.
>
> Despite its success, the tax credit program has not by itself kept pace with the burgeoning need. Recent statistics show, for example, that about 8.5 million low-income families are now spending more than half of their income on rent or living in hazardous, substandard housing. Beyond that, federal rental assistance programs reach only about a quarter of eligible families.

> The rental programs must be enlarged, and the credit itself improved by focusing it more closely on needy areas and on the neediest families — those who earn only 30 percent of average median income in their area — while at the same time encouraging mixed-income developments. (A Tax Credit Worth Preserving)

VI. Conclusion

Government agencies such as HPD, HDC and HUD, and government programs such as the LIHTC, have changed the way that New York City approaches affordable housing and they continue to come up with creative solutions to the problem of how to create and maintain affordable housing stock in a city that is getting more and more expensive every day. After a close examination of the research, one can see that the resources provided by governmental agencies such as HPD, HDC and HUD, and programs such as the LIHTC, remain crucial to the creation and preservation of affordable housing in New York City. From defining affordability, to setting what is considered to be an affordable rent, to incentivizing investors into new development projects, to preserving the current stock of affordable housing, and exploring solutions to create affordability in perpetuity, these government agencies and programs are needed to ensure that New York City's low-income residents can find decent, affordable places to live and thrive in their own communities.

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