

TESTIMONY FROM NYCHA CHAIRMAN JOHN B. RHEA
CAPITAL CONSTRUCTION FACILITIES MANAGEMENT AND ASSET DISPOSITION
ASSEMBLY STANDING COMMITTEE ON CORPORATIONS, AUTHORITIES, AND
COMMISSIONS

FRIDAY, FEBRUARY 1, 2013 – 10:30 AM
19TH FLOOR ASSEMBLY HEARING ROOM, 250 BROADWAY

Chairman James Brennan, distinguished members of the Committee, and to all the members of the State Assembly, I am John B. Rhea, Chairman of the New York City Housing Authority (NYCHA). Joining me this morning are Cecil House, General Manager, Raymond Ribeiro, Executive Vice President for Capital Projects, and Fred Harris, Executive Vice President for Development. Thank you for the opportunity to discuss with you NYCHA's capital program and policies for land disposition, and how we can best address the needs of our residents. In discussing our capital process and land disposition, both highly regulated activities, I will describe how we must comply with a host of federal and state regulations, as well as participate in a transparent and inclusive process of engagement with multiple stakeholders.

NYCHA's Challenge of Underfunding

NYCHA serves nearly 630,000 public housing residents and Section 8 recipients across the five boroughs. We are the largest administrator of Section 8 in the country, with about 90,000 apartments under lease. And with 179,000 apartments in 2,600 buildings, NYCHA is the only provider of public housing in the City, and the largest in the nation. Our portfolio of properties—most of which were developed in the 1940s to 1960s—is a valuable resource to the families we serve. But there are many challenges we must confront in our mission to provide decent, affordable housing to low-income New Yorkers, the most pressing of which is addressing critical capital improvements and maintenance and repairs due to chronic underfunding. NYCHA's funding has declined substantially over the years, failing to keep pace with the growing needs of our aging infrastructure.

Sixty-six percent of NYCHA's revenue comes from federal funding. Rent accounts for the other 30 percent, leaving 4 percent from other sources such as grants and local government funding. State funding—for specific CCTV security camera enhancements at select developments, for example—is a very small portion of our revenue stream. For the past 12 years, appropriations from Congress to fund NYCHA's operations have fallen short a total of \$757 million, based on the national eligibility formula prescribed by the U.S. Department of Housing and Urban Development (HUD) to calculate the costs of operating public housing. Federal capital grants, which comprise the bulk of our capital funding, have declined 36 percent in the last 12 years, from \$420 million annually to \$270 million, a cumulative federal capital funding loss of \$876 million. In 1998, the State discontinued funding for 16 housing developments that they built, financed, and annually subsidized. In 2001, the City followed suit, disinvesting from its five housing developments. As a result, NYCHA was left to cover all the operating and capital costs of these 20,000-plus apartments. The operating deficit for these properties over the past dozen years was approximately \$690 million, which we met by depleting our precious reserves and siphoning funds from our federally assisted units. In that same period of time, we have spent approximately \$1 billion of federal funds to address basic maintenance and repairs of these former City and State developments. Since 2001, the combination of the loss of State and City funding and reductions in federal allocations brought NYCHA's total funding loss to over \$2.3 billion. Through hard work and the innovative federalization transaction, we were able to bring over 11,000 units into the federal portfolio in 2010; yet over 5,000 apartments remain without subsidy.

Our annual operations budget is subject to annual appropriations from Congress. Those appropriations have been dramatically prorated, leaving NYCHA with a structural deficit and depleted reserves that are well below HUD's recommended guideline.

Capital Program

NYCHA's capital needs are enormous. A 2006 Physical Needs Assessment (PNA) identified \$25 billion of investment required over 15 years to keep our precious housing stock in a reasonably good state of repair. About \$9 billion of that was needed in the first five years. But we've only received \$2.7 billion since 2006, resulting in a deferral of approximately \$6.5 billion of needed work from 2006 through 2011. If you add the deferred work to an estimated \$7 billion of need over the next five years, we are left with a need of around \$14 billion by 2016. Persistent funding shortfalls restrict our ability to perform necessary repairs and upgrades, making future maintenance and repairs far costlier.

Process for Programming, Obligating, and Expending Funds

As a result, NYCHA works diligently to ensure the judicious and efficient management of our capital plan, which currently projects that \$2.4 billion will be available for property improvements, major modernization, and other system-wide upgrades over the next five years. We follow best practices and protocols related to long-term capital planning based on PNAs. However, due to severe underfunding, we are compelled to make difficult choices, and so we budget based on what we receive rather than what we need. We program projects in advance as part of our Five Year Capital Plan so that there's a strategy in place when funds are received. Our limited capital dollars are considered for projects that preserve our properties; reduce operating costs or increase efficiency; expedite maintenance and repairs or strengthen services to our frontline; enhance our residents' quality of life; improve safety and security; further our "green" agenda; and others.

As expected, federal capital grants come with strict deadlines for their obligation and expenditure. Section 1437g of the U.S. Housing Act of 1937 mandates that all public housing authorities across the nation obligate 90 percent of capital funds within 24 months and expend them within 48 months; this is one example of the many federal regulations with which we comply. All capital funds come with these same timeframes and regulations, regardless of when they are received. The

timelines take into account the complex planning process that includes design development and review; contract bid evaluation and firm procurement; review by the Office of Inspector General and the Mayor's Office of Contract Services; contract review and approval by the NYCHA Board; and approval of the bidder's choice of materials or subcontractors. A thorough environmental evaluation of the property site must be conducted for federal capital initiatives, according to "Protection and Enhancement of Environmental Quality" and "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities."¹ We also take time to consider comments or issues from residents and the community. And our design process, often dealing with aging infrastructure, may also involve stakeholder engagement as well as plenty of due diligence and site analysis.

Despite these challenges, I am proud to say that NYCHA has never missed an obligation or spend deadline. This is an accomplishment that not every public housing authority (PHA) can boast, including those of far lesser size than NYCHA. And since my appointment in 2009, we have successfully managed and invested close to \$1.5 billion in federal capital projects. In addition to the timely stewardship of our HUD capital program, this included the management of our \$423 million American Recovery and Reinvestment Act (ARRA) grant, the largest award to any public housing authority in the country. NYCHA successfully met HUD's accelerated deadlines for the obligation and expenditure of the ARRA funds (one and three years, respectively), often meeting timeframes early. NYCHA's responsible management ensured the receipt of our full fund allotment and enabled us to maximize every dollar invested in our properties. Over the 2009-2012 period, over 140,000 public housing families benefited from brick repairs, roof and elevator replacements, heating systems upgrades, and new refrigerator and stove installations.

Improving Capital Management

¹ 24 C.F.R. Parts 50 and 58

That said, we recognize that there is always room to improve our capital planning process. Achieving efficiencies in the obligation and spend process will help us to do more with less in terms of our funding; by getting major repairs and upgrades completed sooner, we can reduce routine maintenance and repair needs and their related costs. We have identified organizational and process changes that will reduce the amount of time to obligate and expend funds, significantly accelerating building improvements that will positively impact residents. We are on track to decrease obligation timelines to 18 months and future expenditure timelines to 36 months (from HUD's 24- and 48-month mandates, respectively). I am pleased to report that 100 percent of our 2011 \$273 million federal capital grant and 60 percent of the 2012 \$270 million grant are expected to be fully obligated by year's end. The grants will also be expended according to our new expedited timeline—within 36 months—and will benefit over 90,000 families through security enhancements and work on building facades, roofs, and elevators. Additionally, we've looked at other options, including our request to leverage relationships with sister agencies, such as the Dormitory Authority of the State of New York (DASNY), to further efficiencies and accelerate contracting and construction.

Reporting and Substantial Resident and Community Engagement

As with any receipt of federal funds, NYCHA meets strict and comprehensive reporting requirements and community engagement guidelines that we must comply with on an ongoing basis. NYCHA develops a HUD-mandated Annual PHA Plan, a comprehensive guide to NYCHA's policies, programs, operations, and strategies for meeting housing needs and goals. Specifics of our capital program are outlined in the Capital Fund Program's "Annual Statements and Performance Evaluation Reports," which provide information on the status of each open capital grant obligation and expenditure. These reports are available for public review at NYCHA's Central Office in the Research Department and are posted on NYCHA's website. As per the HUD regulations for the Annual Plan,

NYCHA is required to form and meet with a Resident Advisory Board (RAB) and hold one public hearing to solicit comments on the Plan.² NYCHA's RAB consists of 75 members (70 are duly elected resident leaders plus five Section 8 residents). For NYCHA's Fiscal Year 2013 Annual Plan, NYCHA held 10 meetings over five months in 2012 with the RAB and senior NYCHA staff to discuss elements of the Annual Plan, including Financial Resources, Capital Projects, Operations Management, and Demolition/Disposition activities. NYCHA's responses to the RAB comments on the Annual Plan are included in the Plan document as a required attachment. NYCHA goes beyond the Annual Plan regulation for a public hearing by conducting five town hall meetings with NYCHA residents in each borough before the public hearing. At these meetings, NYCHA senior staff share information on the Plan elements, including Capital Projects, Financial Resources, etc., with NYCHA residents, elected officials, local partners, and the general public. The engagement process culminates with a public hearing.³ NYCHA is also required to consider comments on the Annual Plan received at these meetings, as well as written/faxed comments, and provide a summary of responses as an attachment in the Annual Plan document. In order to encourage resident participation, NYCHA mails the Annual Plan notice with information about the dates and times of the public meetings to every public housing household, posts flyers in every residential building, publishes the notice in the NYCHA Journal distributed to every family, conducts automated calls to residents, and posts the information on NYCHA's website. The Draft and Final PHA Annual Plans are also posted on NYCHA's website. Additionally, NYCHA senior management meets with the Citywide Council of Presidents (CCOP) to discuss all major financial matters, capital investments, and development projects.

In addition, as required by "Uniform Financial Reporting Standards,"⁴ NYCHA reports financial information to HUD on an annual basis and records obligations

² 24 C.F.R. § 903.17

³ *Ibid.*

⁴ 24 C.F.R. § 5.801(b)

and expenditures in HUD's Electronic Line of Credit Control System (eLOCCS) on a monthly basis.

In 1992, NYCHA entered into a memorandum of understanding with the New York City Department of Investigation (DOI) to create an independent Inspector General's (IG) office for the Authority. To be clear, NYCHA's Inspector General is appointed by the Commissioner of DOI and is an employee of that agency; this measure ensures a proper check on the Board's broad powers. Within the agreement there are also provisions for strong financial controls, training of Board members on conflict of interests, vetting of new employees, and requirements for personal financial reporting by senior executives and those negotiating contracts. These measures are some of the reasons why NYCHA has successfully avoided the travails of some of our peers. I'd like to note that for eight years in a row, we have been recognized by the Government Finance Officers Association for our exemplary financial reports and best practices.

NYCHA is subject to a significant amount of local oversight. The New York City Council's Public Housing Committee, led by Council Member Rosie Mendez, holds monthly hearings on various topics concerning our housing programs. Annually, NYCHA presents our Five Year Operating and Capital Plans—the first year of which serves as the agency's budget—to this Committee. The Five Year Plans are voted upon by the Board in an open meeting, which encourages public participation, and are available on our website.

State Regulations and the Public Housing Law

As a state public benefit corporation, NYCHA is also subject to oversight under New York's unique Public Housing Law—an additional layer of regulation. The New York Public Housing Law governs aspects of a housing authority's operations, including bidding and contracting; labor law compliance; procurement; state financing; reporting bylaw amendments to the State; and

board governance issues, including the definition of a quorum and the resolution of conflicts of interest.

Land Disposition and Section 18 Regulations

NYCHA has more than 160,000 people on the waiting list for public housing and a turnover rate of less than five percent; there are 125,000 households on the Section 8 waiting list. NYCHA's existing housing stock and Section 8 housing subsidy do not support the current need for affordable housing. Property disposition is a vital part of a larger strategy to generate revenue for the preservation of existing public housing and realize our mission to increase safe, affordable housing opportunities for low- and moderate-income New Yorkers. Dispositions also create jobs and educational and enrichment opportunities that aid our families and revitalize our communities, and are done subject to review and approval by HUD.

The demolition and disposition of public housing is authorized under Section 18 of the Housing Act of 1937 (the Act), as amended. HUD has promulgated a regulation, 24 CFR 970, detailing the administrative steps required to perform demolition/disposition activity in accordance with the Act. Regulations distinguish between disposition or demolition of public housing units, and other forms of real estate such as land or non-residential buildings, which are incidental to, or do not interfere with, the continued operation of an existing public housing development. Supplemental materials and certifications are required for disposition or demolition of public housing units. Disposition is broadly defined to cover a range of real estate interests, including land, buildings, development rights, easements, and leases of more than one year.

Before NYCHA submits a demolition or disposition application for HUD's approval, we must meet stringent requirements to demonstrate to HUD's satisfaction that the transaction should go forward. Only after NYCHA demonstrates compliance with all of the regulatory prerequisites will the

application be ready for HUD's consideration and approval. Components of a complete Section 18 application include:

- Description of the property proposed for disposition or demolition;
- Evidence of consultation with affected residents and their elected leadership, the Citywide Council of Presidents (CCOP), and the Resident Advisory Board;
- Environmental review;
- Appraisal report to determine fair market value of the property;
- Certification the proposed disposition is described in an Annual Plan approved by HUD;
- A detailed description of how net proceeds will be used. A housing authority may dispose of property for less than fair market value if it demonstrates commensurate public benefit to the community, the public housing authority, or the Federal Government. Real estate interests sold at less than fair market value (e.g., negotiated sale) are subject to a reverter clause required by HUD: disposed property returns to NYCHA if the use described in the application and approved by HUD ceases to apply;
- Letter of support from the Mayor's Office for the Section 18 application;
- Board resolution dated after the date of the last resident meeting and after the date of all letters of support from government officials to show the Board is aware of all resident and local government comments concerning the demolition/disposition; and
- If tenants will be displaced as a result of the proposed demolition or disposition, NYCHA must also submit a relocation plan showing that the displaced residents will be offered comparable housing that meets housing quality standards, including housing that provides reasonable accommodation for persons with disabilities.⁵

⁵ 24 C.F.R. §§ 970.7(a)(6); 970.21.

Through the Annual Plan process, residents, elected officials, other stakeholders, and the general public receive notice of, and may comment upon, the planned demolition or disposition of NYCHA property at five meetings (one in each borough) and a public hearing on the Annual Plan. Opportunity to comment on demolition or disposition is thus provided to stakeholders at two different stages of the demolition or disposition process. The second occurs during preparation of the Section 18 application.

Disposition of property involving existing public housing units is regulated under HUD's mixed-finance regulations set forth in 24 C.F.R. 941. These transactions involve the disposition of our property to developers of low-income housing who will also construct public housing units. Under these rules, the disposition review process is similar to the process set forth in federal regulations (24 C.F.R. 970). But HUD also requires that the developer of the property be competitively procured and have the financial capacity to undertake the development. And the disposition must be included in our Annual Plan. Furthermore, HUD's process requires a detailed review of all documents associated with the transaction. If the disposition results in displacement of residents, NYCHA must provide the notice well in advance and offer affected residents counseling, comparable housing, and moving expenses. Former residents also have rights to return to the newly constructed development.

In addition to demolition and disposition oversight, NYCHA is subject to separate, detailed federal statutory and regulatory requirements when seeking HUD's permission to offer home ownership opportunities to residents.⁶ Residents occupying the units proposed for sale have a right of first refusal. And residents must be consulted regarding the plan. Those residents who choose not to purchase must receive notice well before displacement and must be offered comparable housing.

⁶ 42 U.S.C. § 1437z-4; 24 C.F.R. Part 906.

When City approval of a discretionary land use is required, NYCHA adheres to the mandated municipal public review processes, including the City's Uniform Land Use Review Procedure (ULURP).

Successful Track Record of Land Disposition and Development

The intensively regulated land disposition process, with substantial opportunities for public and resident participation and requirements for detailed disclosure, is a tool already used by NYCHA to support Mayor Bloomberg's New Housing Marketplace Plan. Since 2004, through collaborations with the Department of Housing Preservation and Development (HPD) and the Housing Development Corporation (HDC), over 4,270 units of affordable housing are in various phases of development on former NYCHA property. Approximately 2,000 units of new affordable housing have been built to date; 1,930 units are under construction and another 350 in pre-development. While the City's model for low-income housing development historically relied on a nominal land cost (i.e., one dollar), NYCHA determines the fair market value of the real estate asset and, on average, has realized at least a quarter of the independently appraised value of the property in low-income housing transactions. This practice reflects a primary principle of the federal disposition process in which public housing property may be disposed for less than fair market value if a commensurate public benefit is demonstrated to HUD.

Two examples illustrate how our land disposition and development have enhanced the quality of life for our residents and the surrounding communities. Through a partnership with the non-profit, community-based organization Metropolitan Council on Jewish Poverty, HUD, HPD, and HDC, we built Council Tower VI, a 78-unit development for low-income seniors, on a former parking lot at Pomonok Houses in South Queens. Opening in February 2012, NYCHA seniors received preference for 25 percent of the units (19). All of Council Tower VI's residents benefit from onsite supportive services and programming that includes Meals On Wheels, case management, housekeeping assistance, individual and

group counseling, healthcare referrals, and social and recreational activities. This beneficial project came to fruition after substantial community outreach and consultation with residents, Resident Association leaders, community boards, elected officials, local community organizations, and government agencies.

We partnered with another non-profit community organization, Harlem RBI, and HPD and the City's School Construction Authority to develop a landmark mixed-use facility that includes a charter school, 89 affordable apartments, and offices at the George Washington Houses in East Harlem. Again, NYCHA residents received a priority for 25 percent of the residential units. NYCHA residents also have a preference for 50 percent of the seats in each entering kindergarten class. The \$85 million, 150,000-square-foot project is expected to create 50 permanent jobs and up to 50 construction jobs and will serve almost 500 students at its DREAM Charter School.

Conclusion

NYCHA is fully committed to serving our residents in the most efficient, beneficial, and transparent ways possible. By continuing to improve our processes and seek new sources of revenue, we will further that aim. Generating capital that is efficiently used through the development of our vacant and underdeveloped land has, and will continue to be, an elemental strategy in our stewardship of this public asset. We exceed the many regulations and requirements that govern land disposition in our engagement and collaboration with residents, the public, elected officials, and other stakeholders to put our land to its best use. What is needed at this moment is not more regulation—for we are already well-regulated in this arena—but more support from the partners who are invested in the future of public housing. To that end, we ask that the esteemed members of the Assembly allow NYCHA, through passage of Assembly Bill 181, to contract with DASNY—doing so will reduce the costs and time associated with contracting design work to outside vendors, aiding our goals to expedite the obligation and expenditure process and use our limited dollars more wisely.

Thank you. I am happy to answer any questions you may have.