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HPD's New Regulatory Agreement

- 2018 Update -

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Overview

The New York City Department of Housing Preservation and Development ("HPD") has released a plan to force new regulations on cooperative Housing Development Fund Corporations ("HDFCs").[1] This is part of a longstanding debate over what kind of public benefits should be expected from private entities that receive government subsidies.

In this case, HPD is concerned that tax exemptions for HDFCs will soon be going to many who can no longer be called low income. A few HDFC apartments have recently sold for extraordinary amounts and the median sales price is higher than many low income families can afford. Meanwhile, almost a third of HDFCs languish near bankruptcy because of poor management and lack of funds.

We believe HDFCs produce outstanding public benefits that justify their tax exemptions. Extraordinary sales prices make great headlines but are exceedingly rare. The data on median sales prices is also misleading because it excludes sales under $80,000.00, leaving out apartments in less affluent locations and a large swath of below-market transfers between low income family members. The data also demonstrates that turnover in HDFCs is still quite low.

Some HDFCs could certainly benefit from competent outside management. However, experience has shown that merely having a manager or monitor does not cure one of the main issues for distressed HDFCs, which is that low income families by definition have little money to spend on their aging buildings. A large portion of HPD's planned tax exemption will go to the added cost of hiring multiple for-profit contractors and will not solve this issue.

The vast majority of HDFC apartments are occupied by low-income New Yorkers, some more than 30 years after they were transferred to private ownership. The program has been a resounding success and is in no danger of becoming overrun by the wealthy.

HPD's plan of further regulation has met with strong opposition from shareholder groups. Although the plan was officially revealed in 2016, HPD has not released a final version of the new regulatory agreement and the City Council has not introduced legislation to remove tax exemptions for unregulated HDFCs.

The existing DAMP tax exemption will expire in 2029 and HPD will likely want some form of additional regulation in exchange for granting a new or extended exemption. We encourage all shareholders to get involved in the discussion and join with other buildings to make sure any future regulations take shareholder concerns into account.

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1 HDFCs can be both rentals and cooperatives. HPD's plan affects only cooperative HDFCs.

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Part 1: History

Timeline

1926:	Limited Dividend Housing Companies Act grants private developers tax exemptions in exchange for limiting rents and profits
1938:	New York State Constitutional amendment authorizes direct State subsidies and investment in low-income housing
1961:	Private Housing Finance Law consolidates regulation of limited dividend housing companies into one body of law
1966:	Article XI of the Private Housing Finance Law adds provisions governing HDFCs
1980s:	Housing crises causes City to transfer many tax-foreclosed buildings to HDFCs
1982:	Board of Estimate requires 60/40 agreements for new HDFCs
1989:	City Council grants most HDFCs DAMP property tax exemption that will end in 2029
1990-2000s:	HPD institutes multiple standardized regulatory agreements
2016:	HPD proposes new regulatory agreement, new property tax exemption, and repeal of DAMP property tax exemption for buildings without a regulatory agreement

Prior Regulatory Agreements:

For many years, HPD used several standard form regulatory agreements that for the most part had similar provisions:

- 30 year term
- 120% of Area Median Income ("AMI") maximum income for new shareholders
- No subletting for more than 18 months per five year period
- Mandatory 30% flip tax
- Mandatory contributions to reserve funds
- HPD approval for withdrawals from the reserve fund

HDFCs only entered into new regulatory agreements when they needed something from HPD.

- Approximately 80% of HDFCs have not needed anything from HPD recently and have operated without a regulatory agreement

Before its latest proposal, HPD's regulatory agreements were simple, written in plain English, and drafted so that a shareholder could flip to a section and quickly understand the restrictions.

Current DAMP Tax Exemption

The Independent Budget Office ("IBO") estimates that the average annual tax saving per apartment with DAMP is $1,728.00. This amount will obviously be more for apartments in buildings assessed at higher values and less for apartments in buildings assessed at lower values.[2]

Average Tax, Levy, and Tax Expenditure for Properties Receiving the DAMP Exemption, 2016

Property Type	Number of Apartments	Levy Per Apartment	Total Tax Expenditure, *in millions*	Tax Expenditure Per Apartment
1-4 Family	49	$1,512	0.01	$1,537
Coops	16,058	1,221	27.7	1,728
Rental	3,397	1,201	8.5	2,516
Total	**19,504**	**$1,219**	**$36.4**	**$1,865**

SOURCE: Independent Budget Office analysis of Department of Finance data
NOTE: Dollars may not add due to rounding.

[2] Unless otherwise stated, all charts in this handout come from the IBO's December 3, 2015 Memorandum titled "Cost Estimates for Alternative Tax Exemptions for Some HDFC Coops." A full copy of that Memorandum is attached to this handout as Exhibit A. It can also be found on the IBO's website: http://www.ibo.nyc.ny.us/iboreports/estimating-cost-of-full-tax-exemption-for-hdfc-coop-buildings.pdf

Part 2: HPD's Proposal

Overview

The proposal has three parts:

1. New regulatory agreement[3]
2. New tax exemption
3. Repeal DAMP for buildings without a regulatory agreement

The New Regulatory Agreement:

Third-Party Monitors and Managers

Monitor

- Certifies board elections
- Oversees all aspects of sales and issues stock
- Approves subleases
- Manages board training
- Approves withdrawals from the reserve account
- Determines shareholder violations and sends notice
- Power to sue the HDFC to enforce:
    - Regulatory Agreement
    - Monitoring Agreement
    - Private Housing Finance Law
    - Business Corporations Law
    - Any other law or agreement

[3] There are two versions of the proposed regulatory agreement. The first, labeled 5(a) Standard, does not permit any exceptions to the asset and sales price caps. The second, labeled 5(b) Scheduled Apartments, includes an additional provision that allows the HDFC to exempt a certain number of apartments from asset and sales price caps. Both versions of the agreement are available on HPD's website along with HPD's explanatory materials: http://www1.nyc.gov/site/hpd/owners/homeowner-hdfc.page.

Manager

- Runs day-to-day affairs of HDFC
- Enforces shareholder violations as decided by Monitor
- Manager requirement can be waived by HPD if certain conditions are met:
  - Maintain six (6) months' of maintenance in a reserve account(s)
  - Less than one quarter in DEP or DOF payment arrears
  - Current in all mortgage payments, if applicable
  - HPD or DOB violations on less than 20% of dwelling units
  - At least 85% rate of maintenance and rent collection for the previous year
  - Proof of annual board elections for past 3 years
  - All documents required by a regulatory agreement submitted to HPD

Sales Price Cap

Maximum Sale Price						
Calendar Year	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	5 Bedroom
2016-2017	$286,296	$347,636	$412,022	$476,712	$539,880	$601,830
2018	$294,909	$358,111	$424,358	$491,215	$556,244	$620,055
2019	$303,738	$368,766	$436,839	$505,826	$572,682	$638,319
2020	$312,780	$379,902	$450,069	$521,150	$590,100	$657,831
2021	$322,337	$391,515	$463,739	$536,876	$608,186	$677,669
2022	$332,101	$403,297	$477,843	$553,302	$626,630	$698,435
2023	$342,375	$415,853	$492,681	$570,422	$646,032	$720,119
2024	$352,546	$427,960	$507,029	$587,011	$664,862	$740,885
2025	$362,915	$440,527	$522,099	$604,585	$684,634	$762,856
2026	$373,480	$453,247	$537,278	$621,918	$704,427	$785,108
2027	$384,541	$466,722	$553,168	$640,223	$725,145	$808,241
2028	$396,400	$481,254	$570,068	$660,099	$747,390	$833,158
2029	$408,140	$495,619	$587,362	$680,018	$769,934	$858,326
2030	$420,670	$510,725	$605,348	$700,580	$793,376	$884,344
2031	$433,379	$525,958	$623,411	$721,777	$817,098	$910,896
2032	$446,261	$541,618	$641,848	$743,296	$841,699	$937,970
2033	$459,619	$558,004	$661,262	$765,434	$866,865	$966,164
2034	$473,447	$574,805	$681,340	$788,790	$893,194	$995,465
2035	$487,741	$592,015	$701,772	$812,441	$920,066	$1,025,558
2036	$502,194	$609,630	$722,548	$836,379	$947,165	$1,055,819
2037	$517,409	$627,946	$744,270	$861,507	$975,699	$1,087,454
2038	$532,773	$646,958	$766,625	$887,511	$1,005,046	$1,120,144
2039	$548,890	$666,354	$789,910	$914,380	$1,035,499	$1,154,181
2040	$565,451	$686,433	$813,507	$941,799	$1,066,740	$1,188,941
2041	$582,451	$707,188	$838,320	$970,366	$1,099,062	$1,225,017
2042	$599,885	$728,306	$863,123	$999,462	$1,131,538	$1,261,481
2043	$617,748	$750,085	$889,123	$1,029,379	$1,165,371	$1,299,231
2044	$636,643	$772,822	$916,007	$1,060,410	$1,200,853	$1,338,555
2045	$655,346	$795,900	$943,155	$1,091,933	$1,236,446	$1,378,219
2046	$675,070	$819,616	$971,166	$1,124,240	$1,273,354	$1,419,118

*Source: HPD Coop Regulatory Agreement 5a Standard.

Scheduled Apartments

- A second version of the regulatory agreement, labeled 5b Scheduled Apartments, allows HDFCs to specify up to one-third (1/3) of apartments as "Scheduled Apartments," which have the following restrictions:

    - No asset cap
    - No sales price cap
    - Income cap of 165% of AMI for a family of four
        - In 2017 AMI that is $157,410[4]

- If having scheduled apartments is found to be illegal, the regulatory agreement says the default income, asset, and price caps apply

Asset Cap

- 175% of AMI for family of four

    - In 2017 that is $166,950

Prohibited Event Fees

- Penalty for shareholders who violate the regulatory agreement

- Monthly fee

    - The difference between the maintenance for the apartment and what the monitor determines is the likely market rent for the apartment, plus $200

- Monitor levies, manager enforces

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[4] All AMI figures come from HPD's website: http://www1.nyc.gov/site/hpd/renters/what-is-affordable-housing.page.

Annual Certifications

- Shareholders must submit annual certifications

- The certifications include

    - The number of nights they slept in their apartment
    - Affirmation HDFC their only residence on various documents:
        - Taxes,
        - Voter registration
        - Driver's license
        - Any other document

No Other Property in City

- Shareholders may not acquire property within 100 miles of New York City except through inheritance

- Inherited property within that range must be sold within a year

Primary Residence Requirement

- Increased to 270 days from standard 183 days

- On its face is not flexible to allow for temporary stays elsewhere without subletting

All Prior Regulatory Agreement Requirements

- 30 or 40 year term (HPD's presentation says 40 years, but agreement itself says 30)

- 30% flip tax

- 120% AMI income requirement, except all families are presumed to be families of four

    - In 2017 that is $114,480

New Tax Exemption

HPD's proposal calls for a new, more favorable tax exemption. As explained in the IBO memorandum, the 2016 DAMP tax exemption capped the taxable value of a coop building at $9,787 multiplied by the number of units in the building. This cap goes up by 6% a year or 20% over five years. HPD's plan would lower the 2016 cap to $6,695 and have the cap go up by 3% annually. The IBO estimates HPD's plan would cost the City approximately $7.7 million more per year than the current system.

The IBO memorandum also mentions a proposal from the Task Force on City Own Property ("TCOP"). TCOP's alternative plan would provide a complete tax exemption in return for capping the income for incoming shareholders at 80% of AMI. This plan has not been endorsed by HPD.

Repeal DAMP For HDFCs Without a Regulatory Agreement

HPD has proposed repealing DAMP early for buildings without a regulatory agreement. Currently, HDFCs are not eligible for the coop exemption that other cooperative buildings receive.

Part 3: How the Proposal Will Affect Your Building

Effect on Sales Prices

Most HDFCs will not immediately be affected by the sales price caps.

Maximum Sale Price						
Calendar Year	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	5 Bedroom
2016-2017	$286,296	$347,636	$412,022	$476,712	$539,880	$601,830
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2046	$675,070	$819,616	$971,166	$1,124,240	$1,273,354	$1,419,118

Sales Data for Coops in DAMP Exempt Properties, 2011 Through 2015

		Sales Price		
Real Price	Number of Sales	Minimum	Median	Maximum
Strong	**449**	**$90,900**	**$360,000**	**$1,913,800**
Manhattan–Mid/Lower	359	$90,900	$387,500	$1,913,800
Brooklyn–Downtown	14	$148,300	$369,000	$772,400
Brooklyn–Williamsburg/Greenpoint	76	$92,100	$236,900	$604,400
Moderate	**524**	**$82,500**	**$210,000**	**$2,039,700**
Manhattan–Upper	466	$82,500	$213,700	$2,039,700
Brooklyn–Rest	58	$85,600	$197,200	$755,500
Weak	**17**	**$82,900**	**$122,800**	**$271,000**
Bronx	17	$82,900	$122,800	$271,000
Citywide	**990**	**$82,500**	**$270,200**	**$2,039,700**

SOURCE: Independent Budget Office analysis of Department of Finance property sales data
NOTE: Dollars are deflated to 2015 values.

Our comments on the chart provided by the IBO:

- Because inflation and AMI is uncertain 30-40 years in the future, we cannot tell how the price caps will affect future sales
    - Sales price caps go up a little more than 2% a year
    - Unknown how inflation and AMI will rise
- Some HDFC apartment owners in highly desirable areas will immediately be forced into lower sales prices unless they become Scheduled Apartments
    - It is unclear if Scheduled Apartments are legal without additional State legislation
    - The process for becoming a Scheduled Apartment is vague

Effect on Tax Exemption

- HDFCs that do not sign could pay significantly more in taxes
    - Not currently eligible for coop tax exemption
- Some HDFCs that get the new exemption will pay less, some will see no benefit

Effect on Corporate Governance

- Monitor will oversee the board
    - Many board members are thrust into corporate governance that is over their heads
    - Can help make sure board not behaving badly
    - Quality of monitors is uncertain and in past have had high turnover
    - Unclear how it will be handled if board and monitor disagree
- Manager will run day-to-day operations of the building
    - Many buildings could use help from a quality manager
    - Keep buildings from getting in trouble
    - But some buildings have experience with bad managers
    - Unclear how it will be handled if board and manager disagree

Effect on Finances

- Required deposits into reserve accounts
- Monitor will ensure finances are in order
- Increased reporting to HPD could help prevent bad management
- But cost of manager and monitor could be difficult for smaller buildings

Obtaining Shareholder Approval

- Agreement is overly complex and drafted in a confusing manner
    - Prior regulatory agreements had only a few clear definitions
    - New agreement has at least 69 cross-referencing definitions that are difficult to follow
    - Important terms that are hidden in the definitions section.
        - Terms are different from even recent regulatory agreements
        - Shareholders have to learn an entirely new vocabulary
- Annual reporting requirements mean HPD will police where shareholders sleep
    - Shareholders may have invasion of privacy concerns
- Some restrictions appear inconsistent
    - Someone can make a salary of $500k a year without penalty
    - But inheriting a non-HDFC apartment and renting it out for extra income is a violation, even if the shareholder maintains their HDFC apartment as their primary residence

Part 4: Alternatives

Privatizing

- HDFCs may not be able to reincorporate into regular cooperatives
    - Certificate of Incorporation requires HPD approval for dissolution
    - Purpose of corporation is developing low-income housing
- Would need a test case to go to court
    - The PHFL is ambiguous about whether HDFCs need to stay low-income forever
    - Deed restrictions prohibiting sales for a term of years may indicate that the building can be sold after the term ends

State Legislation

- Proposed State legislation would impose most of the restrictions in the regulatory agreement.
    - See State Senate Bill No. S06543, attached as Exhibit B
- New items proposed in the legislation:
    - No sales of HDFC property without HPD approval
    - No leasing commercial space for more than two years without HPD approval
    - HPD can appoint new board for violations
    - All HDFCs subject to property sale provisions of the Not-For-Profit Corporations Law
    - No owning two apartments without HPD approval
    - No combining or reducing units in building
    - Certificate of Incorporation to must say the HDFC will continue to operate housing for low income
- **Legislation is now stricken**, meaning it is no longer being formally considered, but could be revived in the future

EXHIBIT A

MEMORANDUM

Date: **December 3, 2015**

To: **George Sweeting**

From: **Geoffrey Propheter**

Subject: **Cost Estimates for Alternative Tax Exemptions for Some HDFC Coops**

Introduction

The Task Force on City-Owned Property (TCOP) asked IBO to conduct a cost analysis of its proposal to fully exempt from the property tax coops formed under the supervision of the Department of Housing Preservation and Development's (HPD) Division of Alternative Management Program (DAMP). Through the DAMP program, HPD sells city-owned residential buildings to a Housing Development Finance Corporation (HDFC), a cooperative intended for low- and moderate-income shareholders, for $250 per apartment. In exchange for accepting income restrictions on shareholders for the duration of a regulatory agreement with HPD, the city offers the coop, among other benefits, a partial reduction in property taxes, which we refer to as the "DAMP exemption."

IBO estimates that TCOP's proposal, compared with current policy, would cost taxpayers $19.1 million more a year on average over the next 40 years—and could cost more depending on how the full exemption is administered. Many of the coops formed under the alternative management program currently receive the state School Tax Relief (STAR) exemption, and the city is reimbursed by the state for the forgone revenue. A full exemption would presumably cost the city the reimbursement if these HDFC coops are treated as a classified exemption like property owned by nonprofits. IBO also estimated the cost of TCOP's proposal under various scenarios of buildings opting out of the proposal to avoid restrictions on resales under new regulatory agreements that would be part of the proposal.

TCOP, a group of community-based organizations, also asked IBO to estimate the revenue implications of HPD's alternative proposal, which would further reduce the affected coops' property tax liability but not fully exempt them from the tax. Compared with HPD's proposal, IBO estimates that TCOP's proposal would cost taxpayers $11.4 million more a year on average over the next 40 years.

Finally, TCOP asked the IBO to analyze sales of apartments in these HDFC coops over the last five years. IBO identified 990 coop apartment sales from 2011 through 2015. Adjusting for inflation, the citywide median price (in 2015 dollars) was $270,200, with prices ranging from $82,500 to $2.0 million; 83.6 percent of the apartments sold for $500,000 or less.

TCOP initially submitted a list of research questions to IBO. After subsequent conversations with TCOP, IBO reformulated the questions, which are shown below. Following a discussion of the methodology and assumptions used by IBO in this analysis, we offer our cost estimates following each question.

Methodology and Assumptions

To estimate the property tax revenue implications of TCOP's and HPD's proposals, IBO collected assessment data from the Department of Finance's real property assessment database on coop properties currently receiving the exemption because they were created under DAMP. Based on conversations with TCOP members, IBO modeled the revenue implications of a 40-year regulatory period beginning in 2018 and extending through 2057. (Unless otherwise noted, all years refer to city fiscal years.) Future tax expenditures were calculated using the Class 2 tax rate in 2016 (12.883 percent) and discounted at 4.0 percent.

In order to answer each of the questions posed by TCOP, IBO had to adopt a variety of simplifying assumptions. The following assumptions apply to the entire analysis:

First, as we are comparing TCOP and HPD proposals to the current DAMP regulatory agreement, to create a common baseline, IBO assumed that the current agreement, which expires 13 years from now, would instead be renewed in 2028 and continue in its current form through 2057.

Second, we assumed that the average number of coop apartments participating in the program in the future will equal the current number of 16,058 apartments.

Third, we assumed that assessed values will grow on average by 3.9 percent a year, which is the inflation-adjusted average annual growth in assessed value for the former DAMP properties over the last 30 years.

Fourth, IBO assumes that a newly adopted regulatory agreement does not forgive property taxes that are currently in arrears. If outstanding balances are instead forgiven in the future, the forgone revenue would be an additional cost of the proposals. Neither TCOP's nor HPD's proposals include provisions to forgive outstanding balances.

In addition, IBO made a number of assumptions that are unique to each of TCOP's questions. We provide more information on these assumptions when discussing each question.

Importantly, IBO's analysis does not consider tax expenditures for HDFCs that are not coops—namely, rental housing and one- to four-family homes. These properties may receive the exemption tied to DAMP or a variety of other exemptions. The analysis also does not consider properties that received DAMP at some point in the past but are not currently benefitting from the exemption in 2016. These properties previously lost or voluntarily relinquished their eligibility, and their eligibility status is assumed not to change during the proposed new regulatory period. Hence, the analysis is based on the universe of HDFC coops currently receiving the DAMP exemption rather than the universe of all HDFC housing.

Assessment of Impact on Tax Base

What is the forgone tax revenue from the current DAMP tax exemption each year?

For fiscal year 2016, the tax expenditure for properties receiving a DAMP exemption is $36.4 million. Coop apartments, which make up 82.3 percent of all residential units in the program, are responsible for 76.3 percent of the tax expenditure, or $27.7 million.

Average Tax, Levy, and Tax Expenditure for Properties Receiving the DAMP Exemption, 2016

Property Type	Number of Apartments	Levy Per Apartment	Total Tax Expenditure, *in millions*	Tax Expenditure Per Apartment
1-4 Family	49	$1,512	0.01	$1,537
Coops	16,058	1,221	27.7	1,728
Rental	3,397	1,201	8.5	2,516
Total	**19,504**	**$1,219**	**$36.4**	**$1,865**

SOURCE: Independent Budget Office analysis of Department of Finance data
NOTE: Dollars may not add due to rounding.

What would be the forgone annual tax revenue for DAMP exemption coops based on HPD's proposal?

Under current law, for properties entering the DAMP program after 1990, taxable assessed value is limited to 6.0 percent growth a year or 20 percent growth over five years. For 2016, taxable value for the coop buildings equals $9,787 (the taxable assessed value cap) multiplied by the number of coop apartments in the building. The cap is expected to grow an average of 3.7 percent a year through the current regulatory period. HPD proposes lowering the assessment cap to $6,695 for 2016 for coops with the DAMP exemption, and further proposes to limit the cap growth to 3.0 percent annually.

In present value terms, we estimate that HPD's proposal would result in an average tax expenditure of $34.9 million, a $7.7 million annual increase over current law through 2057.

What would be the forgone annual tax revenue for DAMP exemption coops under the task force's proposal granting a full property tax exemption?

TCOP proposes a full property tax exemption for the HDFC coops in formerly city-owned buildings. In addition to the assumptions described in the methodology section, the calculations necessary to estimate the proposal's cost in terms of forgone property tax revenue required an additional simplifying assumption: these coop owners continue to receive all of the other tax exemptions they currently enjoy. For 2016, property tax records indicate that 9,448 of the 16,058 apartments in the HDFC coops also received STAR exemptions; other awarded exemptions include veterans, senior citizens, disabled homeowner, and J-51. IBO's analysis of TCOP's proposal assumes that awarding a full property tax exemption would not affect these other exemptions. As will be discussed shortly, this assumption produces a small underestimate of the proposal's total cost to city taxpayers.

IBO estimates that were current policy extended through 2057, the DAMP property tax exemptions for coops would cost the city a total of $1,088.9 million in present value terms. HPD's proposal would increase the expenditure to $1,396.2 million, a $307.3 million increase. TCOP's proposal would increase the expenditure to $1,851.9 million, a $763.0 million increase. Thus, TCOP's proposal would cost $455.6 million more than HPD's proposal over the life of the program, or $11.4 million more a year on average.

TCOP's Proposal Would Cost the City $11.4 Million More a Year on Average Than HPD's Proposal

Dollars in millions

Scenarios	Estimated Tax Expenditure
Current DAMP Cap	$1,088.9
HPD-Proposed Cap	$1,396.2
TCOP-Proposed Cap	$1,851.9
Difference Between HPD and Current Policy	$307.3
Annual Average	$7.7
Difference Between TCOP and Current Policy	$763.0
Annual Average	$19.1
Difference Between TCOP and HPD Proposals	$455.6
Annual Average	$11.4

SOURCES: Independent Budget Office, Department of Finance
NOTES: Dollars are discounted at 4.0 percent a year through 2057. The table does not include the estimated cost of losing the state STAR reimbursement, over the proposed regulatory period. Columns may not add due to rounding.

Under state law, the city is currently reimbursed for STAR property tax exemptions on coops with the DAMP exemption as well. If the full exemption proposed under TCOP's option were treated as a classified exemption similar property owned by nonprofits, then the city would forgo the state reimbursement for STAR granted to the residents of coops with the DAMP exemption. Assuming the city forgoes the reimbursement, the above estimates will slightly understate the total cost of a full exemption for these properties. IBO estimates that forgoing the reimbursement would increase the aggregate cost of TCOP's proposal through 2057, bringing the estimated total to $470.1 million relative to HPD's proposal, or $11.7 million more per year. However, it is also possible that the city could structure a full exemption in such a way that this additional cost would not be incurred.

Assessment of the Tax Revenue Generation from Coops That Opt Out

TCOP asked IBO to estimate revenue implications of HDFC coops opting out of a new regulatory agreement. Given the city's robust real estate market, the boards of some coops in neighborhoods where apartments have high potential resale value may find it financially advantageous to opt out of a new regulatory agreement. In such instances, reducing the cost of coop ownership by exempting some or all property taxes may not be sufficient benefit to persuade shareholders to continue accumulating equity in the coop. Thus, in areas of the city with particularly strong market growth, we would expect to find more coops exercising an option to opt out of regulatory agreements. Since DAMP regulatory agreements impose income restrictions on coop shareholders, the effect of opting out is to not only return the coop's actual assessed value to the property tax roll but also to reduce affordable home ownership options for low- and moderate-income households.

In order to answer TCOP's questions regarding opting out, IBO defined housing markets of differing strength across the city. Based on an analysis of nonrental residential median sales prices in 2014 and 2015, IBO divided the city into seven regions and coded their housing market strength as strong, moderate, or weak based on the annual change in real median sales prices. The accompanying table describes the areas identified. As there are no coops with DAMP exemptions in Staten Island, the borough was omitted.

The Strength of the City's Current Residential Market Varies Within and Across the Boroughs

Area	Area Description	Market Strength
Manhattan-Upper	North of E 96th St, North of 110st between Frederick Douglass Blvd. and 5th Ave, and North of West 116th St at Frederick Douglass Blvd.	Moderate
Manhattan–Mid/Lower	The rest of Manhattan not already defined.	Strong
Bronx	The entire borough.	Weak
Brooklyn–Downtown	From the East River east on Congress St./Bergen St. and North on Classon Ave to and including the Navy Yard	Strong
Brooklyn–Williamsburg/Greenpoint	The portion of Williamsburg and Greenpoint west of the Brooklyn-Queens Expressway.	Strong
Brooklyn – Rest	The rest of Brooklyn not already defined.	Moderate
Queens	The entire borough.	Weak

SOURCE: Independent Budget Office analysis of Department of Finance property sales data

Once a coop building opts out of the DAMP regulations, its apartments become eligible for a city abatement if the apartment is the property owner's primary residence. The abatement offsets some of the city's savings from restoring the assessed value of buildings that opt out to the tax roll. The net revenue gain to the city from coops opting out of DAMP regulations is the difference between the baseline DAMP tax expenditure and the abatement some coops would become eligible to receive. IBO's analysis incorporates the offsetting effect of the abatement and assumes that all coop apartments are occupied as primary residences.

If 50 percent of coops with DAMP exemptions in strong markets opted out of the current regulatory agreement, how much tax revenue would these properties generate annually?

If 50 percent of these coops in strong markets opted out, IBO estimates their present value tax liability would be $5.9 million a year on average. This results from an $8.9 million increase in property taxes that are partly offset by $3.0 million in coop abatements.

However, since these properties currently have some tax liability remaining after the DAMP partial exemption, the city already receives a portion of the buildings' expected $8.9 million annual liability. The portion that would represent new revenue to the city is the buildings' tax expenditure under current policy, were current policy extended through 2057. In this case, IBO estimates the new revenue these properties would generate on average is $3.2 million a year—$6.2 million from property taxes less the $3.0 million from the coop abatement.

If 50 percent of coops with DAMP exemptions in strong markets opted out, how much additional tax revenue would these properties generate annually compared with HPD's proposed cap?

Because HPD's proposal lowers the tax liability of the DAMP exemption relative to the current regulatory agreement, if a building opts out of HPD's proposal the city will collect additional revenue beyond what it would collect had they opted out of current policy. If half of the DAMP exemption coops in strong markets opted out of HPD's proposal, IBO estimates the new revenue to the city will average $4.3 million annually in present value terms. About three-quarters, or $3.2 million, of this additional revenue is due to current policy while the balance, $1.1 million, is due to the marginal increase from the more generous exemption under HPD's proposal.

If 50 percent of coops with DAMP exemptions in strong markets and 10 percent of all other DAMP exemption coops opted out of the current regulatory agreement, how much tax revenue would these properties generate annually?

Under these opt-out conditions, IBO estimates that the coops' full tax liability would be $8.1 million a year on average through 2057—$11.7 million from the property tax less $3.7 million from the coop abatement. In terms of new revenue, however, we estimate that the net gain to the city in present value terms is $4.0 million a year on average. The majority of this, $3.2 million as noted above, is from coops in strong markets with the remainder coming from coops in moderate and weak markets.

How much additional tax revenue would coops with DAMP exemptions generate annually in each type of market if they opted out of TCOP's proposal assuming 25 percent, 50 percent, 75 percent, and 100 percent opt-out rates?

TCOP asked IBO to estimate revenue impacts if these coops opted out of the organization's proposed regulatory agreement, which provides a full property tax exemption. The additional revenue to the city is therefore the difference between the coops' tax expenditure under current policy minus the abatement the coops become eligible to receive once they opt out. IBO estimated net gains in property tax revenue for strong, moderate, and weak markets under the four different opt-out rate assumptions. If all coops with DAMP exemptions opt out of TCOP's proposal, the city is poised to gain $14.9 million a year on average through 2057 in present value terms. At the other extreme, if a quarter of all coops in each market opt out, the city's net gain is on average $3.7 million annually over the same period.

Because the annual new revenue to the city reported in this section is 1) measured against a scenario in which the TCOP full exemption is assumed to have been adopted, and 2) offset by the abatement which coops that opt out would be eligible to receive, these estimates differ from other estimates reported earlier in the analysis. For illustration, consider the case of a 100 percent opt out rate. A prior question posed by TCOP asked for the additional cost of offering a full exemption to these coops, which we estimated as $19.1 million a year through 2057. This question asks how much additional revenue the city would gain if coops opted out of a regulatory agreement offering full property tax abatements. In this case, $19.1 million is not new revenue but rather the expected liability under current policy. Instead, the new revenue source comes from eliminating the current tax expenditure that the coops enjoy, worth $27.2 million a year on average. From this amount IBO subtracted $12.3 million to account for the abatement buildings opting out would become eligible to receive. The difference is the net new revenue the city is expected to receive under a 100 percent opt out scenario—$14.9 million a year.

The Amount of New Revenue to the City Increases as the Percentage of Coops Opting Out Increases
Dollars in millions

	Opt-Out Rates			
Market Strength	**25 Percent**	**50 Percent**	**75 Percent**	**100 Percent**
Strong	$1.6	$3.2	$4.7	$6.3
Moderate	1.8	3.5	5.3	7.1
Weak	0.4	0.8	1.2	1.6
Total	**$3.7**	**$7.5**	**$11.2**	**$14.9**

SOURCE: Independent Budget Office

The above analysis assumes the current regulatory period is extended through 2057, which assumes not only that HPD fails to adopt a new regulatory framework but also that the city council approves a straight extension of existing policy after 2029 when the current regulatory period ends. An alternative way to view the tax revenue implications is to assume that the City Council does not approve a straight extender and instead lets the DAMP exemption expire without a new HPD regulatory agreement. In this case, the city would receive the affected coops' full tax liability from 2029 onward.

IBO modeled the total property tax revenue (that is, new revenue plus existing liabilities under the current regulatory agreement) the coops would generate for the city through 2057 if the City Council refused to approve any new DAMP exemptions after 2029. Overall, the city would receive $33.5 million a year in present value terms if no new regulatory agreement is in place after 2029. Nearly half of the revenue, $16.1 million, would be generated by affected coops in moderate markets.

The City Would Receive More Revenue Per Year from Coops with DAMP Exemptions in Moderate Markets if No New Regulatory Agreement Is in Place After 2029
Dollars in millions

Market Strength	Total Revenue
Strong	$11.7
Moderate	16.1
Weak	5.8
Total	**$33.5**

SOURCE: Independent Budget Office
NOTES: Columns may not add due to rounding.

Sale Frequency and Sales Prices

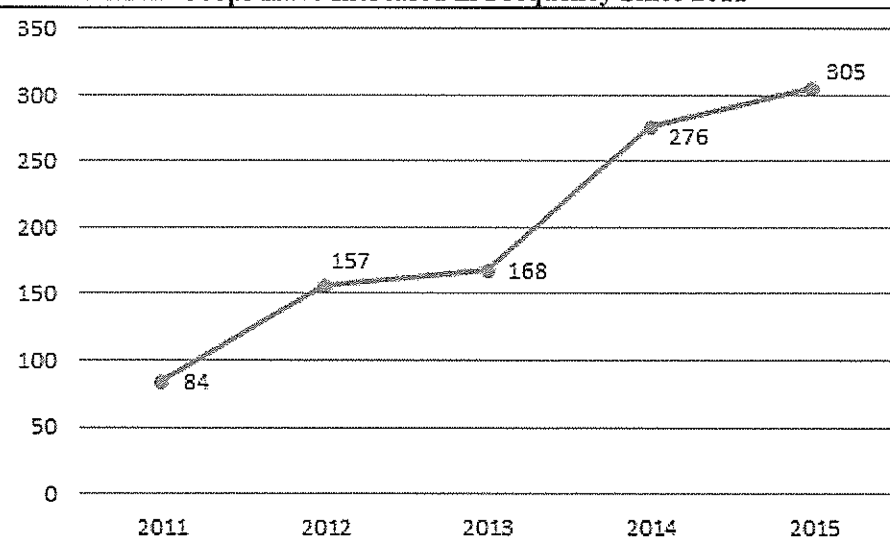
What has been the annual *number of resales in HDFC coops each year over the past five years?*

HPD does not sell DAMP properties to an HDFC at market price but instead at $250 per apartment. As these are not arm's-length transactions (that is, the price a willing buyer and willing seller would pay in a competitive market), including them in a sales analysis would distort our perceptions of the market. To provide a clearer picture of the market for HDFC coop apartments, IBO used a $80,000 price threshold to distinguish arm's-length from non-arm's-length transactions.

IBO identified 990 DAMP coop apartment sales presumed to be arm's-length transactions taking place from 2011 through 2015. Sales have become increasingly more frequent during this period, more than doubling over the five-year period.

Importantly, IBO excluded coop sales with multiple apartments bundled together in a single transaction. Since TCOP's goal is to understand the sales dynamics for individual coop apartments, including bundled transactions—which IBO cannot disaggregate into individual sales prices—would bias the analysis.

Sales of Individual DAMP Coops Have Increased in Frequency Since 2011



SOURCES: Independent Budget Office, Department of Finance

For each year over the past five years, what has been the lowest, highest, and median sales price for HDFC coops overall, and *in each of the following markets: weak, moderate, and strong?*

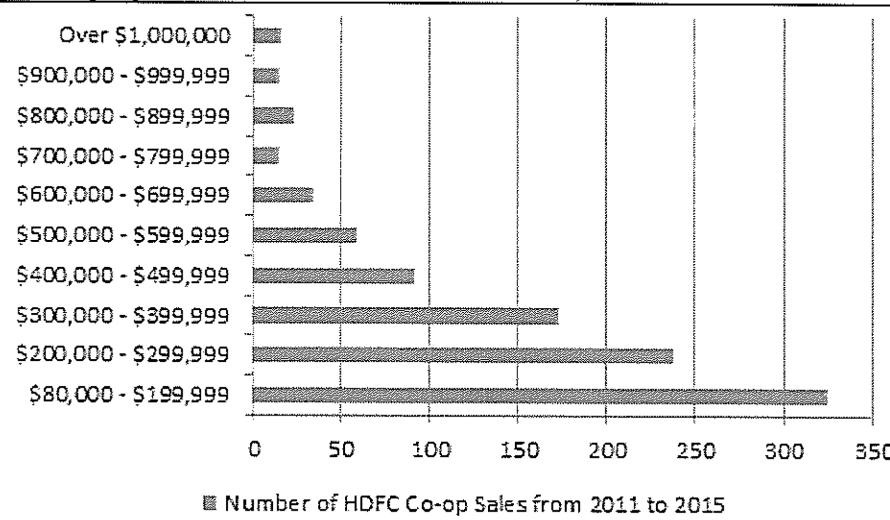
The citywide inflation-adjusted median sales price for the 990 presumed arm's-length coop sales over the last five years (in inflation-adjusted 2015 dollars) was $270,200, with prices ranging from $82,500 to $2.0 million.

Sales Data for Coops in DAMP Exempt Properties, 2011 Through 2015				
		Sales Price		
Real Price	Number of Sales	Minimum	Median	Maximum
Strong	**449**	**$90,900**	**$360,000**	**$1,913,800**
Manhattan–Mid/Lower	359	$90,900	$387,500	$1,913,800
Brooklyn–Downtown	14	$148,300	$369,000	$772,400
Brooklyn–Williamsburg/Greenpoint	76	$92,100	$236,900	$604,400
Moderate	**524**	**$82,500**	**$210,000**	**$2,039,700**
Manhattan–Upper	466	$82,500	$213,700	$2,039,700
Brooklyn–Rest	58	$85,600	$197,200	$755,500
Weak	**17**	**$82,900**	**$122,800**	**$271,000**
Bronx	17	$82,900	$122,800	$271,000
Citywide	**990**	**$82,500**	**$270,200**	**$2,039,700**

SOURCE: Independent Budget Office analysis of Department of Finance property sales data
NOTE: Dollars are deflated to 2015 values.

As further illustrated in the bar graph below, a majority of HDFC coops sold for under $300,000. Moreover, 83.6 percent of the coops sold for $500,000 or less.

Half of DAMP Coop Apartments Have Sold for Under $270,200



SOURCES: Independent Budget Office, Department of Finance

EXHIBIT B

S06543 Text:

STATE OF NEW YORK

6543

2017-2018 Regular Sessions

IN SENATE

June 1, 2017

Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the private housing finance law, in relation to the assets and supervision of housing development fund corporations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The private housing finance law is amended by adding a new section 573-a to read as follows:

§ 573-a. Assets and supervision of housing development fund corporations. 1. Except as may be specifically authorized in writing by the commissioner or the supervising agency, as the case may be, (a) a housing development fund corporation shall not cause or permit any vacant dwelling unit to be leased to, or occupied by, anyone other than families and persons of low income, (b) a housing development fund corporation organized pursuant to the not-for-profit corporation law shall not cause or permit any dwelling unit to be leased or occupied at a rent that is not affordable to families and persons of low income, as determined in accordance with standards established by the commissioner or the supervising agency, as the case may be and (c) a housing development fund corporation organized pursuant to the business corporation law shall not cause or permit the sale, transfer, assignment or issuance of any shares allocated to any dwelling unit to anyone other than families and persons of low income, or cause or permit the sale, transfer, assignment or issuance of any shares allocated to any dwelling unit for a price that is not affordable to families and persons of low income, as determined in accordance with standards established by the commissioner or the supervising agency. Where the ownership of shares allocated to any dwelling unit is transferred by operation of law, without the consent of the housing development fund corporation, to parties who are not families and persons of low income, the corporation shall not cause

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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or permit the occupancy of the dwelling unit to which such shares are allocated until the shares have been sold or otherwise transferred to a family or person of low income that will occupy such dwelling unit; provided, however, that the corporation shall not be required to remove any member of the prior shareholder's household who has continuously occupied the dwelling unit to which such shares are allocated as his or her sole residence for a period commencing not less than two years prior to the event which resulted in such transfer, even if the actual transfer occurred at a later date.

2. A housing development fund corporation shall not sell, transfer or assign all or substantially all of its assets, or any of its real property, without the prior written approval of the commissioner or the supervising agency. A housing development fund corporation shall either deposit the proceeds if any such sale, transfer or assignment with the commissioner or the supervising agency, or devote such proceeds to a housing project for families and persons of low income, or for related affordable housing activities, in a manner approved in writing by the commissioner or the supervising agency.

3. A housing development fund corporation shall not lease any of its real property, other than a lease of a single dwelling unit or a commercial unit for a term not exceeding two years, without the prior written approval of the commissioner or the supervising agency.

4. The certificate of incorporation of a housing development fund corporation shall not be altered or amended, and the corporation shall not be dissolved, without (a) the prior written approval of the commissioner or the supervising agency and (b) the prior written approval of any governmental entity which holds a mortgage or other lien on any assets of the corporation or to which any indebtedness of the corporation is outstanding.

5. Violations by a housing development fund corporation. (a) If the commissioner or the supervising agency determines that the housing development fund corporation has violated any of the provisions of this article or its certificate of incorporation or has violated or failed to fulfill any agreement with or obligation to a governmental entity, the commissioner or the supervising agency may (i) appoint to the board of directors of the corporation a number of new directors sufficient to constitute a majority of such board, notwithstanding any other provision of the certificate, the by-laws of the corporation or any agreement entered into by the corporation, (ii) revoke or suspend all or part of any exemption from local real property taxation pursuant to section five hundred seventy-seven of this article or (iii) exercise any other remedies available under applicable law or pursuant to any agreement with the corporation.

(b) Unless the commissioner or the supervising agency determines that a cure of any such violation or failure is impossible, prior to exercising any of the powers provided in subdivision (a) of this section, the commissioner or the supervising agency shall either (i) provide the corporation with thirty days notice and opportunity to cure such violation, (ii) provide the corporation with such notice and opportunity to cure such violation as may be provided in any agreement between a governmental entity and the corporation or (iii) only with respect to the revocation of a tax exemption pursuant to section five hundred seventy-seven of this article, provide the corporation with such notice and opportunity to cure such violation as may be provided in a resolution of the local legislative body.

6. A housing development fund corporation shall not acquire any real property not specifically identified by address or tax parcel in its certificate of incorporation without the prior written approval of the commissioner or the supervising agency.

7. Any housing development fund corporation incorporated pursuant to the provisions of this article and the not-for-profit corporation law shall be deemed to be a charitable corporation, as defined in subparagraph three-a of paragraph (a) of section one hundred two of the not-for-profit corporation law.

8. The following provisions of the not-for-profit corporation law shall apply to any housing development fund corporation incorporated pursuant to the provisions of this article and the business corporation law: section one hundred twelve, section five hundred eight, section five hundred ten, section five hundred eleven, section five hundred eleven-a, section five hundred fifteen, paragraph (d) of section seven hundred six, paragraph (c) of section seven hundred fourteen, section seven hundred fifteen, section seven hundred sixteen, section seven hundred twenty, section nine hundred seven, section nine hundred seven-a, section nine hundred seven-b, paragraph (d) of section one thousand two, paragraph (a) of section one thousand two-a, paragraph (c) of section one thousand two-a, paragraph (b) of section one thousand three, paragraph (c) of section one thousand three, section eleven hundred one and section eleven hundred two. Where any conflict exists between the provisions of the not-for-profit corporation law listed in this subdivision and the business corporation law, the provisions of the not-for-profit corporation law shall control.

9. A housing development fund corporation incorporated pursuant to this article and the business corporation law shall not:

(a) cause or permit any shareholder to own shares allocated to more than one dwelling unit without the prior written approval of the commissioner or the supervising agency; or

(b) cause or permit any dwelling unit to be combined, eliminated, or devoted to any use other than occupancy by families or persons of low income without the prior written approval of the commissioner or the supervising agency.

10. Notwithstanding any provision of paragraph (c) of section five hundred one of the business corporation law to the contrary, a housing development fund corporation incorporated pursuant to this article and the business corporation law may, with the approval of the commissioner or the supervising agency impose different charges, fees, assessments and requirements with respect to different dwelling units and the shares allocated to such dwelling units. The reasons for such different charges, fees, assessments and requirements may include, but shall not be limited to, differences in (a) the income requirements for occupancy of, or actual incomes of the households occupying, specific dwelling units, (b) the duration of ownership of shares or the date or circumstances of the purchase of such shares and (c) the degree of compliance with the proprietary lease or with any agreement between the corporation and a governmental entity.

§ 2. Subdivision 14 of section 572 of the private housing finance law, as amended by chapter 655 of the laws of 1978, is amended to read as follows:

14. "Supervising Agency." [~~The comptroller in a municipality having a comptroller; in a municipality having no comptroller, the chief fiscal officer of such municipality; except that~~] The agency in a municipality having jurisdiction over the development and operation of affordable

housing, regardless of any agency specified in the certificate of incorporation of a housing development fund corporation, or, in the city of New York [~~it shall be~~], the department of housing preservation and development.

§ 3. Paragraph a of subdivision 3 of section 573 of the private housing finance law, as amended by chapter 758 of the laws of 1967, is amended to read as follows:

a. that the company has been organized exclusively to develop and operate a housing project for persons of low income;

§ 4. Section 577 of the private housing finance law is amended by adding a new subdivision 4 to read as follows:

4. Notwithstanding the provisions of any general, special or local law, upon the commencement of an exemption pursuant to this section with respect to any real property in a project of a housing development fund corporation, such corporation may, with the consent of the commissioner or the supervising agency, terminate any other tax exemption or abatement applicable to such property.

§ 5. Severability. If any clause, sentence, paragraph, subdivision or section of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or section thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 6. This act shall take effect immediately.