Preserving Affordable Home Ownership: HDFC Coops and Our Community

Purpose of This Meeting

- After more than a year of conversations with many interested stakeholders, HPD believes it has a solution to address many of the issues facing HDFC cooperatives (coops).

- HPD is now expanding the conversation to include additional stakeholders. These meetings are to inform YOU of what we have been doing, why we have been doing it, and to get new perspectives on our efforts so we can refine and finalize our proposal.

First: What is an HDFC Coop?

- An HDFC Coop is a cooperative formed under Article XI of the Private Housing Finance Law (PHFL)
- An HDFC Coop, by statute, has income restrictions.
- All HDFC Coops have income restrictions for incoming shareholders spelled out in their Certificates of Incorporation.
  - Many buildings conveyed prior to 2003 have income restrictions based on the apartment's maintenance and utility payments.

HDFC Coops: The Basics

- HPD approved the formation 1,048 HDFC Coops comprised of 1,274 buildings.
  - 681 buildings in Manhattan.
- In most cases, HPD sold the building to the existing shareholders for a nominal price (usually $250 per unit).
- Shareholders and their boards are responsible for what happens to their buildings.
- Most coops have <u>no</u> HPD oversight.
  - Only 207 Coops have Regulatory Agreements (RAs) with HPD (~20%). The other 841 Coops have no HPD oversight pursuant to an RA.

HDFC Coops: The Basics (continued).

- Most HDFC Coops that were formed via the City of New York have a tax exemption called the DAMP cap (a cap on assessed value) which expires in June of 2029.
  - Example: current cap (2016/2017) is $9,787. A 10 unit building will only pay taxes on $97,870 x tax rate (as opposed to taxes based on Assessed Value which is typically much higher).

- HPD's legal authority with HDFC coop is limited and only related to the corporate structure. It can only approve the incorporation and dissolution of HDFC coops, and changes to Certificates of Incorporation.

- HPD provides technical assistance when asked.

Challenges Facing HDFC Coops

- Predominant themes of HDFC coop issues:
  - High priced sales
  - Illegal subletting
  - Mismanagement of buildings
  - Financial distress - 27% of HDFC Coops are in significant financial distress
- Lack of clarity surrounding Private Housing Finance Law (PHFL) – creates misunderstandings about how sales should occur.
- Especially in buildings without Regulatory Agreements, HPD often does not know about these problems until it is too late.
- HPD's current avenues to help are limited under Article XI of the PHFL. HPD has authority over formation, dissolution, and changes to certificate of incorporation.

Challenges Facing HPD

- Many shareholders mistakenly expect HPD to intervene when there are problems
  - HPD does not have the authority to address board mismanagement, or any other problems with how HDFCs are run day-to-day.
  - The shareholders own the building and they and their board are responsible for everything that the HDFC does.
- HPD currently has only one tool to address HDFC problems and it is extreme
  - HDFCs may go into Third Party Transfer when problems become extreme.
  - Third Party Transfer results in the loss of ownership. Shareholders no longer own their apartments – they become renters.
- HPD cannot force HDFCs to sign a regulatory agreement
  - HPD can only offer an incentive, with City Council approval, for HDFCs to enter into a regulatory agreement.
  - The only incentive is to change the tax benefit.

Why Now?

- The problems have grown to the point where HPD feels it must act to stop the ongoing and accelerating loss of affordable coop housing.
- For many years HPD has listened to shareholders concerns about how their buildings are mismanaged. HPD has lacked the ability to do more than provide technical assistance.
- Many shareholders, elected officials, and other stakeholders are alarmed by the high sale prices of some HDFC apartments. The frequency of those sales is increasing.
- In the age of Airbnb, subletting of apartments is becoming more common and more of a problem.
- HDFC Coop buildings comprise almost 37% of all buildings in Round X of Third Party Transfer.   HDFC Coops are being lost because HPD does not have the tools to intervene.

Goals

- Preserve true affordability: maintain income restrictions, while introducing asset restrictions and caps on sales prices (in buildings that vote to sign the Agreement).
- Require Coops to submit information to HPD so we will have an ability to identify problems before they become too expensive or too far-gone to fix. Develop new enforcement mechanisms.
- Find an incentive that will encourage HDFCs to sign a new Regulatory Agreement that increases HPD's ability to help.
- Strike the right balance between shareholders who want to be able to sell their units and recognize significant financial gains, and those who want to limit sales prices to maximize ongoing affordability.
- Create more certainty for lenders. As the current tax benefit gets closer to its expiration date, shareholders increasingly will face difficulty obtaining financing.

Process

- After more than a year of conversations with a taskforce of more than a dozen interested non-profit stakeholder organizations, City Council member and Borough President representatives and attorneys, HPD has developed a proposed regulatory agreement.
- With that same group, we have developed a tool to incentivize Coops to sign the proposed agreement.
- HPD is now discussing these changes more broadly including with interested shareholders.
- This fall, HPD will formally ask City Council to consider our proposed new tax benefit.
- HPD will ask the Council to give Coop HDFCs at least a year, after enactment, before HDFCs will be asked to make a decision to sign the agreement.

Provisions of the Proposed Agreement

- 40-year Agreement with a 40 year tax exemption.
  - The new tax exemption will be more generous than the current tax exemption (DAMP cap which expires in 2029).
  - A deeper exemption to account for added requirements and costs in the Regulatory Agreement.
  - Every eligible HDFC Coop – even high-value coops – would receive a tax benefit.
  - The lowest value coops, which experience high rates of financial distress, would pay no property taxes on the residential part of their building, and could use the savings to pay down delinquent tax bills or making building improvements.
- Additional reporting to HPD and Monitor to ensure buildings are in good health and are exercising good governance and abiding by regulatory restrictions.

Provisions of the Proposed Agreement (continued).

- Requires routine 2% increases to maintenance fees (in order to keep up with expenses).
- HDFCs that sign this Agreement must employ the services of a third party monitor and a third party manager:
  - Manager's job is to help the coop operate effectively.
  - Monitor's job is to safeguard the sustainability and affordability of the building and to see that the building is adhering to Regulatory provisions.
  - If HPD deems an HDFC to be managing itself well, the HDFC can apply for a waiver to the third party manager requirement.
- To improve a building's overall financial health, the new Agreement will require a 30% flip tax. When units are sold, 30% of the profit from that sale will go to the building's reserve fund.

Breakdown of Responsibilities: Monitor vs. Manager

- Monitor's job is to safeguard the sustainability and affordability of the building and to see that the building is adhering to Regulatory provisions.

- Manager's job is to help the coop operate effectively and efficiently.

Monitor	Manager
• Evaluates and approves every sale of shares, lease, and sublet. • Issues Stock Certificates. • Oversees and certifies annual elections. • Determines whether or not to impose a prohibited events fee, and will provide notice to noncompliant shareholder. • Approves, modifies, or rejects the training plan for the HDFC. • Approves reserve account withdrawals.	• Collects rent and maintenance. • Maintains current insurance policy. • Monitors and reviews the Books and Records. • Approves leases for any non-residential space. • Collects from a noncompliant shareholder a prohibited events fee.

Provisions of Regulatory Agreement: Income & Sales Restrictions

- Eligibility to purchase shares and become a new shareholder:
  - Household income at or below 120% of AMI ($108,720 for a family of 4 in 2016).
  - Household assets at or below 175% of AMI ($158,550).
- Requirements for new and existing shareholders:
  - Household must make the HDFC unit its primary residence.
    - Shareholders cannot sublet their apartments for more than 18 months cumulative out of a five year period, and they must obtain Board and Monitor approval if they choose to sublet their units.
  - Cannot own property within 100 miles of New York City.
  - Sales of units at prices affordable to 110% of AMI or below.

Understanding Income Restrictions

- **There are 3 types of income caps for HDFC Coops:**
  - 1) Coops with up to 165% AMI.
  - 2) Coops with income restrictions subject to Section 576 of the Private Housing Finance Law.
  - 3) Coops sold with a 30 year Regulatory Agreement subject to 120% AMI.

Calculating income based on Section 576 PHFL:

- 1-2 person household: 6 x (monthly maintenance + monthly utilities) x 12.
- 3+ person household: 7 x (monthly maintenance + monthly utilities) x 12.

Assuming $150 for monthly utilities and $750 for maintenance:

- 1-2 person household: 6 x(150 + 750) x 12 = **$64,800** maximum income for household.
- 3+ person household: 7 x(150 + 750) x 12 = **$75,600** maximum income.

Understanding Income Restrictions (continued).

Calculating income based on 120% AMI in 2016

Household Size	Maximum Gross Income
1 Person	$76,200
2 Persons	$87,000
3 Persons	$97,920
4 Persons	$108,720
5 persons	$117,480
6 Persons	$126,120
7 Persons	$134,850
8 Persons	$143,550

Maximum Sales Prices at 110% AMI

0 Bedroom (Studio)	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	5 Bedroom
$286,296	$347,636	$412,022	$476,712	$539,880	$601,830

- Resale prices set affordable to a maximum of 110% of AMI.
- If a Board votes to adopt a lower resale price cap to maintain deeper affordability, HPD will design a customized schedule of sales.
- Resale prices will be indexed annually.

Option to Carve-Out of Resale Prices

- Only in buildings where there have been high-priced sales, the owners of the high-priced units may opt to have their unit "carved out" of the resale price restriction and asset cap for prospective buyers of their unit.
- The purpose of this provision is two-fold:
  - To ensure shareholders who bought in at a high-price (affordable to 110% of AMI for year unit was sold) are not unfairly penalized at the time they wish to sell.
  - To encourage these shareholders to not work to block the rest of the building from signing the Regulatory Agreement.
- No more than 1/3 of units in a building may be carved out.
- Subsequent purchasers of "carved-out units" would still have to have incomes at or below 165% of AMI as the HDFC Coop is still subject to the statutes in Article XI of the Private Finance Housing Law.

HPD's Proposed Tax Exemption

- HPD will be discussing with the City Council a tax exemption proposal:
  - Would be more generous than the current tax exemption (DAMP cap which expires in 2029).
  - A deeper exemption to account for added requirements in the Regulatory Agreement.
  - Every eligible HDFC Coop that signs the Regulatory Agreement– even those with high Assessed Values– would receive a tax benefit.
  - The lowest value coops, which experience high rates of financial distress, would pay no property taxes on the residential part of their building, and could use the savings to pay down delinquent tax bills or making building improvements.

Comparison of Taxes under HPD's Proposed Exemption, Current DAMP cap, and Full Property Taxes

Building	Dwelling Units	Full Property Taxes	With DAMP Cap	With Proposed Exemption
288-85 East 4th Street HDFC (Manhattan)	36	$92,978	$45,391	$18,552
124 South 3rd Street HDFC (Brooklyn)	26	$65,313	$42,580	$17,305
211 West 135th Street HDFC (Manhattan)	8	$28,517	$10,087	$4,123
212-14 West 108th Street HDFC (Manhattan)	30	$81,928	$37,826	$15,460
510 West 151st Street HDFC (Manhattan)	14	$26,146	$17,652	$6,310
433 West 46th Street HDFC (Manhattan)	20	$49,057	$20,174	$12,917
721 Van Siclen Avenue HDFC (Brooklyn)	38	$98,288	$62,656	$19,582
681 East 161st Street HDFC (Bronx)	51	$68,722	$63,043	$42,438
1185 Fulton Avenue HDFC (Bronx)	42	$50,031	$50,031	$28,388
2114 Belmont Avenue HDFC (Bronx)	16	$20,233	$20,174	$3,996
803-05 East 182nd Street HDFC (Bronx)	44	$54,310	$54,310	$31,635

Preserving Affordable Housing

- HPD wants to be proactive in helping preserve this limited and crucial affordable housing stock; the proposed Regulatory Agreement will be instrumental to achieving this goal.
- This Agreement creates needed insight into how buildings are performing, enabling HPD to be able to proactively work with struggling properties and help resolve problems before it's too late.
- The Agreement provides more ways for HPD to identify problems and intervene before in-rem foreclosure becomes the only solution.
- We believe this agreement strikes the right balance between many competing interests, and will result in many Coop HDFC signing onto the new regulatory agreement.

Questions?