

# **New York University**

**Robert F. Wagner Graduate School of Public Service**

**Volume XXII, 2014 - 2015**

## **THE WAGNER REVIEW**

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*The Wagner Review* is the student-run academic journal of the Robert F. Wagner Graduate School of Public Service at New York University. *The Wagner Review* promotes dialogue on a wide range of issues related to public service by publishing original research from a diverse group of students and alumni that reflects the academic programs offered and scholarly research conducted at NYU Wagner. In support of this mission, *The Wagner Review* publishes both print and online editions. Visit us on the Web at [www.thewagnerreview.org](http://www.thewagnerreview.org) for more information, and to read opinion-based commentary, book reviews, and feature articles.

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## LETTER FROM THE EDITOR

Dear Reader,

We proudly present to you the 2014-2015 edition of *The Wagner Review*, the student-run academic journal of the Robert F. Wagner Graduate School of Public Service at New York University.

The mission of *The Wagner Review* is to promote dialogue on a wide range of issues related to public service and to provide an outlet for the fine scholarship of our community. We do this by publishing original peer-reviewed research, analysis, and commentary from a diverse group of students that reflects the academic programs offered and research conducted at NYU Wagner.

We are grateful to the writers who submitted pieces and our staff who served as editors. We would also like to thank the Wagner Student Association and the NYU Wagner Administration, particularly our faculty sponsor, Carrie Nordlund. We appreciate your time, effort, and support.

We hope you enjoy reading.

Sincerely,

The Wagner Review Executive Board

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# THE WELL FORM HELL: BP DEEPWATER HORIZON AND THE RELENTLESS PURSUIT OF PROFIT

Michael G. Avgerinos

**ABSTRACT** *The 2010 BP Deepwater Horizon offshore oil well blowout took the lives of 11 workers. The 4.9 million barrel spill was unprecedented in size and threat to the environment. A conflicted regulatory structure enabled BP and its contractors to focus on production and profits at the expense of safety and environmental protection. A federal ban on deepwater drilling was lifted six months after the BP disaster, even though experts warned that blowout preventers like the one that failed to close BP's well were not designed for deepwater conditions. The solution should include an independent federal regulator and a robust permitting process that requires companies to file detailed emergency response plans. Drilling for oil and gas is inherently risky, but it is risk that can be managed.*

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# INTRODUCTION

Could the BP *Deepwater Horizon* disaster have been prevented? One must examine the key issues of risk, safety, regulatory capture, BP's corporate culture, and government policies to answer this question. The 2010 BP oil spill was the nation's first declared Spill of National Significance (SONS) due to the scale of the event, the threat to the environment, and the presence of hazardous material. A policy analyst must identify the circumstances that led to the catastrophic event, whose environmental and human health costs may not be known for many years, in order to propose policies to prevent or reduce the consequences of similar hazardous-material events. Effective public policy to prevent future oil spills should establish a federal top-down approach, including a single, independent regulator with the power to approve startup and operation of offshore drilling based on input from stakeholders and specialized agencies. This regulator should have the power to (i) award drilling permits, (ii) shut down operations that violate safety or environmental regulations, (iii) provide incentives for whistleblowers, and (iv) bring criminal charges for safety violations, if appropriate.

## BACKGROUND

The BP *Deepwater Horizon* spill, due to its severity, size, and potential impact on the environment and public health, required extraordinary coordination between all levels of government and BP.<sup>1</sup> The BP rig blowout spilled nearly

207 million gallons of crude oil from BP's Macondo well into the Gulf of Mexico, contaminating over 2,500 square miles of ocean and closing some 90,000 square miles of the Gulf to fishing.<sup>2</sup> The spill's emergency response included "over 48,000 people from hundreds of organizations," 60 U.S. Coast Guard (USCG) ships, "22 aircraft, 345 response vessels, 3,200 local vessels of opportunity (VOOs), and 127 surveillance aircraft."<sup>3</sup> Since the spill involved hazardous material, the Department of Homeland Security (DHS), with the support of USCG Admiral Thad Allen as National Incident Commander (NIC), was responsible for coordinating these response efforts.

The size and location of the BP spill tested the effectiveness of U.S. preparedness for a major technological disaster. On April 20, 2010, the *Deepwater Horizon* offshore drilling rig BP leased from Transocean was almost finished with the drilling of BP's exploratory well in the 5,000 feet deep waters in the Gulf of Mexico, 48 miles off the Louisiana coast. BP's corporate public relations office planned to announce BP's discovery of 100 million barrels of oil some 13,000 feet beneath the sea floor the next day. On the following day, the well would be sealed and the rig transported to its next exploration site.<sup>4</sup> Just before the 11 PM shift change, a "kick," or a small burst of drilling fluid containing natural gas, came up the drill pipe.<sup>5</sup> As the crew debated how to proceed, two more bursts occurred, and the well ejected a surge of drilling mud into the rig. Halliburton, BP's contractor, plugged the well with cement that may not have had time to

cure.<sup>6</sup> A blowout should never have occurred, since there was a blowout preventer (BOP) that should have isolated the well if fluid pressures within became unbalanced.

In testimony before the Senate Environment & Public Works Committee, BP America Chairman & President Lamar McKay said the BOP "was to be the fail-safe in case of an accident...Transocean's blowout preventer failed to operate."<sup>7</sup> The Transocean BOP was designed and tested by Cameron International and installed at the wellhead on the seabed floor.<sup>8</sup> Cameron spokesman Mike Pascale said that Cameron "has never characterized company products as fail-safe."<sup>9</sup> It is unclear why the BOP failed, but one explanation is that the drill pipe was not centered and the BOP shear rams could not cut the pipe.<sup>10</sup> Halliburton recommended 21 stabilizers to hold the pipe in place to ensure an effective cement job, but there were only 6 stabilizers available on the rig and BP management decided to use only the 6 stabilizers and did not inform Halliburton of its decision.<sup>11</sup>

The rig crew reportedly had plenty of emergency training. The crew had even filmed a rap video touting its safety awareness and procedures.<sup>12</sup> During training sessions, a shout of "blowout!" meant that all floor hands should respond immediately to lift the heavy emergency shutoff valve to control the surge.<sup>13</sup> The safety training was of no use on April 20 because the cement began spewing out during shift changeover, and the drill deck was "temporarily undermanned."<sup>14</sup> To make matters worse, it was late at night and the thick, gooeey oil had coated

everything, including the floodlights.

A 23 year-old technician in the control room had been trained to trigger a gas alarm, even if just one red light was flashing.<sup>15</sup> When she saw twenty red warning lights flashing simultaneously, she assumed it was a malfunction and took no action for up to 9 minutes.<sup>16</sup> Although the electrical equipment on a drilling rig "is specifically designed to prevent spark-ignited flare-ups," when uncontrolled combustible gases rise to the ocean surface it only takes one tiny spark to ignite the gas, "even static electricity...that's all it will take to trigger a disaster."<sup>17</sup>

The rig's diesel engines began over-revving from intake of natural gas that came up from the well. The rig's diesel engines generate electricity and also power the rig to resist wave forces and to stay centered over the borehole.<sup>18</sup> Since no gas alarm sounded, engine room technicians did not realize that natural gas was causing the generators to over-rev.<sup>19</sup> Lightbulbs on the rig began to pop, while computers and other electronic equipment were "fried by the overvoltage."<sup>20</sup> The over-revving destroyed the diesel engines and the bunkrooms went dark as the emergency generator failed to start.<sup>21</sup> The rig was adrift on the ocean with no diesel power, which strained the riser pipe that connects the rig to the wellhead 5,000 feet below the ocean surface.<sup>22</sup> Two explosions hit in quick succession. Sirens finally began to sound and a voice on the speaker system shouted, "This is not a drill! Repeat, this is not a drill!"<sup>23</sup>

As the rig collapsed and sank, its mile long riser pipe failed to disengage,

which stressed the open valves at the wellhead. Engineers concluded that because the riser pipe did not disconnect, it damaged the BOP. Over the next 83 days, as oil gushed out and headed toward Gulf Coast beaches, BP executives continued to downplay the amount of oil spewing out of the well. Since the well was in waters too deep for human divers, BP engineers attempted to close the BOP with a remotely operated vehicle. When that failed, technicians attempted to capture the spewing oil with a containment dome. When that also failed, they tried a capture device called “top hat”. This device failed due to methane hydrate crystals that form due to the low temperature and extreme pressure at depths of 5,000 feet.<sup>24</sup> This was followed by a “straw,” a “top kill,” and finally a “bottom kill” by drilling a relief well. During that time, some 4.9 million barrels of crude oil escaped.<sup>25</sup>

## HISTORY REPEATS ITSELF

The *Deepwater Horizon* disaster was the largest offshore drilling spill the U.S. has ever experienced. The most recent global offshore drilling disaster, prior to the BP spill, was the Occidental Petroleum 1988 *Piper Alpha* explosion and fire in the North Sea off the coast of Aberdeen Scotland, where 167 people died. The investigation determined that Occidental “had used inadequate maintenance and safety procedures.”<sup>26</sup> At the time, Occidental had “massively” cut costs in response to a plunge in oil prices from \$30 per barrel to just \$8.<sup>27</sup> The investigation

revealed “a lack of communication at a shift change meant staff were not aware that they should not use a key piece of pipework which had been sealed with a temporary cover and no safety valve.”<sup>28</sup> Dr. Elisabeth Paté-Cornell, Stanford professor of engineering risk analysis, links production pressures in the oil industry with excessive risk-taking: “[t]he culture is marked by formal and informal rewards for pushing the system to the limit of its capacity. Production increases sometimes occur with little understanding of how close one is or might be to the danger zone.”<sup>29</sup>

Previously, the most recent offshore drilling disaster to occur in the Gulf of Mexico happened in 1979 when the Pemex rig *Ixtoc I* experienced a blowout, explosion, and fire off the coast of Mexico. Unlike *Deepwater Horizon*, the *Ixtoc I* well was drilled in water just 160 feet deep, which is a level human divers can reach. The *Ixtoc I* blowout released some 475,000 metric tons, or roughly 4 million barrels of crude into the Gulf of Mexico over ten months.<sup>30</sup>

Thirty-one years after the *Ixtoc I* leak, BP used many of the same failed methods that Pemex used in 1979 to try to stop its blowout. *Ixtoc I* engineers placed a 300-ton giant steel cone called “Operation Sombrero” over the well, the exact method BP tried with its “top hat.”<sup>31</sup> Pemex also tried shooting steel and lead balls into the well, but the high pressure from leaking oil and gas ejected them.<sup>32</sup> BP used this same tactic with its so-called “junk shot,” which involved shooting junk, such as rubber tires and old golf

balls, into the well to plug it up in a process similar to “clogging up a toilet.”<sup>33</sup> Pemex tried pumping cement and salt water into the well to plug it, which is what BP also attempted with its “top kill” maneuver.<sup>34</sup> In both cases, drilling relief wells finally stopped the spill.

Both *Ixtoc I* and *Deepwater Horizon* spills had an adverse impact on the local fishing industry. Fishing is an important part of the Mexican economy, and the *Ixtoc I* spill “wiped out fishing off the Mexican Gulf Coast for more than two years.”<sup>35</sup> Some crab populations along the Mexican Gulf coast were almost completely eradicated by the spill.<sup>36</sup> Adverse effects on marine food chains were noted, with large plankton blooms observed near the city of Tampico, Mexico.<sup>37</sup> The BP spill continues to adversely impact Gulf wildlife, according to the National Wildlife Federation (NWF), although much of the research has not yet been published due to ongoing trials.<sup>38</sup> A report from the NWF on March 30, 2015 cites research studies showing “abnormal development in a number of fish species, including commercially important species like mahi-mahi and Atlantic bluefin and yellowfin tuna.”<sup>39</sup>

The chemical Corexit was used in both blowouts to disperse the spilled crude oil. More than 170,000 gallons of Corexit 9517, 9527 and 7664, produced by Exxon Chemical and sold at \$8 per gallon in 1979, were used to disperse the *Ixtoc I* oil.<sup>40</sup> In 1994, Exxon formed a joint venture with Nalco Chemical Company and marketed Corexit through Nalco-Exxon Energy Chemicals.<sup>41</sup> In 2001, Exxon

sold its 40% stake in the joint venture that produced Corexit and other chemicals for the oil and gas industry.<sup>42</sup> Nalco Holding, whose largest shareholder is Warren Buffett’s Berkshire Hathaway, now produces and sells Corexit for around \$50 a gallon.<sup>43</sup>

A University of Alabama peer-reviewed study published on April 2, 2015 showed that Corexit 9500A, the dispersant used to break up the spilled BP oil, “causes structural and functional abnormalities” in both “human bronchial airway epithelial cells and aquatic animals.”<sup>44</sup> The study cited research from Georgia Institute of Technology showing that mixing Corexit with oil “increased the toxicity of the mixture up to 52 times when compared with oil alone.”<sup>45</sup> The EPA website on the BP spill, however, says “dispersant-oil mixtures are generally no more toxic to the aquatic test species than oil alone.”<sup>46</sup> A total of 1.84 million gallons of Corexit was used to disperse the BP spill, and although scientists know that Corexit exposure triggers cellular oxidative stress, the impact of Corexit use on human lungs and the gills of aquatic animals is still unknown because the body’s production of the enzyme Heme Oxygenase-1 may protect against Corexit-induced injury.<sup>47</sup>

The Alabama study notes that dioctyl sodium sulfosuccinate (DOSS), a chemical compound in Corexit known to cause “mass detachment of the intestinal epithelium of horses and guinea pigs,” was found in water samples from the Gulf of Mexico 64 days after the use of Corexit to disperse the BP spill had ended.<sup>48</sup> The

study concludes that DOSS has “little or no susceptibility to biodegradation” and suggests that “investigation of the ecological and trophic implications of this chemical is warranted.”<sup>49</sup> The EPA website, however, says “[d]ispersants are generally less harmful than the highly toxic oil leaking from the source and biodegrade in a much shorter time span.”<sup>50</sup> Congressman Ed Markey complained that “BP carpet-bombed the ocean with these chemicals, and the Coast Guard allowed them to do it,” noting that the Coast Guard granted BP 74 exemptions in 48 days for surface use of Corexit.<sup>51</sup> BP CEO Bob Dudley told shareholders “[t]he toxicity of Corexit is about the same as dish soap, which is effectively what it is and how it works.”<sup>52</sup>

The difference between the *Ixtoc I* spill and the *Deepwater Horizon* spill was that the *Ixtoc I* blowout occurred at an ocean depth of 160 feet, while the *Deepwater Horizon* blowout occurred at a depth of 5,000 feet. It is easier to control a well blowout at a depth of 160 feet because “the pressure is lower and underwater access is easier.”<sup>53</sup> S. Elizabeth Birnbaum, director of MMS at the time of the *Deepwater Horizon* disaster, warns that “[t]he risk of another blowout is real,” in particular because “[t]he expansion of drilling into deeper water and farther from shore was not coupled with advances in spill prevention and response”<sup>54</sup> She notes that from the BP disaster in 2010 until 2014, the U.S. government has not taken the steps its advisers recommended to improve offshore drilling safety.<sup>55</sup>

Birnbaum describes the National

Academy of Engineering (NAE) 2011 report to the U.S. government on the *Deepwater Horizon* blowout as “detailed and damning.”<sup>56</sup> In particular, the NAE report said that the *Deepwater Horizon* BOP “was neither designed nor tested for the dynamic conditions that most likely existed at the time that attempts were made to recapture well control...the design, test, operation, and maintenance of the BOP system were not consistent with a high-reliability, fail-safe device.”<sup>57</sup> The NAE report lists “a number of deficiencies” in *Deepwater Horizon’s* BOP system, and notes that “the shortcomings may be present for BOP systems deployed for their deepwater drilling operations.”<sup>58</sup> Birnbaum concludes that a blowout similar to the BP blowout could easily happen again today because the BOP was “not adequately engineered to stop emergency blowouts in deep water.”<sup>59</sup> The U.S. government promised to regulate BOPs by the end of 2012.<sup>60</sup> By the fourth anniversary of the BP blowout in 2014 no new regulations had even been proposed, notes Birnbaum, yet the government continued to auction deepwater leases in the Gulf of Mexico despite NAE warnings that a deepwater blowout may not be preventable with current BOP technology.<sup>61</sup>

Coinciding with the 2015 fifth anniversary of the *Deepwater Horizon* disaster, however, the Interior Department’s Bureau of Safety and Environmental Enforcement (BSEE) intends to formally propose new requirements for BOP shearing standards, for centering drill pipe, for safe drilling margins, for third-party verification of BOPs, for drilling fluid

density, and for real-time well temperature and pressure monitoring from land.<sup>62</sup> What is not yet known is how long the lead times will be for corporations to comply with the new offshore drilling safety regulations. "We will have to have a phase-in of new requirements, because it will take time for industry to gear up," said James Watson, former director of BSEE.<sup>63</sup> After the *Exxon Valdez* spill, Congress passed the Oil Pollution Act of 1990, which required the use of double-hull tankers, but Congress gave corporations a 25 year phase-in period to comply with the new safety rules.<sup>64</sup>

BP did not have a spill response safety plan in place to contain the blowout before it occurred; BP responded only after the well blew out.<sup>65</sup> The Coast Guard attributes this to the fact that BP and other large oil companies believed that "the ultimate risk of a deepwater well blowout was essentially zero."<sup>66</sup> This attitude among oil industry executives, says the Coast Guard, "has had the effect of creating a void in any type of substantive research to advance response equipment technology such as the sombrero or other innovations."<sup>67</sup> This explains why corporate spill response had not changed in the 31 years between the *Ixtoc I* and the *Deepwater Horizon* spills. BP executives were unaware of the history or lessons to be learned from the *Ixtoc I* 1979 disaster:

Now you'd think that everyone in a high position in an oil corporation or in Louisiana government would know this history and keep it in mind as they approve offshore drilling projects. But did they? Nope. During one of the

congressional hearings on the then-ongoing *Deepwater Horizon* disaster, a five-member panel of BP executives was caught flat-footed by a question about how their contingency planning had been affected by the *Ixtoc I* accident. None of them acted as if they'd even heard of *Ixtoc I*. As for Louisiana leaders, there seems to be no record of any journalist asking them that same question.<sup>68</sup>

The *Ixtoc I* spill should have been a wake-up call for U.S. regulators to insist that U.S. deepwater drillers provide detailed spill response plans. Yet there was no mention of top hat, top kill, or junk shot in BP's Gulf of Mexico Oil Spill Response Plans or its Mississippi Canyon Initial Exploration Plan.<sup>69</sup> In fact, BP's Initial Exploration Plan for its Macondo well, as approved by BP's offshore drilling regulator Minerals Management Services (MMS), said that a blowout scenario was not required.<sup>70</sup>

In March 1989, the tanker *Exxon Valdez* hit a reef in Alaska and spilled 11 million gallons of crude oil into Prince William Sound. Although the *Exxon Valdez* spill was 1/20 the size of the BP spill, it was an environmental disaster that permanently damaged the fragile Alaska ecosystem. On the 25<sup>th</sup> anniversary of the Exxon spill in 2014, thousands of gallons of oil continued to pollute Alaskan beaches, and only 13 out of 32 monitored wildlife populations have recovered.<sup>71</sup>

Kathleen Tierney, Professor of Sociology and Director of the Natural Hazards Center at the University of Colorado Boulder, is an expert in the social constructs of disasters. She

notes that BP's corporate response to the *Deepwater Horizon* spill closely resembled Exxon's response. First, both companies offered reassurances about their ability to fix a massive spill, then promised to compensate the victims of its spill "even as it became increasingly clear that those statements were falsehoods."<sup>72</sup> Tierney also notes that Exxon was "more concerned with productivity and cost-cutting than with safety or the environment," citing a broken collision avoidance radar system on the *Valdez* that had not been repaired and a crew that typically worked 12-14 hour shifts, plus overtime.<sup>73</sup>

Although Exxon and BP both filed disaster plans with government regulators, it is clear that a significant contributor to the disasters was regulatory capture, where regulators charged with acting in the public interest promote, instead, the interests of the industry they are charged with regulating.<sup>74</sup> The Report to President Barack Obama on the BP spill noted that revenue generation was the primary goal pursued by both BP and MMS. Not only was MMS the federal offshore drilling regulator in 2010, but it was also responsible for maximizing the government's revenues by auctioning offshore drilling leases. This was a clear conflict of interest. BP's goal was to maximize profits; MMS's goal was to collect "billions of dollars of revenues obtained from lease sales and royalty payments from producing wells."<sup>75</sup> The Report to the President also noted the risks inherent in such a goal:

But there was a hidden price to be paid for those increased

revenues. Any revenue increases dependent on moving drilling further offshore and into much deeper waters came with a corresponding increase in the safety and environmental risks of such drilling. Those increased risks, however, were not matched by greater, more sophisticated regulatory oversight. Industry regularly and intensely resisted such oversight, and neither Congress nor any of a series of presidential administrations mustered the political support necessary to overcome that opposition. Nor, despite their assurances to the contrary, did the oil and gas industry take the initiative to match its massive investments in oil and gas development and production with comparable investments in drilling safety and oil-spill containment technology and contingency response planning in case of an accident.<sup>76</sup>

Tierney notes that the entire Report to the President highlighted "regulatory capture and a host of institutional weaknesses within the MMS that enabled BP and its contractors to focus on production at the expense of safety and environmental protection."<sup>77</sup>

Exxon and BP both filed spill response plans that were woefully inadequate, yet the plans were approved by regulators with few questions asked. Alyeska, the Alaska Pipeline consortium that is majority-owned by BP, assured Congress in 1982 that "[t]he contingency plan which will be drawn up will detail methods for dealing promptly and effectively with



any spill which may occur, so that its effect on the environment will be minimal”, and that the cleanup time for a spill of 100,000 barrels of crude would be “less than 48 hours.”<sup>78</sup> When Alaska urged Alyeska to include a response scenario for a 200,000 barrel spill, the company said “Alyeska believes it is highly unlikely a spill of this magnitude would occur.”<sup>79</sup> In fact, the *Exxon Valdez* experienced a spill of 260,000 barrels. Containment efforts began 14 hours after the accident, and it took 18 hours before a boom was placed around the ship to try to contain the spill.<sup>80</sup>

In 1982, six years before the *Exxon Valdez* oil spill, retired USCG captain James Woodle took a job with the Alyeska oil consortium in Valdez, Alaska, where he was in charge of spill recovery. Woodle noted that “[t]hey had cut back on equipment, on staff” and claims that when he questioned the cost-cutting, he was told point blank, “*safety doesn’t make money*” (emphasis added).<sup>81</sup> In April 1984, Woodle wrote a letter to George Nelson, president of Alyeska, informing him that “[d]ue to a reduction in manning, age of equipment, limited training and lack of personnel, serious doubt exists that Alyeska would be able to contain and clean up effectively a medium- or large-sized oil spill.”<sup>82</sup> A few weeks later, Woodle was fired for insubordination. The *Exxon Valdez* spill occurred five years later, and the Alyeska consortium and its BP operatives were the first responders. “I knew it would be a disaster—they didn’t have the equipment or the men,” said Woodle, referring to the *Exxon Valdez* spill.<sup>83</sup>

BP learned nothing from the *Exxon Valdez* spill. BP’s lack of emergency preparation can be seen in its 528-page Oil Spill Response Plan for the Gulf of Mexico, which had also been approved by MMS. James Woodle, in a *Newsweek* interview, noted similarities between the *Exxon Valdez* and *Deepwater Horizon* spills. The spill contingency plans for the Valdez, Alaska terminal were useless, said Woodle: “The attitude was that you don’t have to worry about spills, because they will probably never happen. The only important thing was the number of pages in the plan. The more pages the better. It was huge, but cut-and-pasted and padded with a lot of images of the shoreline.”<sup>84</sup> Like Exxon’s Valdez spill contingency plans, BP’s response plan totaling 528 pages appeared to have cut and pasted portions. For example, it described the need to protect seals, sea otters, and walruses, animals that do not even exist in the Gulf of Mexico. This evidence supports the case that BP may have cut and pasted this information from response plans for other regions, such as Alaska. BP’s plan also cited an expert who had been dead for four years, and, for some unknown reason, also included a hyperlink to a Japanese shopping site.<sup>85</sup>

The worst-case scenario in BP’s exploration plan was a spill of 162,000 gallons a day. Yet on the day that the *Deepwater Horizon* sank, BP officials warned in internal e-mails that if the well was not protected by the BOP, some 3.4 million gallons of crude oil per day could surge into the Gulf of Mexico.<sup>86</sup> These e-mails did not become public until documents were

released in 2012 as part of federal court proceedings. In one email, a BP manager instructed the employees working with spill estimates from the flow rate projection model “not to communicate to anyone on this” because BP was having “difficult discussions with the USCG on the numbers”<sup>87</sup> at the time. On April 23, 2010, the USCG reported that no oil was leaking, based on information from BP’s remotely operated vehicle. The next day, USCG reported that 42,000 gallons per day were leaking.<sup>88</sup>

## BP: A CULTURE OF RISK-TAKING

To understand how such a catastrophe could have happened after the *Ixtoc I* blowout in 1979 and the *Exxon Valdez* tanker spill in 1989, one must examine BP’s approach to risk-taking. BP’s business model, which defines its corporate culture, was one of risk-taking and capital efficiency.<sup>89</sup> In 2007, Tony Hayward, former BP CEO, promised shareholders that BP’s strategy was to become more profitable through cost-cutting, capital efficiency and margin quality. Despite oil prices approaching \$100 per barrel, BP profits still disappointed investors and underperformed its competitors in late 2007. BP’s Wall Street investment banker warned that BP “might not be here in a couple of years’ time,” and strongly recommended even further cost-cutting to improve profit margins.<sup>90</sup> Following suit, BP announced 5,000 job cuts and 20% overhead cost reductions. *The Wall Street Journal* later reported that BP eliminated 6,500 jobs, citing company insiders who

described “draconian” cost-cutting with a heavy emphasis on higher oil production targets.<sup>91</sup>

In 2008, the push was on BP to cut costs and ramp up production to maximize profits as oil prices continued to rise. West Texas Intermediate (WTI) oil prices peaked at \$146.73 in July 2008. The high price of oil led to an increase in hydraulic fracturing, or fracking, as high-cost shale drilling became profitable. When the financial crisis hit in 2008, oil demand plunged as the economy went into a tailspin. This drop in oil demand, along with an increase in supply of oil and gas due to fracking, caused oil prices to collapse. By January 2009, the WTI oil price was at \$32.70 per barrel—a 78% drop in just six months.<sup>92</sup>

An investigative report by journalists at *Fortune* noted that the *Deepwater Horizon* disaster “was a long time in the making, the product of a corporate culture that venerated risk-taking even as years of merger-driven growth and successive rounds of cost-cutting consumed its leaders’ focus.”<sup>93</sup> John Browne, BP’s CEO from 1995 to 2007, had a finance background and served as Chief Financial Officer of SOHIO, which BP bought in 1987 (Figure 1). BP produced oil in Alaska, but the SOHIO acquisition gave BP U.S. refineries and U.S. retail gas stations. When Browne became CEO in 1995, he began a drive to aggressively grow BP into a global oil powerhouse (summarized in Figure 1).

BP acquired Amoco in 1999, making BP the world’s third largest multinational oil company and the

# BP's Global Growth Strategy

Name	Type	Reason for Acquisition	Acquisition Date	Acquisition Cost	Job Losses	WTI Crude Price per BBL
<b>Standard Oil of Ohio (SOHIO) - US</b>	R&M	Perfect fit for BP: --BP found oil in Alaska but no way to sell in US -- <u>So</u> hio had US refineries and gas stations but no oil.	Mar 1987	\$27 billion	1,000	\$18
<b>AMOCO - US</b>	E&P/R&M	--BP became the world's third largest multinational oil company in terms of income. --AMOCO was the largest natural gas producer in N. America, with exploration in 20 countries and production in 14 countries; --AMOCO also produced chemicals. --Deal would allow BP to become more competitive in Soviet Union, China and Latin America.	Aug 1998	\$48.2 billion	10,000	\$10
<b>ARCO - US</b>	R&M	--BP became the largest gas producer in North America, the UK North Sea and in Atlantic and Mediterranean markets. -----Gave BP ARCO's US retail outlets plus natural gas in China with a pipeline to Hong Kong. --BP also gained gas reserves in Indonesia, Malaysia, Thailand, and Qatar and oil reserves in Algeria, Venezuela, the Caspian sea, --BP gained ARCO's joint venture with LUKOIL, Russia's largest oil company.	Apr 1999	\$27 billion	2,500	\$17
<b>Vastar Resources - US</b>	E&P	--Strengthened BP's position as top natural gas producer in North America.	Sep 2000	\$8.1 billion	250	\$34
<b>Veba - Germany</b>	R&M	--Expanded BP's presence in Germany's large oil-products market. --Gave BP 5 refineries and oil producing properties in 13 countries in Europe, Middle East, Africa, and Latin America	Jan 2002	\$4.4 billion	1,500	\$20
<b>Burmah Castrol</b>	Burmah E&P Castrol R&M	--Burmah-- gave BP access to emerging markets --Castrol-- became BP's leading lubricants brand.	Mar 2000	\$4.73 billion	1,700	\$30

E&P = Exploration and Production  
R&M = Refining and Marketing

Figure 1

largest natural gas producer in North America. BP acquired ARCO several months later, giving the company a vast global reach, including a joint venture with LUKOIL, Russia's largest oil company. The acquisition of Vastar strengthened BP's position as top natural gas producer in North America. The acquisition of Burmah Castrol gave BP access to emerging markets and to the leading brand in global lubricants. The purchase of Veba in Germany gave BP refineries and oil-producing properties in 13 countries. Browne transformed BP into the largest oil

producer in the U.S.<sup>94</sup> Each acquisition involved large-scale layoffs and other cost-cutting measures, earning John Browne the nickname "Neutron John," since his "cost-cutting zeal" was like a neutron bomb.<sup>95</sup> Figure 1 illustrates how the size of the deal and the resulting job losses correlate with oil prices; the lower oil prices resulted in higher job losses and cost-cutting. Browne imposed an aggressive, profit-driven, cost-cutting mentality on all of BP's managers.<sup>96</sup>

Browne was head of BP's exploration

and production arm before becoming chairman. In order to compete against the major oil companies, Browne's strategy was to look for "elephants," or enormous oil fields that could dramatically improve BP's profits.<sup>97</sup> His geologists told him that to find those elephants, BP would have to drill in places that were technologically difficult. The company knew that drilling in deep water would be risky, but that the rewards had the potential to be huge. The deep waters of the Gulf of Mexico were the most exciting prospect, mainly because "[t]he U.S. offered a stable democracy, low taxes, and minimal regulation, as well as nearby refineries and an insatiable market."<sup>98</sup> BP aggressively bid for offshore leases and soon became the biggest player in the Gulf of Mexico. U.S. politicians helped pave the way by cutting taxes for offshore drilling. More importantly, MMS "operated like a promotional arm of the industry... everybody, it seemed, liked offshore drilling."<sup>99</sup>

In March 2005, an explosion and fire in BP's Texas City oil refinery killed 15 people and injured 180, resulting in the worst U.S. industrial accident in a decade. The Final Investigation Report by the U.S. Chemical Safety and Hazard Investigation Board (CSB) noted that the BP Texas City refinery disaster "was caused by organizational and safety deficiencies at all levels of the BP Corporation. Warning signs of a possible disaster were present for several years, but company officials did not intervene effectively to prevent it."<sup>100</sup> The Texas City refinery, although profitable, was not profitable enough for BP management. Cost-cutting "had been extensive during the years

leading up to the 2005 disaster...the plant cut back on maintenance and avoided investing in equipment that would have made refining processes safer."<sup>101</sup> Even though BP was aware of the "serious safety problems at the Texas City refinery" beginning in 2002, "BP executives challenged their refineries to cut yet another 25% from their budgets the following year"<sup>102</sup> in 2004.

## **BP'S FAILURE TO LEARN FROM PAST DISASTERS**

How is it possible that by 2010, BP had learned nothing from neither the *Ixtoc I* disaster, the *Piper Alpha* disaster, nor from the *Exxon Valdez* disaster? BP, formerly known as British Petroleum, is a UK-based multinational company whose head office set safety standards for its worldwide operations. BP's corporate structure may have contributed to a buildup of risk because senior safety experts, who were located in BP's London headquarters, had responsibility "only for establishing the company's safety standards, not for enforcing them."<sup>103</sup> Even the local safety advocate in BP's Texas City refinery could not exert much influence over the plant manager, despite his concerns about close calls at the plant.<sup>104</sup> Production pressures and cost-cutting at the Texas City refinery "caused a progressive deterioration of safety," according to the CSB investigation.<sup>105</sup> Tierney asks, "How much headway can any safety advocate expect to make in the face of a 25 percent budget cut?"<sup>106</sup>

BP also appears to have learned little from its own near misses, including “no fewer than six close calls in the previous ten years *in the same refinery system*.”<sup>107</sup> Tierney notes that “near misses need not necessarily be socially constructed as accident precursors at all.”<sup>108</sup> In one study, Robin Dillon, Georgetown McDonough School of Business professor who analyzes decision-making under conditions of uncertainty, concluded that “near misses can engender complacency rather than concern.”<sup>109</sup> Outcome bias can cause people to view near misses as successes. Dillon and her colleagues found that near misses can embolden corporate managers to take even more risks: “managers’ experiences with near misses can encourage more extreme risk-taking behavior, in part because, being defined as successes, near misses do not count against them.”<sup>110</sup>

Thomas Birkland, an expert on how institutions and policy systems learn from disasters, notes that most institutions simply do not learn lessons from disasters. Most solutions are largely symbolic or may be too costly to implement. Disasters that eventually lead to change are the ones that are high visibility and are socially defined as “representing major policy failures that need to be remedied.”<sup>111</sup> For example, the Oil Pollution Act of 1990 was passed in the aftermath of the *Exxon Valdez* disaster, banning single-hull tankers in U.S. waters. Birkland refers to the typical after-the-fact investigative reports or lessons learned reports as “fantasy documents” since they rarely “stimulate learning or address the fundamental causes of

disasters.”<sup>112</sup> Birkland contends that attempting to determine lessons learned is “often nothing more than a knee-jerk response to the fact that things have gone badly wrong and even efforts to bring about institutional change are biased by powerful interests.”<sup>113</sup>

The Coast Guard’s ISPR report in the aftermath of the *Deepwater Horizon* disaster follows the “lessons learned” template, including a “lessons learned” summary at the end of each section: “The Coast Guard should draw from lessons learned in this report, and institute an autonomous program, not unlike a private sector quality control program to select, implement, and assess the outcome of lessons learned.”<sup>114</sup> This excerpt from the ISPR report confirms Birkland’s theory about institutions not learning lessons from disasters:

The ISPR Team decided to add a focus area to the report that discusses lessons learned categorically. While each focus area has its own Lessons Learned section, there were many on the team who felt a need to look back to prior spill events and exercises to see which lessons learned were, in fact, not really learned prior to the *Deepwater Horizon* incident.<sup>115</sup>

In other words, the important lesson learned from the BP *Deepwater Horizon* disaster is that the lessons that should have been from prior disasters were, in fact, never learned.

There are a number of accepted definitions of disaster, but all describe an extreme physical event that occurs

suddenly and interacts with a vulnerable social system, resulting in social change. The BP *Deepwater Horizon* disaster, like the disasters described above, adversely impacted society, the economy, and the environment. The severity of such man-made technological disasters is typically measured in lives lost or injured, amount of oil spilled, the size of the spill, coastal damage, wildlife killed, and legal damages from property destruction and lost wages. Such disasters seriously disrupt the routines of collective units such as fishermen, rig workers, first responders, USCG, and local governments. The BP *Deepwater Horizon* was much larger than earlier spills in all categories, with the exception of the death toll in the *Piper Alpha* explosion. Each disaster involved

a sudden disruption in the functioning of the local community and social change to adjust to the disruption. The definition of disaster that best describes the BP *Deepwater Horizon* disaster is that by W.R. Dombrowsky, director of the disaster research unit at Christian Albrechts University in Kiel, Germany: “the collapse of cultural protections—captured in habits, folkways, laws, or policies—that either deflect or fail to deflect the threatening forces to which societies are exposed.”<sup>116</sup> The Report to the President showed that regulatory capture deprived the public of its cultural protections. The MMS, by pursuing its own revenue goals at the expense of public safety and environmental protection, failed miserably in its job of acting in the public interest.

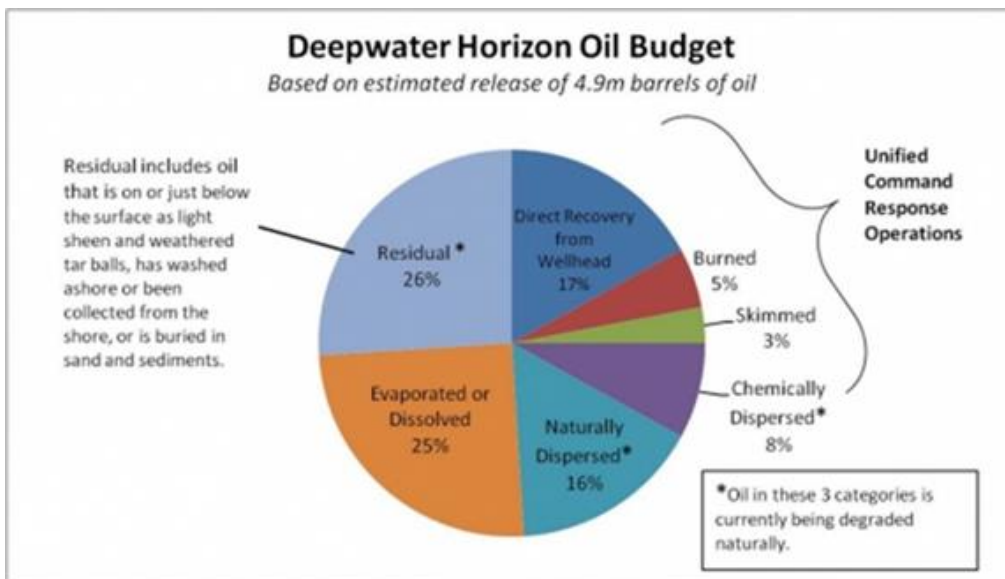


Figure 2

- 25% cleaned or captured
- 25% dissolved or evaporated
- 24% dispersed (naturally & with chemicals)
- 26% residual (includes the “missing” crude)

Source: whitehouse.gov and <http://www.mnn.com/earth-matters/wilderness-resources/blogs/huge-oil-spill-footprint-found-on-gulf-of-mexico-floor>

## CONSEQUENCES

The short term impact of the BP spill was obvious: loss of life, loss of fishing zones, decline in marine and plant life, and loss of jobs and tourism. The long-term impact of the BP spill on human health, however, may not be known for years. Dr. Michael Robichaux, a Gulf area physician who has treated patients involved in the BP spill cleanup, is particularly concerned about the use of an unprecedented amount of Corexit to disperse the spilled oil.<sup>117</sup> Symptoms of Corexit poisoning, which Dr. Robichaux calls "BP Syndrome," include fatigue, joint and muscle pain, migraine headaches, photophobia, and memory loss.<sup>118</sup> "BP Syndrome is not something you're going to read about in any textbooks because the government refuses to acknowledge it exists" says Dr. Robichaux.<sup>119</sup> He says that his patients cannot be compensated for their ailments because nine of the most common symptoms are not listed as illnesses for which BP's settlement will compensate.<sup>120</sup>

The long-term impact, with respect to species diversity and the food chain, was highlighted in two recent studies showing that up to 30% of the 2 million barrels of crude thought to be trapped in the ocean most likely sank to the ocean floor.<sup>121</sup> The U.S. government estimates that 25% of the spilled oil was cleaned or captured with booms at the surface (Figure 2). Another 25% may have dissolved or evaporated, and about 24% was dispersed. Part of the 26% remaining crude may have been dispersed with Corexit at the wellhead and never

came to the ocean surface. Scientists so far can account for only 4% to 31% of the oil that sank.<sup>122</sup> Researchers took 3,000 samples from 534 locations near the spill site, but some 70% of the missing crude is not accounted for, perhaps because it drifted out of the collection zone.<sup>123</sup> Jeff Chanton, Florida State University oceanographer who led the 2014 study, says "Fish will likely ingest contaminants because worms ingest the sediment, fish eat the worms. It's a conduit for contamination into the food web."<sup>124</sup>

The BP *Deepwater Horizon* disaster was a focusing event of enormous magnitude with high economic, environmental, social, and political impact. Occurring nearly five years ago, the legal battle between BP and the U.S. government continues. BP has already incurred \$42 billion in costs, including cleanup and compensation for victims.<sup>125</sup> In January 2015, District Court Judge Carl Barbier ruled that 3.19 million gallons of oil spilled into the Gulf.<sup>126</sup> Judge Barbier also found that BP was "grossly negligent" and liable for \$13.7 billion in fines under the Federal Clean Water Act's maximum penalty of \$4,300 per barrel spilled.<sup>127</sup> On March 13, 2015, the U.S. government said it would appeal, arguing that 4.19 million barrels of oil were spilled, and that BP's fine should therefore be \$18 billion.<sup>128</sup> While the government has also made some changes in the five years since the BP spill, such as restructuring MMS into three entities, more should be done to eliminate regulatory capture and encourage a culture of safety in the oil and gas industry.

## PUBLIC POLICY GOAL: AN ACCEPTABLE LEVEL OF RISK

The Federal Energy Regulatory Commission (FERC), which regulates natural gas projects, already has a formal process in place for approving siting, construction, expansion, and operation of liquefied natural gas (LNG) terminals.<sup>129</sup> FERC's pre-filing environmental review process involves assessing market need and project feasibility, identifying stakeholders and allowing time for public input.<sup>130</sup> The next step in FERC's process involves an environmental impact statement (EIS) to inform the public about potential environmental or safety impacts, including water, fish and wildlife, cultural resources, land use, air and noise quality, et al. In contrast, MMS in 2009 gave BP a "categorical exclusion" from the National Environmental Policy Act (NEPA).<sup>131</sup>

The offshore drilling permitting process should not be a rubber-stamp process that exempts environmental or social impacts. Rather, it should be a robust permitting process determined by a committee headed by FERC with input from EPA, OSHA, NOAA, USFWS and MMS (whose regulatory arm is now called BSEE – Bureau of Safety and Environmental Enforcement.)<sup>132</sup> A joint task force comprised of NOAA, USCG, EPA, and OSHA should conduct surprise inspections at start-up, during drilling operations, and before each well is sealed and abandoned. Incentives, like those in the Dodd-Frank banking law, should be paid to whistle blowers who help uncover

safety violations and prevent disasters. Most importantly, oil company executives should take personal responsibility for safety and be subject to compensation clawbacks and criminal charges for firm-wide negligence.

Oil and gas are important resources that create jobs and economic growth. Offshore drilling that supplies those resources is inherently risky, but it is risk that can be managed. BP's corporate culture was one of outsized risk-taking and extreme cost-cutting that seemed to emphasize profits over safety, and it was rubber-stamped by a regulator that did not act in the public interest. Sociologists describe disasters and their impacts as social constructs. Resilience is a society's counterweight to disaster risk. Societies, local communities, and civic organizations have the power to reduce risk and increase resilience. Offshore drilling involves risk, but safety implies that risk is mitigated to a level that is acceptable to all stakeholders.

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# A HISTORY OF THE NRA AND THE ARMS TRADE TREATY

Liz Casey

**ABSTRACT** *International players, including Oxfam, the United Nations, and Amnesty International have been working since 2003 to address the endemic international problem of illicit arms manufacturing, sales, and trafficking. This group, along with other members, formed what we know today as the U.N. Arms Trade Treaty (ATT). No participating country's domestic interest groups had previously inserted themselves in purvey of curbing international arms sale and trafficking until the National Rifle Association (NRA).*

*This research paper explores the independent histories of both the ATT and the NRA and subsequently how their paths crossed a few years ago once the ATT became politicized in the U.S. and internationally. This paper also walks through the evolution of the UN Arms Trade Treaty and how it became an issue the NRA and its members have deemed an unconstitutional infringement on the 2nd Amendment, leading to the present day where the agreement's future success is uncertain.*

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# INTRODUCTION

The history of international efforts to curb illicit arms trafficking and manufacturing has been lengthy and difficult. Long before the U.N. Arms Trade Treaty (ATT), countries and organizations around the world had organized to address the social harm caused by illegal arms trafficking and manufacturing. However, it was not until October 2003, with the official launch of an international arms control campaign that the ATT entered the international and political scene.<sup>1</sup> This historic move, backed by Oxfam, Amnesty International, and International Action Network on Small Arms (IANSA), finally compelled the National Rifle Association (NRA) to weigh in on its perceived threats to the Second Amendment right of American citizens, even though the UN and international arms issues had never been in the purview of the NRA.

Historically, the NRA has not lent its voice to international policy issues but rather funneled their money and time through a domestic lens. While the NRA struggled with the internal transformation from a sportsman's group to a political lobbying behemoth, the ATT embarked on a difficult journey to take the international stage. It was not until the NRA's strength, power, and influence grew that it was able to formally stand against any ratification of an international Arms Trade Treaty. This surprised many international players unaware of the group's unique grip on influential U.S. politicians and leaders and would further mystify these players when

their influence would continue to extend to international matters.

## HISTORY OF THE ARMS TRADE TREATY AND U.N. ACTION ON ILLICIT ARMS ACTIVITY

Before there was international support for arms control and accountability, the United States and other members of the U.N. Security Council had the opportunity to examine the results of Saddam Hussein's invasion of Kuwait. What they discovered was troubling: Iraq contained hundreds of "arms supplied by all five permanent members of the United Nations Security Council" several of which armed Iran, leading to a war, resulting in hundreds of thousands of civilian deaths.<sup>2</sup>

This startling revelation led the U.N. member states to examine their policies for arming other states, particularly those mired in conflict or those with poor human rights records. Thus began the creation of the Firearms Protocol that, according to a Diplomat's Guide to UN Small Arms Process, the UN established to "promote, facilitate and strengthen cooperation among States Parties," to combat illicit manufacturing of and trafficking in firearms and all their parts. (UNGA, 2001c, art.2) The Small Arms Conference and establishment of the Firearms Protocol laid the groundwork for future momentum towards the ATT, given the Firearms Protocol was the first "legally binding global instrument on small arms."<sup>3</sup>

In 2003, Oxfam, Amnesty International, and the International Action Network on Small Arms (IANSA) united in a campaign aimed at global participation in ending illegal arms trafficking and manufacturing. This campaign, called the *Control Arms Campaign*, launched with the support of over 100 nations worldwide. The campaign's strategy focused on a global awareness initiative and political lobbying with high-ranking state officials. Amnesty International led the activist efforts to help create the Million Faces campaign, an online photo petition urging its global citizens to force their elected officials to act to end violence caused by illicit arms deals. Some of the most notable public events to pressure governments to introduce a draft of the ATT included events in Mali, India, and a boat festival in Cambodia's capital Phnom Penh.<sup>4</sup>

Once a draft version of the ATT was introduced and negotiations began, the real difficulties arose from conflicting international and domestic, state-specific policy agendas. In particular, the United States, the UK, Russia, China and some Middle Eastern States opposed its ratification. According to the Diplomat's Guide to UN Small Arms Process, the negotiations difficulties were:

signaled on the first day of the UN small arms conference when the United States opened by laying down a number of 'red lines', indicating its refusal to accept provisions that would, among other things, constrain the legal trade and legal manufacturing of small arms and light weapons, prohibit civilian possession of small arms, or limit trade in small arms and light weapons solely to governments.<sup>5</sup>

This adamant and seemingly staunch

stance the United States took at the onset of negotiations reflected the sentiments of certain influential lobbying positions at home, namely the NRA. Consequently, the countries who profited from the sale of arms that the ATT now aimed to prohibit were incentivized to enter negotiations with similar recalcitrance to protect their national interests. However, the NRA and other small pro-gun groups were not the only voices among the negotiations. The pro-ATT campaign demonstrated their strategic savvy by bringing a number of unlikely allies into the fold. According to Oxfam's analysis of the process, the pro-ATT campaign was able to recruit arms manufacturers who identified themselves as responsible organizations within the arms industry, including many retired military personnel from within the EU. And while the campaign did not actively recruit faith-based members to join them, Pope Benedict XVI and Desmond Tutu declared their public support for the ATT in 2010.<sup>6</sup>

It was not until 2009 that President Obama shifted the United States' public stance from voting "no" to "yes" for a ratification of the ATT. This historic shift provided even further momentum to the now six-year-old campaign for an internationally agreed upon Arms Trade Treaty. The campaign continued to conduct research, generate media coverage, and build behind-the-scenes alliances for support. However, around this time the NRA became more involved in lobbying against the ATT, using fear tactics against newly elected President Obama to make federally elected U.S. officials declare their opposition to the campaign. While the NRA had little experience lobbying for or against international policy, their power and lobbying strategy was a force to be reckoned with in any arena.

# HISTORY OF THE NRA AND ITS LOBBYING POWER

The NRA was not always the Washington-insider powerhouse it is today. The group, founded in 1871 by former gunsmith General Ambrose E. Burnside,<sup>7</sup> had more humble origins. Ambrose was disturbed by the Union Army's inability to shoot in the Civil War, so he officially formed the NRA in New York to "promote and encourage rifle shooting on a scientific basis."<sup>8</sup> Over the next century, the organization grew into a large, bipartisan, member-based group focused largely on recreational hunting, marksmanship and promoting firearm safety. However, in 1977, the NRA struggled with internal political and ideological conflict over the future of the group, creating a schism of the old guard and new guard. With this struggle came the desire for the new guard to further align themselves politically with the U.S. Republican Party in order to lobby for expanding the second amendment legislatively. The new guard viewed the old guard as out-of-touch elites who cared not to protect "infringements on NRA members' freedoms and rights."<sup>9</sup> That year marked the official radicalization and new direction for the group, as the new guard took over leadership positions and future vision.

With the creation of the Institute for Lobbying Action (ILA) in 1975, the NRA embarked on their "no-compromise"<sup>10</sup> legislative journey, using the sophisticated strategy of lobbying behind the scenes at both the state and federal levels to get legislators and candidates to commit to 2<sup>nd</sup> Amendment defense and offense by drafting bills expanding the definition and application of the amendment. NRA-ILA also developed the grade system, in which they would publically

celebrate or shame legislators with grades from A-F on gun rights issues. This became a fear tactic used by the group still in use today, supported by the NRA's long list of friends and enemies to either: fund for re-election or fund their opponent.

In closely aligning themselves with wealthy gun manufacturers and politicians from both sides of the aisle, the NRA became a lobbying giant, striking fear in the hearts of politicians to do nothing in the face of gun violence, lest they wanted to lose their next election to an NRA-backed opponent. One of the more brilliant tactics used by the NRA is the maintenance of their 'grassroots,' membership base, using call-to-actions on election day to drive single-issue voters to the polls - and all of this under their tax-exempt, 501-C3 status.

Often, the NRA runs on fear and serious financial clout alone. Many speeches made by current NRA Vice President Wayne LaPierre allude to gun registration and confiscation, stating that any gun-control measure is merely a guise by those who want gun sense legislation passed to take away all guns from all people. More recently, the group's leadership has ramped up their rhetoric, making claims about the Obama administration's desire for "total disarmament, leading to a tyrannical government in complete control."<sup>11</sup> Interestingly, the Obama administration has used the least amount of executive power on the issue compared to President's Bush and Clinton.

Most of the NRA's victories remain behind the scenes in back-room deals, but the group has had many public victories over the years. In 1986, the group successfully passed the Firearm Owners Protections Act of 1986, which



"eased restrictions on interstate sales of firearms and expressly prohibited the federal government from creating a database of gun ownership."<sup>12</sup> Federally, the NRA had a setback with the passage of the *1994 Brady Handgun Prevention Act*, which instituted background checks for gun sales and a seven-day waiting period. This further firebranded the group and formalized the ten year strategy of pushing legislation on a statewide level, including carry laws, firearm reciprocity, guns in sensitive places, and federal firearm nullification laws, all of which make gun safety laws weaker and less enforceable.

The NRA also continues to be one of the groups to spend the most on federal elections, spending nearly \$20 million on federal election campaigns in 2012, according to OpenSecrets.org.<sup>13</sup> This unprecedented amount of spending on a single issue has historically been in the domestic domain here within the United States. However, in 2009, the NRA waded into the international realm to publically lobby against the ATT, which they claimed to be a threat to American freedom and constitutional rights.<sup>14</sup>

## THE NRA AND THE ARMS TRADE TREATY

As the international community continued their multi-year effort to reach consensus on the ATT, the NRA began its campaign against it. In 2009, Wayne LaPierre and other NRA leadership testified before the UN about protecting the 2<sup>nd</sup> Amendment. With use of their signature messaging, LaPierre went on to say:

"The right to keep and bear arms in defense of self, family and

country is ultimately self-evident and is part of the Bill of Rights to the U.S. Constitution. Reduced to its core, it is about fundamental individual freedom, human worth and self-destiny. We reject the notion that American gun owners must accept any lesser amount of freedom in order to be accepted among the international community."<sup>15</sup>

This was the first time the NRA had taken a position on international arms law in front of a global audience.

Amnesty International, Oxfam, and other members of the ATT movement watched while a major lobbying player in one nation's government attempted to derail the process. The movement's incredulity stemmed directly from a clause within the ATT's preamble, affirming explicitly "the sovereign right of any State to regulate and control conventional arms exclusively within its territory, pursuant to its own legal or constitutional system."<sup>16</sup> This preamble debunks the NRA claim that the ATT would lead to an international registry of guns, defiling the 2<sup>nd</sup> Amendment rights of American citizens.

The NRA continued its campaign against the ATT by lobbying congressional opposition to the treaty. Shortly after the LaPierre's UN speech, the NRA successfully wrangled 130 U.S. House Representatives and 50 U.S. Senators to sign a letter opposing the ATT, which the NRA delivered to President Obama. These legislators continued to support the NRA's position in lockstep with domestic issues, even given the ATT's global implications to address armed conflict and devastation. According to Mother

Jones columnist Gavin Aronsen, the U.S. was in a safe position to oppose the ATT given the country is the world's leading arms exporter and its firearm manufacturing industries, closely aligned with the NRA, profit from these international deals.<sup>17</sup>

The ATT proponents worked to combat the NRA's stance on the treaty's ramifications. Both Amnesty International and Oxfam called for the NRA to end their campaign of misinformation against the ATT and to acknowledge that the treaty would not affect States' sovereign rights and regulations of firearms. Despite these attempts, the NRA has only further ramped up its attacks on the ATT using the NRA-ILA website for calls-to-action, urging its members to call their member of congress to vote against ATT ratification and funding. High profile legislators like Rand Paul of Kentucky have joined the chorus of conservative voices against the ATT, claiming it is an attempt by the Obama Administration to employ global forces for gun confiscation.<sup>18</sup>

After a ten-year campaign led by ATT proponents, President Obama finally signed the ATT agreement with other major global superpowers, including the UK. Amnesty International, Oxfam and other State actors. The long-term campaign had finally come to a solution and would be implemented in 2014. However, the ink was not even dry before the NRA sought to nullify the treaty within the United States' realm by threatening to gut funding for implementation. Then, in June of 2014, U.S. House Appropriations Committee passed the State Foreign Operations bill, prohibiting funds to be used for

the ATT prior to ratification of the treaty by the U.S. Senate. Specifically, section 7061 states: "None of the funds appropriated by this Act may be obligated or expended to implement the Arms Trade Treaty until the Senate approves a resolution of ratification for the Treaty."<sup>19</sup> Even given the global efforts of multiple stakeholders and the president's signature in 2013, the Senate's obstruction for funding could be a fatal blow to the ATT.

After the 2014 midterm elections, it became increasingly difficult for the ATT to achieve bi-partisan congressional support for funding and implementation within the United States. Emboldened officials in Alabama and other states have already introduced state bills to block funding for the ATT. Also, new U.S. Senate leadership vowed to block ratification, using similar rhetoric to that of the NRA.

Despite the NRA's grip on the U.S. Senate and House leadership for ratification of the ATT within the U.S., the UN saw that the ATT was enforced internationally on December 24<sup>th</sup>, 2014, after 50 countries had ratified the agreement in September of 2014.<sup>20</sup>

The fate of the ATT remains unclear, given the U.S. is the leading exporter of arms and the political climate has become more hostile towards international agreements on arms since November 2014. The NRA has emerged as a major power player in an international arena historically without domestic public interest groups. With the group's strong influence and continued grip on U.S.

politics, the ATT's legislative and financial future remains unclear in Congress. Without implementation, funding, and enforcement of the ATT's proposed policies, illicit arms trafficking and manufacturing will continue to harm countries mired in conflict for years to come.

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## NEW YORK CITY'S PRIOR ATTEMPTS AT RAPID HOUSING AND A POTENTIAL WAY FORWARD

Gehad Hadidi & William Vidal

**ABSTRACT** *In contrast to the steady decline in homelessness throughout the nation, homelessness in New York City has increased every year since 2011. Twenty-two percent of homeless families in the country are now located in New York State and nearly all of them are in the City. Despite the increasing number of homeless in the City's shelter system, the number of new families with children entering shelters has not significantly increased; rather, an increase in length of stay is driving the rise in homeless families within the City's shelters. The paper analyzes this dynamic and discusses whether the City should pursue the rapid re-housing of homeless households--a prominent focus of federal policy. The paper first reviews homeless policies at the national level and in New York City, with a focus on homeless families with children. An analysis of the Advantage program, under the Bloomberg administration, then follows to evaluate the City's past attempts at rapid re-housing. The paper concludes with policy recommendations in light of the City's recent initiatives.*

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# INTRODUCTION

Homelessness in America is a national issue that confronts the dual problem of addressing the moral and sometimes legal imperative to provide access to shelter while also recognizing the finite resources of local governments. In the United States, there were an estimated 578,424 homeless individuals in fiscal year 2014.<sup>1</sup> Of that population, 47 percent were part of a family household.<sup>2</sup> These figures represent a decline of 12.5 percent in total homelessness and a nine percent decrease in family homelessness since 2007.<sup>3</sup> Over the same period, New York State has seen a 39 percent increase in homelessness, representing the largest net increase in all fifty states. Twenty-two percent of homeless families in the country are located in New York State and nearly all of those families are in New York City.<sup>4</sup>

Despite the increasing number of homeless people in New York City's shelter system, the number of new families with children entering the shelter system has not significantly increased; rather, an increase in length of stay is causing the rise in homeless families within the shelter system.

In 2007, New York City launched Advantage, a rapid re-housing program designed to help homeless households exit shelter and find permanent housing. The program provided participants a one-year rent subsidy that was renewable up to two years. Advantage was a controversial program that many homeless advocates criticized as an inadequate

replacement of Section 8 vouchers, which are not time-limited. Critics of the program often point to the shelter-recidivism rate of former Advantage recipients after the program was terminated in 2011 as evidence that Advantage was ineffective. In contrast, the literature and pilots throughout the country suggest that rapid re-housing programs, such as Advantage, successfully transition homeless families from shelter to permanent housing.

This paper analyzes data on Advantage to determine whether New York City should pursue the rapid re-housing of homeless households. The paper first reviews homeless policies at the national level and in New York City, with a focus on homeless families with children. The paper then analyzes the Advantage program and concludes that New York City should: 1) pursue a Housing First model and prioritize the placement of homeless households into permanent housing; 2) tailor homeless services to reflect the different typologies of homeless households; and 3) implement a rent-subsidy program of incremental durations that targets short-term, non-periodic homeless families with children.

## STATE OF HOMELESSNESS IN NEW YORK CITY

### HOMELESS SERVICES IN NEW YORK CITY

New York City stands apart from most

cities in the United States due to its legal obligation to shelter the homeless.<sup>5</sup> In 1979, the New York State Supreme Court ruled in favor of a homeless Korean War veteran in Callahan v. Carey (1981), Index No. 42582/79 (N.Y. Cty Sup. Ct.) based on Article XVII of the New York State Constitution which states “the aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions...” This ruling culminated in the 1981 Callahan consent decree which recognized the right of the homeless to shelter. The results of the consent decree have since been an issue of litigation with each successive mayor aiming to redefine the City’s role and responsibility in sheltering the homeless.

The four primary agencies in New York City responsible for assisting the homeless are the Department of Homeless Services (DHS), the Human Resources Administration (HRA), the New York City Housing Authority (NYCHA), and the Department of Housing Preservation and Development (HPD). While DHS is the primary provider of homeless services in New York City, HRA provides shelter to households that have a member who is either a victim of domestic violence or living with HIV/AIDS. NYCHA and HPD also set aside a certain number of affordable units each year for individuals in the shelter system and victims of domestic violence. As to preventative measures, HRA oversees a number of programs that provide, among other services, emergency rental assistance, known as Homebase.

In addition to the primary City

agencies responsible for sheltering the homeless, the Administration for Children’s Services (ACS) and the Department of Health and Mental Hygiene (DOHMH) assist in administering the “New York/New York Supportive Housing Agreements” that focus on the homelessness of mentally ill individuals, previously incarcerated adults, and homeless youth.<sup>6</sup> In 2014, Governor Andrew Cuomo announced that the Agreement will be renewed and further expanded to include the entire state and homeless families.<sup>7</sup>

The State currently provides approximately 14 percent of funding for sheltering homeless families and individuals; an additional 38 percent comes from the federal government, and the remaining 47 percent of family and individual shelter costs are the City’s responsibility.<sup>8</sup>

## **DEMOGRAPHICS OF NEW YORK CITY’S HOMELESS POPULATION**

As of November 2014, DHS reported a total homeless shelter census of 57,648.<sup>9</sup> In June 2011, the average daily census of all individuals in the shelter system was 36,553.<sup>10</sup> This represents a 57.7 percent increase over the past three years. Within this population, there are three broad categories: single adults, adult families, and families with children. The single adult population accounts for 19.2 percent, adult families account for 7.7 percent, and families with children represent 73.1 percent of the total shelter population.<sup>11</sup>

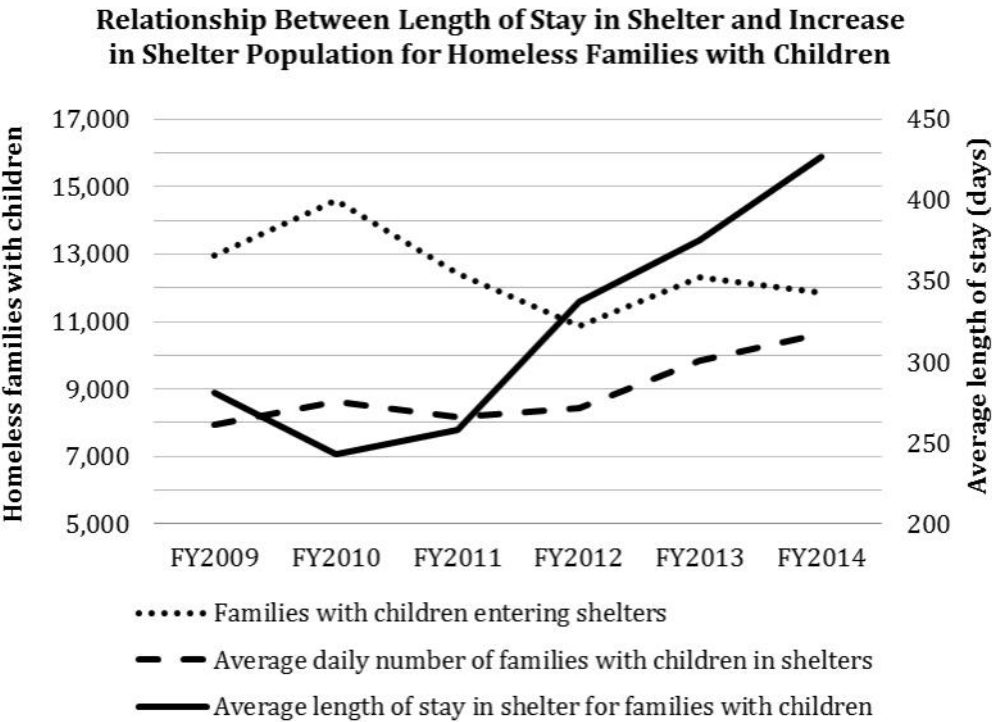
Regarding homeless families, studies reveal there are three broad typologies. Approximately 70 to 80

percent of homeless families are homeless for a short period of time and do not return to shelter.<sup>12</sup> This segment disproportionately consists of households headed by young women with preschool children and that typically become homeless after a period of housing instability. A second typology involves homeless families with a small number of homeless episodes and whose stay in shelter is longer.<sup>13</sup> These families can be referred as “long-stayers,” and the length of stay is attributable, in part, to their enrollment in transitional programs or a lack of viable exit strategies in terms of housing. This subset is estimated to account for 20 percent to 25 percent of homeless families nationally, which is consistent with the percentage of long-stayers in New York City.<sup>14</sup> The needs of long

stayers do not differ considerably from temporarily homeless families, and their primary need is assistance in regaining and maintaining affordable housing. The third typology consists of episodically homeless families who frequently cycle in and out of homeless shelters and programs.<sup>15</sup> These families, who have a high need for supportive services, account for 5 percent to 16 percent of homeless families.<sup>16</sup>

**FOCUS ON HOMELESS FAMILIES WITH CHILDREN**

Homeless children account for over 40 percent of the homeless population in the City’s shelter system.<sup>17</sup> During the 2012-13 school year, there were 80,000 children in New York City schools who were homeless at one



Source: Mayor’s Management Report for FY2010 and FY2014



point during the year.<sup>18</sup> The average number of families with children in the shelter system has increased each year since fiscal year 2009, rising 34 percent between fiscal years 2009 and 2014.<sup>19</sup> In contrast, over the same period, families with children entering the shelter system has decreased from a high of 14,586 in fiscal year 2010 to 11,848 in fiscal year 2014, a reduction of 18.8 percent.<sup>20</sup>

A partial explanation for this apparent discrepancy between the increasing number of families with children in the shelter system and the comparatively stable number of families with children entering shelters is that families are staying in shelters longer. In fiscal year 2009, the average length of stay for a homeless family was 281 days. In fiscal year 2014, it had risen to 427 days.<sup>21</sup> The daily cost of sheltering a family has remained approximately \$100 over the past five years, and the average cost of sheltering a family is \$43,341.

## **NATIONAL TRENDS**

National estimates of family homelessness have decreased by nearly 100,000 families since 2007.<sup>22</sup> As of 2014, California, New York, and Florida have the largest homeless populations. New York leads the country with the largest increase in homeless population since 2007, with a net increase of 17,989 or 28.7 percent, in comparison to Massachusetts, which had the second highest net increase of 6,110 or 40.4 percent increase.<sup>23</sup> New York has also led the nation with the largest increase in family homelessness of 13,402 or 38.8 percent.<sup>24</sup> During this same period,

California led the nation with the largest decrease in family homelessness with a net decrease of 4,847 or 17.3 percent.<sup>25</sup>

## **NATIONAL SHIFT TO A HOUSING FIRST MODEL**

Services directed at sheltering the homeless can be regrouped into two broad categories: Continuum-of-Care and Housing First. Continuum-of-Care (CoC) is a comprehensive approach to homelessness that emphasizes supportive services. CoC was first implemented by health practitioners to address the health causes of homelessness, including mental health, drug abuse, and prolonged illness. CoC programs were widely adopted by municipalities after a 1994 reform that decentralized federal policy and funding for homelessness via local CoC centers.<sup>26</sup> As defined by Connie Evashwick in the context of medical services, "Continuum of Care is a concept involving an integrated system of care that guides and tracks patients over time through a comprehensive array of health services spanning all levels of intensity of care."<sup>27</sup>

There has been a paradigm shift in the design of homeless services. Under the CoC model, the underlying assumption is that a homeless household cannot regain permanent and independent housing unless first rehabilitated through a comprehensive set of supportive services. In the 2000s, academics and advocates re-examined this assumption and conducted pilot programs that focused on first providing a homeless household with stable, independent housing and then

on supportive services—effectively reversing the order of care.<sup>28</sup> These pilots led to a complete shift in how homeless services are now provided, and the new paradigm is known as Housing First.

Housing First is designed to assist homeless households transition back into permanent housing as quickly as possible.<sup>29</sup> Shinn, Rog, and Culhane (2005) find that “although there are varying Housing First approaches, all approaches emphasize rapid re-housing of homeless families in permanent independent housing and on providing services before and after a family is housed to reduce the time spent homeless and to help work through problems that could jeopardize their housing stability.”<sup>30</sup>

Cities across the country shifted to rapid re-housing programs starting in 2009, when Congress enacted the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act. The HEARTH Act was a comprehensive overhaul to the CoC policies that Congress implemented in 1994.<sup>31</sup> Congress funded the new programs under the HEARTH Act through a one-time appropriation of \$1.5 billion as part of the American Recovery and Reinvestment Act.<sup>32</sup> The funded programs included the Homelessness Prevention and Rapid Re-Housing Program (HPRP)—a three-year pilot focused on homeless prevention and rapid re-housing. The program expired in 2012 and, by 2011, had led to the placement of over 200,000 homeless (approx. 100,000 households) in permanent housing through local rapid re-housing programs.<sup>33</sup>

Rapid re-housing programs typically involve rental subsidies to homeless households for 1 to 24 months.<sup>34</sup> The subsidy amount is usually proportional to the size and income of the household, and the household may use the subsidy towards the rent of a privately-owned apartment. Depending on how the municipality implements the program, households will receive assistance in locating an apartment and a degree of supportive services during the span of the subsidy. Generally, rapid re-housing programs target households that experience homelessness due to a one-time event and with limited social services needs.<sup>35</sup>

There are several studies that support the effectiveness of rapid re-housing programs for households with relatively limited supportive needs. Shinn documents a consistent finding that housing subsidies assist households exit shelter and stay housed independent of supportive services provided.<sup>36</sup> Shinn’s finding is illustrated by the homeless programs in Columbus, Ohio and Hennepin County, Minnesota, which were early adopters of rapid re-housing policies. Both counties successfully placed low-risk homeless households in permanent housing through temporary rental subsidies. Hennepin County’s return rate to shelter remained fairly low with only 12 percent of participants returning to shelter after 12 months of exiting homelessness.<sup>37</sup> Similarly, a study commissioned by the National Alliance to End Homeless found that, in seven jurisdictions, households receiving temporary housing subsidies had a 4 percent

return rate to shelter after 12 months of exiting homelessness through a rapid re-housing subsidy.<sup>38</sup>

Los Angeles, California, which has achieved the largest decline in family homelessness in the United States from 2007 to 2014, relied in part on rapid re-housing policies.<sup>39</sup> Using federal HPRP funds, Los Angeles County, led by County Supervisor Zev Yaroslovsky, launched a 30-month rapid re-housing pilot that assisted 360 families before ending in August 2012.<sup>40</sup> The pilot then served as a template for programs created by the Los Angeles Housing Services Authority (LAHSA). In an internal review of the pilot, Our Place Housing Solutions, the nonprofit organization that administered the pilot, stated that “although no research has been published to offer an explanation for the decrease [in family homelessness], given the enduring impact of recent economic hardship on the region, it is tantalizing to imagine that HPRP grant programs had some impact in reversing a trend in rising homelessness in the area.”<sup>41</sup>

The US Department of Housing and Preservation (HUD) is currently conducting the most comprehensive study of rapid re-housing to date. The study has not been completed, but the preliminary findings are in line with the above results.<sup>42</sup> Almost 70 percent of the families who received a rapid re-housing subsidy in Years 1 and 2 exited the program after 180 days.<sup>43</sup> Of those families who exited after 90 days, 83.2 percent have not returned to shelter.<sup>45</sup> Although these preliminary findings are promising, only one to two years had elapsed

since participants stopped receiving their rental subsidy; so, further investigation is needed to examine participants’ housing outcomes over time.

### **PRESENT NEW YORK CITY INITIATIVES THAT RE-HOUSE FAMILIES WITH CHILDREN**

The De Blasio Administration has launched three initiatives aimed at re-housing homeless families in New York City.<sup>45</sup> These programs, which are collectively referred to as “Living in Communities” (LINC) Rental Assistance Programs, were created partially in response to the termination of the Advantage program. Under each program, the household is required to pay 30 percent of their income towards rent each month, and each program will pay the difference up to pre-determined rent limits.<sup>46</sup> The subsidies are available for up to five years and have set funding limits. This differentiates them from Advantage, which became increasingly expensive to New York State and City and was unpopular among homeless advocates because of its strict two-year term limit. These programs can, therefore, be seen as a palatable alternative to the fiscally concerned, even though they will help fewer families and could ultimately cost the City and State more per household than prior attempts at rapid re-housing.

The following are brief descriptions of the pilot programs that the present administration is pursuing:

**LINC I:** Joint program between New York City and the State of New York that targets working families with

children who have been in the City shelter system for at least 90 consecutive days. Funding for this program is limited to \$80 million over four years and is estimated to assist 1,101 families per year.<sup>47,48,49</sup> LINC I prioritizes families with children who have been in the shelter system the longest. There is an initial three-year term limit for families that receive the assistance. Based on eligibility and available funding, recipients are able to renew their rental subsidy for an additional two years, providing up to five years of assistance for eligible families.<sup>50</sup>

**LINC II:** Similar to LINC I, LINC II is a joint program between the City of New York and the State of New York that targets families with children who have been in the shelter system for at least 90 consecutive days and has a five-year term limit. However, this program targets families that have higher recidivism rates and has less stringent work requirements.<sup>51</sup> Additionally, LINC II requires annual renewals after the first year based on eligibility and available funding. Funding for LINC II is limited to \$60 million for this program over five years, which is expected to assist 970 families per year.<sup>52</sup>

**LINC III:** A program administered and funded by New York City without reimbursements from the State, LINC III targets families with children that include a member who was certified by HRA as a victim of domestic abuse. LINC III prioritizes families that have been in DHS or HRA shelters for the longest consecutive periods, families that have exceeded the 180 day limit at HRA shelters, and families that are

currently in DHS shelters due to lack of capacity in HRA shelters. Similar to LINC II, this program requires a yearly renewal based on continued eligibility and available funding and, similar to both LINC I and II, has a five-year term limit.<sup>53</sup>

## ANALYSIS OF THE ADVANTAGE PROGRAM

### EVOLUTION OF THE ADVANTAGE PROGRAM AND ITS TERMINATION

Prior to 2004, Section 8 vouchers had been New York City's primary tool to assist homeless families exit shelter and secure permanent housing.<sup>54</sup> The long waiting list for Section 8 vouchers and a projected decrease in federal funding for the vouchers prompted the Bloomberg Administration to implement rapid re-housing initiatives.<sup>55</sup>

As part of these initiatives, DHS ended the priority that homeless families in shelters received for Section 8 vouchers and public housing units.<sup>56</sup> DHS was concerned that continuing to prioritize the Section 8 application of homeless families would increase demand for shelter, given the decreased funding and availability of Section 8 vouchers.<sup>57</sup> The validity of this concern was strongly contested by advocacy groups,<sup>58</sup> and the New York City Independent Budget Office published a report on the issue. IBO found that the number of families exiting shelter on their own decreased to some extent when the priority for Section 8 and public housing was available.<sup>59</sup> The report also found that

the priority was associated with an increase in the number of families entering shelter.<sup>60</sup> That said, the report found that these increases were offset by the number of families exiting shelter due to the priority placement.<sup>61</sup> Whether access to priority housing creates an incentive to enter the shelter system or stay longer in the system remains a contentious debate among DHS, advocacy groups, and service providers.

To replace the Section 8 and public housing priority, the City applied to the New York State Office of Temporary and Disability Assistance (OTDA) for funding to institute a new rapid re-housing program known as Housing Stability Plus.<sup>62</sup> Launched in 2004, Housing Stability Plus provided a five-year subsidy to three specific groups of homeless individuals: 1) homeless families with children, 2) chronically homeless single adults in shelter, and 3) parents awaiting housing with children in foster care.<sup>63</sup> Housing Stability was further limited to only those individuals receiving public assistance, and the household had to maintain an open public assistance case to remain in the program. In the first year, the rent subsidy covered the full rent up to a maximum cap. In years two through five, the subsidy decreased by 20 percent annually. At the end of the fifth year, the household had to assume the full cost of the rent. Approximately 10,000 households received the subsidy.

DHS discontinued Housing Stability Plus in 2007 due to significant drawbacks in the program's design. The requirement that a household be and remain on public assistance

throughout the five-year period created a disincentive for the households to find employment. Given the increasing share of the rent that recipients had to assume each year, households were in an untenable position of maintaining little to no employment while assuming increasing expenses.<sup>64</sup>

DHS replaced Housing Stability Plus with Advantage in April of 2007.<sup>65</sup> Advantage initially consisted of four programs. Work Advantage was a two-year rental subsidy. To qualify for Work Advantage, the household (family or single adults) had to satisfy the following requirements: an adult in the household had to be working at least 20 hours per week; families had to have been in a homeless shelter for a minimum of 90 days, except for families of six or more, and single adults had to have been in a shelter for over 180 days; and households had to have a public assistance case at the time of the application.<sup>66</sup>

Homeless households that received the Advantage rental subsidy were expected to pay only \$50 per month towards rent and deposit 10 to 20 percent of their monthly rent into a savings account. To remain eligible, the household's income could not exceed 150 percent of the federal poverty level.<sup>67</sup> If a household complied with these requirements, then DHS matched the household's savings, up to 20 percent of the household's annual rent, and reimbursed the total monthly rental contributions made by the household.<sup>68</sup> The other programs included Children Advantage, which targeted families with an active child welfare

case; Fixed Income Advantage, which targeted households with a member receiving disability benefits; and, Short-term Advantage, which targeted household with an income between 150 percent and 200 percent of the federal poverty through a four-month subsidy.

In August 2010, DHS consolidated the four Advantage programs into one program. The new eligibility requirements remained largely the same except the minimum stay in shelter was decreased to 60 days and the maximum household income was increased to 200 percent of the federal poverty level. In addition to working 20 hours per week, the household now was required to perform an HRA-approved activity, such as educational or vocational training, 15 hours per week.<sup>69</sup> Significantly, the level of subsidy was decreased; households now had to contribute 30 percent of their gross monthly income in the first year and 40 percent in the second year.<sup>70</sup> The required savings and matching was also discontinued.

In 2011, the revised Advantage program came to a sudden end when the OTDA announced that it would no longer fund the program. Advantage was funded through city, state, and federal funds.<sup>71</sup> The federal funding came from New York State's allocation of Temporary Assistance for Needy Families (TANF) funds, over which the State has discretion.<sup>73</sup> As part of Governor Cuomo's initiative to reduce the New York State's deficit without raising taxes, the State reallocated the TANF and State funding previously budgeted for Advantage.<sup>73</sup> In testimony to the State legislature,

advocacy groups, such as the Coalition for the Homeless, endorsed the defunding of Advantage, stating the program was fatally flawed and that the City's shelter exit strategy should be based on long-term housing subsidies, such as Section 8 vouchers and public housing priority.<sup>74</sup> In May 2011, Advantage was defunded by the State, and the City had to terminate the program. Litigation ensued over the termination of the program, and the courts ordered the City to fund ongoing subsidies pending the litigation. The City ultimately prevailed before the New York State Court of Appeals in 2012, and the Advantage program was fully discontinued.<sup>75</sup>

#### **THE DEBATE ABOUT THE ADVANTAGE PROGRAM AND THE EFFECTIVENESS OF RAPID RE- HOUSING IN NEW YORK CITY**

Three years after the termination of Advantage, the effectiveness of the program remains a contested issue. On one hand, some reports, such as the case study issued by the Institute for the Children, Poverty, and Homeless (ICPH), assert that Advantage and the City's attempts at rapid re-housing from 2005 to 2011 were a failure.<sup>76</sup> On the other hand, statistics released by DHS depict the program as quite successful.<sup>77</sup> Between these opposing positions are several reports by other organizations, such as the Coalition for the Homeless and the National Alliance to End Homeless.<sup>78</sup>

One consistent concern among Advantage program critics was the program's employment requirements. For example, in Fall 2009, ICPH issued

a report finding that 69 percent of homeless families are unemployed and, as such, were being shut out from the Advantage program.<sup>79</sup> In 2013, ICPH published a second report that concluded more generally “[r]apid rehousing was a failed experiment that produced unwanted incentives and unwarranted costs.”<sup>80</sup>

There are a number of methodological issues with ICPH’s second report and broad conclusion that rapid re-housing has been a failure in New York City. Although the objective of the report was to analyze rapid re-housing policies in New York City between fiscal years 2005 to 2011, the report does not limit its analysis to households that received Housing Stability Plus or Advantage subsidies. Regrouping homeless households that did and did not receive a rental subsidy potentially masks the impact that the subsidies had on recipients. The report also did not confine its analysis to the period that rapid re-housing subsidies were available--fiscal years 2005 to 2011. The report extended the period to fiscal year 2012, which conflates the impact of the Advantage program and the effect that terminating the program had on the shelter system.

Another set of confounding variables that the ICPH report does not account for are the “Great recession,” the increasing cost of apartment rentals, and the increased cost of living. All three of these variables were prominent factors that coincided with the Advantage program and that continue to have significant impacts on homelessness in New York City. Studies have documented the relation between recessions and increases in

homelessness.<sup>81</sup> Moreover, the consensus among providers of homeless services in New York City is that high rents and low wages are primary causes of homelessness and decreased shelter exit rates in the City.<sup>82</sup> In light of this research, rapid re-housing assessments should account for recessions, increasing rents, and cost of living increases.

DHS’s conclusion that Advantage was highly successful program, which allowed thousands of families to regain permanent housing, is equally not devoid of issues. At a City Council Preliminary Budget Hearing on March 24, 2011, then Commissioner of DHS, Seth Diamond, testified about the potential termination of the Advantage program due to the State’s withdrawal of funding.<sup>83</sup> Summarizing the program’s impact, Commissioner Diamond stated, “[b]y even the most critical evaluation, Advantage triumphs as a bridge to independent living.”<sup>84</sup> According to Commissioner Diamond, Advantage should be evaluated based on the number of families who returned to the shelter system after completing the two-year program, and DHS found that 92 percent of households that received an Advantage subsidy completed the full two years.<sup>85</sup> DHS further found that, within one year of successfully completing the program, 81 percent of the homeless families did not return to the shelter system.<sup>86</sup>

DHS’s evaluation of Advantage, based on the number of recipients who completed the two-year program, raises at least two issues. First, this benchmark does not capture the families who did not complete the

program, which is an important indicator as to whether the program is adequately preparing households to subsist once the subsidy ends. Second, a two-year benchmark does not shed light on whether households who completed the program successfully remained stably housed in subsequent years. Based on Commissioner Diamond’s testimony, the return to shelter rate increased from 10 percent to almost 20 percent within one year of households completing the Advantage program. Therefore, the reporting on the Advantage program contains conflicting claims and raises a number of questions.

**WHAT WE DO KNOW ABOUT THE ADVANTAGE PROGRAM**

**■ Approximately 22,674 households received an Advantage subsidy**

Based on the annual Critical Activities Report published by DHS, 22,674 households received an Advantage subsidy and were placed into housing between fiscal years 2008 and 2011.<sup>87</sup> This averages to 5,445 households per year. Table 1 summarizes the number

of households who received an Advantage subsidy between fiscal years 2008 and 2011.<sup>88</sup>

**■ Annual number of homeless families staying in the shelter system remained fairly constant between fiscal years 2008 and 2011**

During the Advantage program, the daily number of homeless families staying in the shelter system remained fairly constant. According to the Mayor’s Management Report, the number of homeless families in the shelter system in fiscal year 2008 was 8,842 and in fiscal year 2011 was 9,480.<sup>89</sup>

According to the Coalition for the Homeless, New York City lost nearly 55,000 apartments with rents below \$800 per month between 2005 and 2008.<sup>90</sup> More broadly, between 2002 and 2008, the City lost more than 194,000 rental units affordable to low-income households.<sup>91</sup> Combined with this decrease in affordable housing was an increase in the cost of living. Between 2000 and 2012, the median rent of apartments in New York City

**Table 1**

	Households that received an Advantage subsidy and placed in housing
FY2008	4,354
FY2009	6,183
FY2010	7,680
FY2011	4,457
Total	22,674



increased by 75 percent.<sup>92</sup> During this same period, the median income of renters in the City only increased by 26.7 percent.<sup>94</sup> Despite these housing and economic trends, it is significant that the number of families in shelters remained fairly constant during Advantage.

■ **The average stay in shelter of homeless families decreased between fiscal years 2008 and 2011**

The average stay in shelter of homeless families decreased by 22 percent during the Advantage program. In fiscal year 2008, the average stay in shelter of homeless families was 350 days and decreased to 272 days in fiscal year 2011.<sup>94,95</sup>

program, while proponents of the program argue that only recipients who had access to the full two-year subsidy should be counted. The data in Table 2 provides both the yearly rate of return before the termination of Advantage in fiscal year 2011 and the total rate of return through fiscal year 2013.

The 29 percent rate of return is in line with the 28 percent rate of return between April 2007 and November 2011 determined by the Coalition for the Homeless.<sup>99</sup> It is important to note that some publications report significantly higher rates of return to shelter based on the number of re-applications to shelter. However, re-applications do not indicate whether the household was eligible for shelter. The eligibility rate ranged from a low

**Table 2. Rate of Return to Shelter of Advantage Recipients<sup>96</sup>**

	Advantage recipients who returned to shelter	Percent of Advantage recipients who returned to shelter <sup>97</sup>
<b>FY2009</b>	145	3.3%
<b>FY2010</b>	678	6.4%
<b>FY2011</b>	1,222	6.7%
<b>Total</b>	<b>6029</b>	<b>29%<sup>98</sup></b>

■ **The rate of return to shelter of Advantage recipients is 29 percent as of August 31, 2013**

One of the most contested issues about the Advantage program is the return rate to shelter of Advantage recipients. Critics include in the rate families that returned to the shelter system following the defunding of the

of 32 percent to a high of 48 percent from January 2010 to January 2014 for former Advantage recipients.<sup>100</sup> To place in perspective the 29 percent overall rate of return of Advantage recipients, the repeat shelter use among families in New York City shelters was respectively 16 percent and 31 percent at 5-years and 10-

years after exiting shelter between 1994 and 2004.<sup>101</sup>

■ **Annual cost of Advantage per household was \$27,313**

Based on information provided by the NYC Independent Budget Office, the average cost of the Advantage program per household was \$27,313. Table 3 summarizes the cost of the Advantage program per fiscal year.

cost savings of approximately \$11,387 per family--the key determinant of the cost savings being the length of stay in shelter.<sup>106</sup>

■ **Economic profile of the average Advantage household**

To calibrate the extent and length of a rapid re-housing subsidy it is important to know the financial profile of the targeted recipients. The median

**Table 3. Costs of the Advantage Program (in millions)<sup>102</sup>**

	City	State	Federal	Total
<b>FY2008</b>	\$21.5	\$15.7	\$17	<b>\$54.2</b>
<b>FY2009</b>	\$53.9	\$45.5	\$46.4	<b>\$145.8</b>
<b>FY2010</b>	\$75.6	\$66.4	\$66.9	<b>\$208.9</b>
<b>FY2011</b>	\$113.8	\$49	\$47.6	<b>\$210.4</b>
<b>Total103</b>	<b>\$264.8</b>	<b>\$176.6</b>	<b>\$177.9</b>	<b>\$619.3</b>

During fiscal years 2008 to 2011, the average daily shelter cost for a family was approximately \$100, and the average stay in shelter for a family with children was 277 days.<sup>104</sup> This corresponds to an average shelter cost per family with children of \$27,700 between fiscal years 2008 and 2011. The average shelter cost per adult family was \$38,700, due to the longer length of stay in comparison to families with children.<sup>105</sup> Accordingly, the average cost of an Advantage subsidy (\$27,313) and the average cost of sheltering a family with children (\$27,700) did not significantly differ. When compared to the average shelter cost of adult families, the Advantage subsidy created significant

Advantage household worked approximately 30 hours a week and received a median wage of \$9.50.<sup>107</sup> As a result, the monthly income of an Advantage household fluctuated between \$1,140 and \$1,216.<sup>108</sup> Given that the average monthly rent of Advantage households was \$1,000, many homeless advocates have noted that the households faced a significant financial challenge upon exiting the program.<sup>109</sup> This concern raises an important issue about the rent burden of very-low- and low-income households. The literature provides that homeless families' risk of returning to shelter is highest during the first two years of exiting shelter and decreases steadily after the

second year.<sup>110</sup> More data, however, is needed to update and confirm the risk curve of formerly homeless households returning to shelter.

### ■ Demand for side deals by landlords persisted

In 2010, the NYC Comptroller's Office performed an audit (the "Audit") of Advantage that confirmed homeless advocates' concern about the compliance of landlords with the program's guidelines.<sup>111</sup> The Audit found that landlords were continuing to demand additional rent payments above the rent levels set by the program<sup>112</sup>—an issue that first emerged with the Housing Stability Plus program.<sup>113</sup> To prevent side deals, DHS increased the focus on tenant and landlord education and included language in the Advantage contracts that expressly forbid side deals to provide the tenants with a legal remedy. Despite these prevention measures, the Audit found that households were not always informed of the prohibition on side deals and that there were not sufficient enforcement measures against landlords.<sup>114</sup>

## POLICY RECOMMENDATIONS

The literature reviewed and the data on Advantage support the following policy recommendations:

### **PRIORITIZE THE PLACEMENT OF HOMELESS HOUSEHOLDS INTO INDEPENDENT HOUSING**

The traditional paradigm assumed that a homeless household could not resume independent living unless the social causes, such as substance abuse, mental illness, unemployment, that led the household to be homeless were first addressed.<sup>115</sup> As a result, homeless service providers focused on rehabilitating homeless households while providing transitional shelter. There has been a paradigm shift, and academics, governments, as well as homeless advocates agree that a city's top priority should be to first re-house homeless households. This conclusion is further supported by the fact that a majority of families with children become homeless due to a financial difficulty that triggered a period of housing instability.<sup>116</sup> Therefore, the City should focus on placing homeless families back into independent housing and providing supportive services on a targeted basis as further discussed in the next recommendation.

### **GIVEN THE DIFFERENT TYPOLOGIES OF HOMELESS FAMILIES AND THE DECREASING AVAILABILITY OF FEDERAL FUNDING, THERE IS AN INCREASED NEED TO TAILOR HOMELESS ASSISTANCE PROGRAMS**

Due to decreasing federal funding, Section 8 vouchers are not a viable long-term solution for temporarily homeless families and long-stayers that are not episodically homeless. In contrast to the annual increases in federal funding from the onset of the program in 1975 to 1994, Congress only funded five increases for Section 8 vouchers to new households between 1995 and 2009.<sup>117</sup>

Moreover, Section 8 vouchers are a blunt tool that is not cost-effective for

episodically homeless households. A more targeted approach to homeless assistance is needed. Based on the typology of a homeless household, the amount and duration of the needed assistance will differ. The objective should be to scale the level of re-housing and supportive assistance based on the needs of a particular household rather than apply a standardized model to all homeless households.

**THE CITY SHOULD IMPLEMENT A RENT-SUBSIDY PROGRAM OF INCREMENTAL DURATION THAT TARGETS SHORT-TERM, NON-PERIODIC HOMELESS FAMILIES WITH CHILDREN**

Given the increasing length of stay in shelter and the decreasing number of entries into shelter, there is a need to re-implement an exit program comparable to Advantage. Entry to shelter for homeless families with children has decreased from a high of 14,586 in fiscal year 2010 to 11,848 in fiscal year 2014, and the number of homeless adult families entering the shelter system has remained fairly constant at around 1,200 per year.<sup>118</sup> Despite these trends, the average shelter stay has steadily increased for homeless families from an average of 284 days in fiscal year 2010 to an average of 471 days in fiscal year 2014.<sup>119</sup> Due to this increase in stay length, the number of homeless families in the shelter system has reached unprecedented levels. These recent trends contrast starkly with the status of the shelter system when there was an exit program. Despite the "Great Recession," the number of families in shelter remained relatively

stable and the average shelter stay decreased during the Advantage program.

Although the LINC programs are a step in the right direction, these programs are relatively small in scope. LINC I and II will provide a rental-housing subsidy to approximately 2,000 working families per year, and LINC III will assist an even smaller number of chronically homeless households. Given the approximately 12,000 homeless families that enter the shelter system annually and 57,000 individuals in shelters, the LINC programs are not likely to significantly decrease the number of homeless families in the shelter system. Therefore, what is needed is a large-scale intervention that provides rental subsidies of incremental duration, beginning with two-years, and support services based on the typology and specific needs of a household.

**BARRIERS TO IMPLEMENTING AN EFFECTIVE RAPID RE-HOUSING PROGRAM**

Funding is the number one barrier to implementing a large-scale rapid re-housing initiative. Although offering a time-limited rental subsidy may provide cost savings regarding certain households, the cost savings are highly dependent on the length of the subsidy and type of household. Furthermore, the City may not be able to actually capture the savings as a result of lower overall shelter costs, as funds for homeless shelters are provided in part by the state and the federal government. As a result, the state and/or the federal government

may lower its share of funding in response to a decreasing shelter population, offsetting potential savings. Aside from funding constraints, the increasing lack of affordable housing for very-low income families combined with low wages makes it increasingly more difficult for households who receive a rent subsidy to assume the full cost of rent. Therefore, these fundamental housing and employment issues must be addressed in tandem with the implementation of a rapid re-housing program.

Lastly, there are two additional hurdles regarding landlords. First, effective oversight and enforcement mechanisms must be designed to prevent side deals and ensure proper living conditions. Second, landlords may hesitate to participate in a program that does not offer a sufficiently long housing subsidy, despite the City's laws against housing discrimination. If the participating household cannot afford the rent after the subsidy ends, the landlord may incur eviction costs. If these potential eviction costs are higher than the profits that a landlord can earn during the subsidy period, the landlord is unlikely to accept program participants. This latter challenge could be addressed by guaranteeing a one-time rent emergency payment through the Homebase program once the initial rapid re-housing subsidy ends.

## CONCLUSION

Despite the challenges of implementing an effective rapid re-housing program, multiple studies, the Advantage program, and the current trends in the

City's shelter system all support the conclusion that properly targeted rapid re-housing programs could reduce the City's shelter population. Given this conclusion, the newly implemented LINC programs are a step in the right direction. To significantly impact the shelter population, however, LINC I should be significantly scaled up and the subsidies should be more targeted. Reducing the length of the base subsidy would both increase the impact of the resources through better targeting and reduce the cost of expanding the program. Under this proposed design, LINC I recipients, who return to shelter, would be further assisted through LINC II. To further offset costs, the administration should also negotiate an agreement with the State to secure the cost savings achieved through the LINC programs.

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99. In determining the percentage of total returns to shelter, Advantage recipients, who received a long-term housing subsidy, such as Section 8, were deducted from the total of households who exited shelter with an Advantage subsidy. Approximately 1,866 households received a long-term subsidy. An additional 3534 Advantage households received an anti-eviction subsidy through a State program--the Family Eviction Prevention Subsidy (FEPS). The number of Advantage families who received FEPS was not factored when calculating the return rate because almost all the families who received a FEPS subsidy received it after the termination of the program. It was not possible to disaggregate which families that received FEPS had or were close to completing the second-year of the Advantage program or received assistance to offset the sudden loss of the Advantage subsidy. Wellington, L. (2014). *Improving the Transition from Shelter to Long-term Affordable Housing- an analysis of the Advantage Program*. Pratt Institute, Master Thesis; Routhier, G. (2012), *Homeless Again: Former Advantage Tenants Adding to Already Record Homelessness in New York City*, *Coalition for the Homeless*.
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120. Average shelter stay was calculated by combining the average length of stay for homeless adult families and homeless families with children published in the FY2014 Mayor's Management Report.



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# THE NEW SOUTH BRONX: EVALUATING THE CHOICE NEIGHBORHOODS PROGRAM IN MOTT HAVEN

Julia Lake, Paul S. Balik & Mariana Oliver

**ABSTRACT** *This paper evaluates the U.S. Department of Housing and Urban Development (HUD)'s Choice Neighborhoods program. Looking specifically at a Choice Neighborhoods planning grant in the Mott Haven neighborhood of the South Bronx awarded in 2012, we highlight the successes and failures of the HUD initiative in practice. Our paper explores whether Choice Neighborhoods is an effective model for community revitalization. To answer this question, we look at how Choice Neighborhoods has incorporated, or failed to incorporate, lessons from past federal neighborhood poverty initiatives, as well as interviews from key players in the Mott Haven Choice Neighborhoods planning process.*

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# INTRODUCTION

In 2009, Congress appropriated up to \$65 million to the U.S. Department of Housing and Urban Development (HUD) to launch the Choice Neighborhoods program.<sup>1</sup> Choice Neighborhoods competitively awards grants to distressed communities for the development or implementation of “Transformation Plans,” strategies for their comprehensive revitalization. It is a unique program for HUD in that it endeavors to address not only the problem of distressed housing in impoverished communities, but also broader issues such as academic performance, workforce development, and neighborhood safety. As of November 2013, fifty-six communities had been awarded Planning Grants in the general amount of \$300,000.<sup>2</sup> By the end of 2013, twelve communities had been awarded Implementation Grants of about \$30 million.<sup>3</sup> This paper addresses the ability of the Choice Neighborhoods program to satisfy such a holistic approach to community development.

In 2012, HUD awarded the New York City Housing Authority (NYCHA) a planning grant for the Mott Haven neighborhood in the South Bronx, targeting the Betances Houses NYCHA developments.<sup>4</sup> Mott Haven is home to over eighty NYCHA buildings housing just over one third of the neighborhood’s forty-six thousand people.<sup>5</sup> Much of the public housing in Mott Haven requires rehabilitation and maintenance, a challenge to a housing authority facing ongoing budget cuts and annual operating deficits of over \$200 million.<sup>6</sup> Compared to other New

York City neighborhoods, Mott Haven faces high poverty, distressed housing stock, poorly performing schools, and high crime rates.<sup>7</sup> Choice Neighborhoods represents an opportunity for comprehensive change in the community.

This paper evaluates the Choice Neighborhoods program as applied in the Mott Haven neighborhood of the South Bronx since 2012. Part III of the paper provides an overview of Choice Neighborhoods, including its stated goals, application process, and requirements for grantees. Part IV compares the Choice model with past federal programs and assesses how Choice has drawn from past neighborhood revitalization initiatives. Part V looks at the details of the Choice Neighborhoods Initiative (CNI) in Mott Haven and the planning process to date. Part VI contemplates potential collateral consequences of the Choice program’s success in improving housing and quality of life in Mott Haven. Part VII analyzes the merits and drawbacks of the Choice model’s approach to comprehensive neighborhood planning. Finally, Part VIII lays out our conclusions about the successes and challenges of the Mott Haven CNI, as well as our recommendations for future, local Choice Neighborhoods planning processes and the federal program overall.

## METHODOLOGY

In preparing our analysis, we reached out to key agencies and community organizations involved in the Choice Neighborhoods Initiative in Mott Haven. We conducted interviews with

representatives of six key players, representing three government agencies, the organization tasked with planning, and two community-based nonprofits serving the South Bronx. Because the Choice Neighborhoods program is ongoing, we respect the wishes of our interviewees to remain anonymous. These interviews, along with primary and secondary sources evaluating Choice Neighborhoods and other community development programs, are the foundation of our analysis.

## **OVERVIEW OF CHOICE NEIGHBORHOODS**

### **THE GOAL OF CHOICE NEIGHBORHOODS**

The primary goal of the Choice Neighborhoods Program is “to develop distressed assisted housing projects and transform the neighborhoods surrounding them into mixed-income, high-opportunity places.”<sup>8</sup> Rather than focusing purely on housing construction and rehabilitation, Choice Neighborhoods approaches community development holistically through three core pillars: housing, people, and neighborhood. To support housing, the Choice program aims to rehabilitate or replace distressed public and assisted housing with mixed-income units. To support people, the Choice Neighborhoods program aims to provide support services to community residents that improve educational outcomes and inter-generational mobility. To support neighborhoods, the Choice Neighborhoods program aims to create conditions that will

encourage public and private investment. These improvements target public safety and schools as well as revitalizing commercial activity.<sup>9</sup>

### **APPLICATION PROCESS AND CRITERIA**

The Choice program’s method for attaining these ends is a competitive process of awarding grants for “Transformation Plans.” There are two types of grants: planning and implementation. Each requires the appointment of a “lead applicant,” the primary entity responsible for planning and carrying out the plan. The lead applicant is the only entity with access to HUD’s Line of Credit Control System, which allows for draws on the grant money.<sup>10</sup> Grant recipients must undertake housing transformation through rehabilitation, preservation, or demolition and one-for-one replacement of severely distressed housing. Grantees are required to provide activities ensuring the economic, educational, and environmental viability of the neighborhood, and promoting economic self-sufficiency of residents.<sup>11</sup>

Planning Grant recipients receive funding for two years, accompanied by a detailed timeline for deliverables.<sup>12</sup> By the end of the first year, the grantee must complete a comprehensive needs assessment and an outline of some of the content that will be in the Transformation Plan. A Draft Transformation Plan must be provided by the end of eighteen months and a Final Draft Transformation Plan by the end of

twenty-one months. The Transformation Plan must address “challenges and gaps in services and assets” identified through the needs assessment.<sup>13</sup> For each of the three core elements of the plan—housing, people, and neighborhood—the plan must outline financing for implementation. Data must be collected to track future community impacts of the plan. Finally, grant recipients are expected to “involve affected residents of the targeted public and/or assisted housing at the beginning and during the planning process.”<sup>14</sup>

Critically important in Choice plans are required protections for tenants in existing public housing. The plan must ensure that lease-compliant tenants whom the plan displaces have the option to return to either on-site or off-site replacement housing. Second, the plan must ensure the one-for-one replacement of “any public and/or assisted dwelling units that will be demolished or disposed.”<sup>15</sup> The grantee may replace up to half of the units with rental vouchers in markets where there is an adequate supply of affordable rental housing in areas of low poverty. As of November 2013, fifty-six communities had been awarded Planning Grants.<sup>16</sup>

The process of awarding Implementation Grants is far more competitive than that for Planning Grants. From 2010 to 2013, only twelve communities received Implementation Grants, generally of \$30 million each.<sup>17</sup> Implementation Grants are awarded through a two-round process.<sup>18</sup> To apply, at least twenty percent of residents must be

living below the poverty line or earning extremely low incomes relative to Area Median Income (AMI).<sup>19</sup> Housing must also be “distressed,” as indicated by: violent crime rates in the neighborhood exceeding the city average by at least fifty percent over three years, long-term residential housing vacancy rates exceeding the city average by at least fifty percent, presence of a low-performing school in the neighborhood, or at least twenty percent of children attending a low-performing school.<sup>20</sup> Applicants must also be able to match at least five percent of total funds requested, either in cash or in kind.<sup>21</sup>

Applicants must collaborate with HUD to develop performance metrics. On the “housing” side, there are four main groups of measurable outcomes. First, redeveloped housing must be modernized to improve energy efficiency. Second, there must be a mix of income levels. Third, the housing must be physically viable, built with durable materials and receiving maintenance and upgrades over time. Fourth, the project must be financially viable and meet or exceed industry standards for management and maintenance.<sup>22</sup>

On the “people” side, metrics must compare “baseline residents,” those living in the area at time of application, to residents of the revitalized development. These metrics must track the locations of residents and ensure that those choosing not to return to the redeveloped site enjoy housing that is at least as good quality as that which they vacated. Measurements of neighborhood safety and public health should improve, as should wages, educational

achievement scores relative to the state average, and access to high-quality early learning.<sup>23</sup>

On the “neighborhood” side, metrics should show a greater mix of household incomes, lower vacancy rates, and improved housing quality. Distances traveled to neighborhood services, such as grocery stores, banks, health clinics, and early learning, should be no greater than the median neighborhood distance in the metropolitan area. Employment rates should be better than those in other neighborhoods in the region. Last, there should be access to high-quality public transit, as well as walking and biking options.<sup>24</sup>

## **PLACE-BASED FEDERAL NEIGHBORHOOD POVERTY INITIATIVES**

While “people-based” housing strategies provide funds directly to individuals to invest in better housing options, often in other neighborhoods, “place-based” strategies aim to change “aspects of the physical environment that contribute to the problem.”<sup>25</sup> Choice Neighborhoods is one of several federal policies that takes a place-based approach, while allowing for some people-based protections, such as vouchers for displaced public housing tenants. Other place-based housing programs include the Johnson administration’s Model Cities program of the 1960s and the HOPE VI program of the 1990s. This section reviews prior place-based policies to understand how

Choice Neighborhoods builds upon the past and to evaluate potential merits of a place-based approach.

### **MODEL CITIES**

President Johnson created the Model Cities program to fund “comprehensive city demonstrations” across the country. Sixty to seventy cities were to receive \$2.3 billion for “supplemental grants” to spend on slum-improvement projects. Other agencies were instructed to free up as much categorical money as possible for local governments to use. All of this money was to be spent in furtherance of “comprehensive plans” that “city demonstration agencies” authored through “widespread citizen participation.” The goal of the program was to fight urban poverty through the concentration of federal funds into particular neighborhoods, uses of which were to be coordinated among local and federal organizations and agencies, as well as through the mobilization of citizen and government groups.<sup>26</sup>

Rather than targeting entire cities, Model Cities targeted funds towards “model neighborhoods,” which could make up no more than ten percent of the overall city population.<sup>27</sup> Cities were given a few hundred thousand dollars to be spent on a twelve-month planning process before receiving any money for implementation.<sup>28</sup>

Model Cities was beset with problems since its inception. First, the vagueness of the criteria for awarding grants made selection of Model Cities rife with politics. The staff administering the program excluded

Los Angeles from the first round because they did not like the city's mayor and some grants were awarded to the cities of certain favored congressmen.<sup>29</sup> Second, the money for categorical grants barely materialized and supplemental grants essentially became the program's entire funding stream. This was largely because either state agencies or federal regulations dictated distribution of categorical funds, leaving federal agencies with little control over these resources.<sup>30</sup> Third, the planning requirement often became little more than an obstacle for cities to overcome in order to acquire the grant money. Cities would submit "plans that were thousands of pages long, containing everything at hand in the way of facts and figures about the model neighborhood, but very little analysis that was not off-the-cuff and faddish."<sup>31</sup> A requirement that all plans be ratified by citizen-participation organizations delayed funds from reaching cities for years.<sup>32</sup> Last, much of the supplemental grant money that cities received was used to maintain federal programs with reduced budgets rather than to undertake the kind of concentrated and innovative programming that Model Cities was intended to produce.<sup>33</sup>

Choice Neighborhoods seems to avoid many pitfalls of the Model Cities program. HUD's provision of both planning and implementation grants does not make the success of the program dependent on categorical grants from other agencies. The bifurcation between planning and implementation grants also eliminates the concern of weak plans. Because cities do not have the assurance that

they will necessarily receive implementation grant money, they are more likely to undertake a more rigorous planning process. Requiring the involvement of citizen groups without giving them complete veto power also avoids the problem of citizen groups blocking the progress of a plan.

Despite attempts to avoid some of the major issues of the Model Cities program, there are still two possible, familiar pitfalls in the Choice Neighborhoods model. First, there is little protection against politically motivated grants, although we did not see evidence of such politicking as of yet. Second, there is a risk that Choice grants will simply be used to plug funding gaps in already-existing programs that Congress and state legislatures have slashed.

## **HOPE VI**

The Choice program builds most directly upon the HOPE VI program of the 1990s. In 1992, the National Commission on Severely Distressed Housing issued a report calling for improvements in support services for public housing residents and resident-owned businesses and for reforms in public housing authority management. Most importantly, the report recommended the rehabilitation and replacement of eighty-six thousand severely distressed public housing units by the year 2000. Responding to the report, Congress approved funding for HOPE VI.<sup>34</sup>

HOPE VI was created to combat the concentration of poverty in public housing. Increasingly, public housing



developments were comprised of majority African-American, very low-income families whose opportunities for moving up the income ladder were limited. HOPE VI emphasized outcomes such as, "health, education, and access to jobs"<sup>35</sup> and de-emphasized output, or the number of units built.

Under HOPE VI, HUD gave grants to local public housing authorities (PHAs) managing severely distressed buildings to use for renovation or demolition. The agency awarded two hundred and eighty-five demolition grants between 1996 and 2003, costing about \$390 million.<sup>36</sup> Once buildings were demolished, they were, in some cases, replaced with mixed-income, lower-density buildings that were often privately managed. A key component of HOPE VI was its voucher system. Displaced public housing residents could use vouchers to relocate to apartments in the private market. Residents could either remain in the market-rate apartment or move back once their buildings were renovated or reconstructed. Despite its aims to improve quality of life for low-income residents, the results of HOPE VI were mixed. Congress drastically cut its funding and ultimately replaced it with Choice Neighborhoods in 2010.

One key criticism of HOPE VI is that the creation of new, mixed-income developments resulted in a net loss of public housing units and the displacement of low-income residents. Mixed-income developments were generally lower-density than the old public housing projects they replaced. Therefore, fewer public housing units remained after reconstruction. Many of the low-income tenants in market-rate units were priced out of the

neighborhood as higher income residents moved into new developments.

For public housing residents who accepted and attempted to use HUD vouchers, the transition into the private market proved much more challenging than HUD anticipated. Many residents ended up in neighborhoods with high crime, high poverty, and poor services.<sup>37</sup> Displaced public housing tenants often did not end up moving back to their reconstructed developments. Harsher screening regulations often kept these tenants out<sup>38</sup> and it was not uncommon for housing authorities to lose track of residents entirely.<sup>39</sup>

Despite its problems, HOPE VI did have successes. In some cases, the program produced lower crime and poverty rates, revitalized neighborhoods, improved chances for mobility, and better amenities and services.<sup>40</sup> Building on these successes, and learning from the failures, the Choice program aims to continue the government's effort to reduce neighborhood poverty. Indeed, former HUD Secretary Shaun Donovan stated that, "as we build on HOPE VI, the next generation of housing policy must not penalize an extremely low-income family for the housing market they live in."<sup>41</sup>

Choice Neighborhoods attempts to expand on HOPE VI and draw from its lessons. As Secretary Donovan acknowledged, "a HOPE VI development that is surrounded by disinvestment, by failing schools or by other distressed housing has virtually no chance of truly succeeding."<sup>42</sup>

Rather than focus exclusively on housing stock, Choice Neighborhoods attempts to build partnerships with community institutions to provide social services such as education and healthcare, to improve public safety, and to invigorate commercial development.<sup>43</sup> The program directly acknowledges the need for neighborhood-wide poverty alleviation.

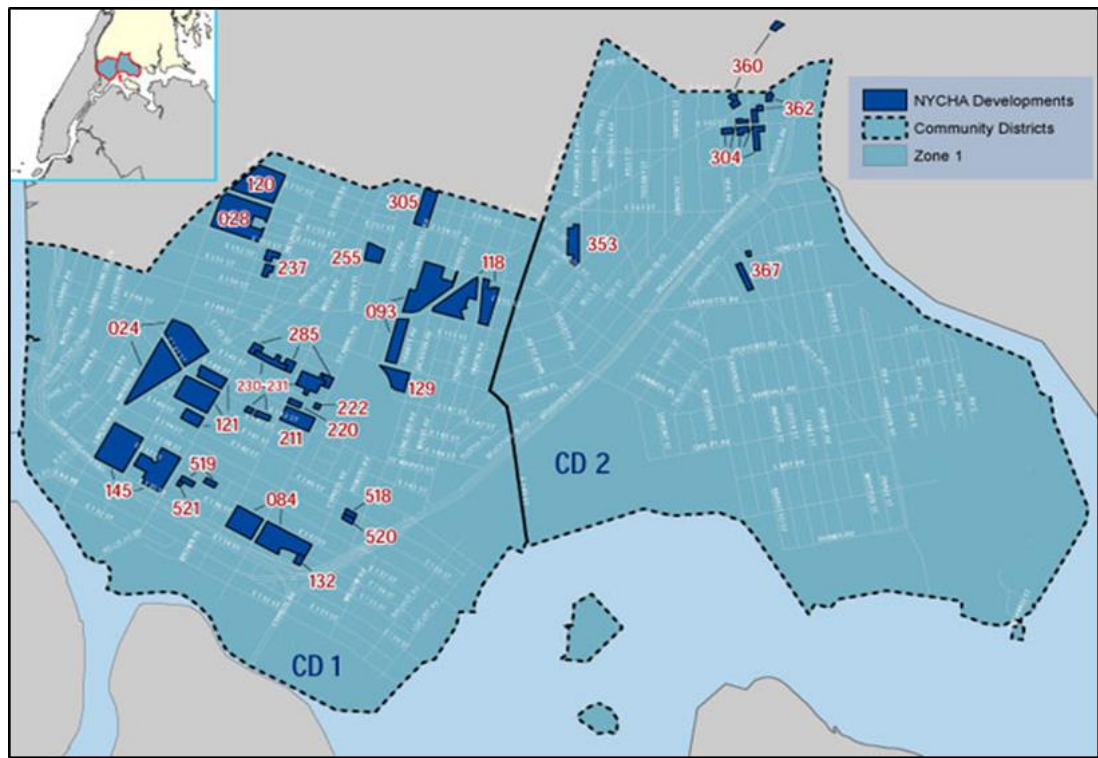
As with HOPE VI, Choice Neighborhoods also requires protection mechanisms for displaced residents. The Choice program requires that displaced tenants have the option to live in redeveloped units once completed and that vouchers be provided to as many as half of the displaced residents. The Choice program deviates from the HOPE VI approach in extending funding

eligibility to privately owned subsidized units in addition to public housing units.<sup>44</sup> Choice Neighborhoods attempts to avoid some of the failures of HOPE VI by focusing on a mix of housing types, improved community services, metrics, and tenant protections.

## THE MOTT HAVEN CASE STUDY

### OVERVIEW OF MOTT HAVEN CHOICE NEIGHBORHOODS INITIATIVE

In 2012, HUD selected the New York City Housing Authority (NYCHA) as lead agency for Mott Haven, one of seventeen neighborhoods to receive a two-year, \$300,000 Choice Neighborhoods Initiative (CNI)



NYCHA developments in the South Bronx. Note the high concentration of public housing in CD1, which includes Mott Haven. Source: <http://opportunitynycha.org/>.

Planning Grant.<sup>45</sup> NYCHA was to use the grant to create “community-based coalitions designed to lead revitalization efforts at Dr. Ramon E. Betances Houses and transform the Mott Haven neighborhood in the South Bronx.”<sup>46</sup> This description captures NYCHA’s framing of its priorities in the planning process: first, improve the housing stock and quality of life at Betances Houses and, in doing so, stimulate a neighborhood-wide revitalization effort. Although the Choice program takes a holistic approach to neighborhood revitalization, NYCHA has naturally placed priority on improving its public housing stock and the quality of life of public housing tenants.

NYCHA submitted its Planning Grant proposal after review of its public housing portfolio in Mott Haven.<sup>47</sup> In its proposal, NYCHA pointed to the high number of public housing residents, historical challenges, crime, poorly performing schools, disinvestment, and health problems in the neighborhood.<sup>48</sup> The Mott Haven CNI catchment area is: 149<sup>th</sup> Street to the north, St. Mary’s Park/Jackson Avenue to the east, 132<sup>nd</sup> Street to the south, and Lincoln Avenue/Morris Avenue to the west, all within Bronx Community District 1.

In October of 2012, NYCHA announced that it had selected the Local Initiatives Support Coalition (LISC) as the Planning Coordinator. NYCHA contracted with LISC to lead the planning process because of the organization’s extensive experience working in the Bronx and nationwide expertise in planning distressed neighborhoods. LISC had the requisite

experience to develop a resident-led transformation plan, to build upon existing resources, and to coordinate with private and public entities for financing.<sup>48</sup> LISC’s directive was to involve residents, community organizations, agencies, and local businesses in a community-driven planning process.<sup>50</sup>

## **THE MOTT HAVEN NEIGHBORHOOD: HISTORY AND CONTEXT**

In the early 20<sup>th</sup> Century, a thriving manufacturing corridor developed along East 138<sup>th</sup> Street that helped transform Mott Haven into an upper-middle class, residential neighborhood.<sup>51</sup> The population was predominantly Irish, German, and Jewish immigrants until the mid-1940s.<sup>52</sup> After World War II, 6,000 units of high-rise public housing were built in the neighborhood.<sup>53</sup> In the 1970s, HUD’s Model Cities program developed the neighborhood’s public housing stock even further, adding an additional 1,700 units of public housing at the Betances Houses.<sup>54</sup> However, from the mid-to-late 1970s, Mott Haven and the rest of the South Bronx experienced severe disinvestment and the effects of New York City’s near bankruptcy in 1975. For the following decades, abandonment, vacancy, arson, and other crimes plagued the neighborhood.<sup>55</sup>

Today, Mott Haven is considered the “heart” of the South Bronx and is home to approximately 50,000 residents.<sup>56</sup> Thirty-six percent of residents live in NYCHA public housing.<sup>57</sup> The neighborhood is predominantly Hispanic with a large

Puerto Rican and growing Central American population.<sup>58</sup>

Mott Haven has high levels of poverty, distressed housing stock, poorly performing schools, and a crime rate significantly higher than that of the rest of the city.<sup>59</sup> Forty-five percent of residents in Districts 1 and 2 (Mott Haven/Hunts Point) live below the federal poverty line, with a median income of \$20,986.<sup>60</sup> Among NYCHA residents in Mott Haven, 55% live below the federal poverty line.<sup>61</sup> According to the Citizen's Committee for Children, Mott Haven has the third-highest child-poverty rate in New York City, at 55%.<sup>62</sup> There are 52.2 reports of child abuse and neglect for every 1000 children, and only 10.7% of third-graders meet standards for reading.<sup>63</sup> While Mott Haven's crime and poverty rates have improved over time, they continue to pose serious problems for the area.

## **HOUSING IN MOTT HAVEN**

Mott Haven is an outlier in the history of housing in the South Bronx. As Jonathan Mahler famously chronicled, widespread blight, poverty, and a troubled housing market sparked landowners to burn much of the South Bronx to the ground in the 1970s.<sup>64</sup> However, Mott Haven remained remarkably resilient. According to a former director at the Department of Housing Preservation & Development (HPD), the high proportion of small homes in Mott Haven can explain this phenomenon.<sup>65</sup> Small homes were more likely to be owner-occupied and less likely than large residential buildings to be abandoned or demolished by landlords whose rents

could not cover expenses. This shielded the neighborhood from blight. HPD's rehabilitation programs also provided funds to renovate many homes and buildings, which private owners then reoccupied. HPD undertook the Housing Partnership Program, which also provided land and subsidies to developers to construct small, three-family homes. This urban renewal project in Mott Haven consisted mostly of infill development, the compiling of vacant lots to develop multi-family homes. Today, 95% of Mott Haven households are renters and 5% are owners.<sup>66</sup>

## **THE MOTT HAVEN CHOICE NEIGHBORHOODS INITIATIVE PLANNING PROCESS**

NYCHA's primary focus in Mott Haven is meeting the needs of its own residents. However, the Choice Neighborhood Initiative requires grant funding to be used for neighborhood-wide planning. Much to NYCHA's credit, the agency has taken this imperative seriously. NYCHA contracted with LISC in 2012 to undertake a planning process that considers the needs of all Mott Haven residents. The first months of the planning process were spent meeting with numerous stakeholders, such as community-based organizations, city agencies, and elected officials. Over the course of the first three months, LISC engaged close to a hundred and ten organizations and agencies.<sup>67</sup>

LISC undertook aggressive efforts to educate the community and incorporate its input in the planning process. Consultants ran visioning workshops beginning in May 2013, and

between sixty and eighty people attended each workshop.<sup>68</sup> Workshops focused on three main issues. The first workshop encouraged attendees to consider what health and environment-related assets existed or were lacking in Mott Haven. The second workshop focused on public safety and housing.<sup>69</sup> The last workshop focused on education and workforce development.<sup>70</sup>

A centerpiece of LISC's planning effort was rejuvenating the Betances Residents' Association. In order to get residents motivated and involved, LISC tried to meet residents at their buildings and hosted a series of coffee hours that rotated through different building lobbies. As residents began to voice their concerns about the community, LISC took the opportunity to encourage residents to join the residents' association. About half the association's members were recruited in this manner. While the residents' association existed prior to the CNI, it was largely inactive until LISC's efforts to revive it.<sup>71</sup> Bronx Borough President Ruben Diaz Jr.'s appearance at one of the meetings was particularly effective in encouraging resident participation and enthusiasm.<sup>72</sup>

Over the course of their two-year presence in Mott Haven, LISC engaged over a thousand individuals in the CNI planning process. The Final Transformation Plan was completed in October 2014, which was the close of the two-year grant period. When asked, LISC seemed satisfied with the \$300,000 Planning Grant amount.<sup>73</sup> The organization's main concern was less about money and more about time. Fully engaging stakeholders,

building institutional capacity, and creating a final plan was difficult to achieve in just two years. Despite this tight timeline, once HUD makes the Notice of Funding Availability (NOFA) available, NYCHA will apply for an Implementation Grant.<sup>74</sup>

Advisors from HUD remained involved throughout the entire planning process. LISC updated HUD staff monthly and received feedback from them over the full two years. One example of how HUD assisted in the planning process was in addressing LISC's initial difficulty engaging residents in the Betances Residents' Association. In the beginning, LISC hosted meetings with NYCHA that were open to concerned residents, which few residents attended. LISC sensed a lack of confidence among residents in their ability to change conditions in their housing and in the neighborhood. HUD suggested strategies, such as the coffee hours, which gradually brought residents into the process.<sup>75</sup>

LISC's community engagement received largely favorable feedback from community partner organizations. According to a staff member at BronxWorks, a human services organization and settlement house, which was present at many planning meetings, LISC was successful in bringing people together from many parts of the community.<sup>76</sup> Although attendance levels fluctuated, she was impressed by how LISC promoted upcoming meetings. LISC sent reminders to community organizations before meetings and circulated minutes afterwards. She felt that LISC kept BronxWorks informed

and involved throughout the process.

A representative of the South Bronx Overall Economic Development Corporation (SoBRO), a non-profit focused on economic development programs in the South Bronx, echoed these favorable impressions of LISC's community engagement efforts.<sup>77</sup> Her main criticism was that, in addition to the wide range of organizational participants, LISC could have done a better job of including resident participants. However, overall, despite a range of agendas and priorities among the diverse interest groups present, she felt the discussions at meetings were productive.<sup>78</sup>

#### **KEY POINTS OF THE MOTT HAVEN TRANSFORMATION PLAN**

Despite the Mott Haven Transformation Plan's comprehensive aim, the plan acknowledges that the "Mott Haven CNI is an investment in the public housing infrastructure of the community."<sup>79</sup> The housing portion focuses on rehabilitation, redesign, and revitalization of existing buildings, primarily those owned by NYCHA. In particular, the plan estimates \$64 million of work needed on Betances Houses IV, V, and VI.<sup>80</sup> Repairs include transforming lobby entrances, redesigning exteriors to address water infiltration, improving security and lighting, replacing roofs, and repairing heating.<sup>81</sup>

Beyond housing, the plan addresses education, employment, health, and safety. The plan aims to increase educational opportunities for children through expansion of the United Way's Read NYC Campaign to improve

reading proficiency at the third-grade level, working with the Department of Education to bring community schools to Mott Haven and to address chronic absenteeism, expansion of BronxWorks' and East Side Settlement's after-school programming, increased vocational training and GED programs, and working with Hostos Community College to expand its high school college readiness program.<sup>82</sup> On the workforce development side, a web-based referral system will connect residents to jobs and services, expansion of the Jobs-Plus training program, improving internship and training programs for young adults, improved vocational training, and creation of a business advisory group to understand the workforce needs of local businesses and to connect residents to those jobs.<sup>83</sup> On the public health side, "Mott Haven consistently reports high rates of chronic diseases – particularly diabetes and asthma."<sup>84</sup> Interventions include diabetes prevention courses, programs that strengthen ties between primary care providers and residents with unmet health care needs.<sup>85</sup>

Throughout the public planning process, coordinators found overwhelming consensus among residents on the need for safer streets. Given these concerns, the plan outlines strategies to reduce gun violence, such as expanding the "Cure Violence" model to target areas, creating more youth programs, and partnering with the NYPD and the Bronx District Attorney's Office.<sup>86</sup>

Included in safety strategies is improved streetscapes and design. The

plan recognizes that making open space available to residents must go hand-in-hand with increased safety measures, and therefore outlines strategies including upgrading parks, improving lighting and security in green spaces and sidewalks, and using creative design to improve public spaces.<sup>87</sup>

## **OTHER POSSIBILITIES FOR THE FUTURE OF MOTT HAVEN**

### **MIXED-INCOME NEIGHBORHOODS**

Since the 1990s, economists, sociologists, and urbanists have touted the benefits of mixed-income neighborhoods. Housing advocates in New York City today, including Mayor Bill de Blasio, increasingly push for mixed-income housing. HUD's decision to direct the Choice grant to public housing in Mott Haven thus seems to go against the model of integration.

HPD offers land, tax programs, and construction subsidies for developers in exchange for income limits on a set amount of units. In the South Bronx, these income limits go up to 60% of AMI. As marketability improves in the area, HPD has begun to encourage more mixed-income development.<sup>88</sup> NYCHA and HPD too have discussed the possibility of new housing development in Mott Haven. NYCHA has identified three of its properties near the Betances Houses, including a long stretch of abandoned playground area, which could be combined with HPD-owned land to create mixed-income housing.<sup>89</sup>

However, our HPD interviewee warns that Mott Haven residents and NYCHA officials should exercise caution when negotiating with developers for mixed-income buildings. Technically, "market rate" should signify no income limit on rental prices. However, due to lack of demand for housing in the South Bronx, market rate in the South Bronx may simply mean more lower-income housing. Thus, developing mixed-income housing in the South Bronx will be more challenging than in high-demand areas like Manhattan.<sup>90</sup>

Beyond marketability, a major concern regarding mixed-income development is its impact on existing low-income residents. American University's Metropolitan Policy Center estimates the number of residents displaced as a result of public housing demolition between 1997 and 2007 at more than 240,000, more than half of whom were African American.<sup>91</sup> While mixed-income communities may deliver long-term benefits, the short-term impacts for low-income families can be significant. As a Washington D.C. housing study found, there is no guarantee of "equally proportioned mixed-income development."<sup>92</sup> Without the guarantee of a reserved spot in these units, as well as concerns regarding affordability for displaced residents, the possibility of significant displacement of low-income tenants is very real in mixed-income development.

In the case of Mott Haven, a strategy to move public housing residents is not feasible. It would require incredible resources to relocate the vast number of public housing residents while

mixed-income development is built or to adopt a people-based voucher strategy. Beyond the fiscal burden, relocating residents could also have a tremendous impact on these low-income families, uprooting them from their social networks without any guarantee of relocating in a better community.

## **GENTRIFICATION**

The flip-side of the mixed-income problem is that amenities will improve too much, or that demand for New York City housing will increase to a point where Mott Haven rents rise to a level that prices current market-rate tenants out of the neighborhood. Mott Haven is in a period of transition. On the one hand, the area continues to struggle with problems in safety, education, infrastructure, and health. On the other hand, Mott Haven and other areas of the South Bronx are experiencing a resurgence, with new retail, community gardens, and diversifying residents.<sup>93</sup> Mott Haven has become an important commercial hub and houses many government agencies. The neighborhood's location allows for easy access to Manhattan.

The City-led push to revitalize the South Bronx and to redefine it from an area of blight to one of opportunity is partly responsible for this transformation. During the period of abandonment and destruction in the 1970s and 1980s, the City took ownership of many properties in the Bronx, creating opportunity to improve the housing stock. The City's Economic Development Corporation (EDC) issued a comprehensive revitalization plan for three South Bronx areas in 2008,

including five to six blocks of Mott Haven. Yet another program, the "New Bronx," is a borough-wide initiative to transform and revitalize the area.<sup>94</sup>

These efforts have resulted in signs of a revitalization, which could mean both benefits and risks for current residents. Some residents welcome gentrification as a process that brings amenities and increases property values while others criticize it for pushing out residents and businesses.

The Mott Haven CNI plan aims to improve existing resources and to attract new amenities, thereby improving quality of life for residents, but potentially resulting in higher rents and increased demand. At the 2013 First Annual Bronx Gentrification Conference, an HPD official argued that he did not believe gentrification would be a problem and welcomed the opportunity for development. Audience members were less than pleased with this position, interpreting the comments as being in support of displacement.<sup>95</sup> According to the HPD official, however, much of the debate about "gentrification" is actually about semantics. A wealthier demographic and increased property values are positive factors so long as they do not come at the expense of current residents. He says that he has not observed an above-average rate of displacement in Mott Haven and attributes this to the fact that a large share of Mott Haven residents reside in subsidized or rent-regulated housing, where it is hard for landlords to raise rents or evict tenants. His position is that there is nothing unique in the practice of landlords under-providing services to push residents



out. “Bad landlords will be bad landlords,” he says, “They have and will always exist.”<sup>96</sup>

While NYCHA and rent-regulated residents of Mott Haven may not face immediate danger of being pushed out, residents and businesses in market-rate buildings have no safety net. As property values increase, residents of Mott Haven’s many three-family homes will likely face higher rent burdens. The small businesses and “mom and pop” shops in Mott Haven have no protection against increased rents and will be in jeopardy of extinction.

Discussion of both the Choice program in Mott Haven and the market-driven, looming transformation of the South Bronx, highlights perhaps the biggest challenge for policy makers: how to balance tradition and development. Residents have expressed a desire for greater diversity in retail and commercial activity, noting the abundance of mom and pop stores but scarcity of sit-down family chain restaurants. However, in order to attract national chain restaurants and businesses, there needs to be a population with purchasing power sufficient to support these businesses. Government and housing officials recognize this dilemma, as evidenced by the City’s push for mixed-income housing. Nevertheless, with many Mott Haven residents barely able to afford 60% AMI rents, balancing this diversity of needs will not be easy.

## **ANALYSIS AND ASSESSMENTS**

### **THE MERITS AND DRAWBACKS OF COMPREHENSIVE PLANNING EFFORTS**

**BREADTH VERSUS DEPTH.** Analyzing the Choice program requires questioning the basic assumption that comprehensive planning is an effective tool for neighborhood revitalization. In our interview with the former HPD director, he suggested that comprehensive planning might be more effective in smaller, less dense cities than New York City.<sup>97</sup> Denser neighborhoods have more complex issues, making targeting and establishing community goals particularly challenging during the planning stage.

NYCHA’s plan for Mott Haven adheres to HUD’s stipulations for a comprehensive approach. However, the Choice Neighborhoods program may require lead agencies to attempt to tackle too many issues at once. If not awarded an Implementation Grant, NYCHA may have difficulty focusing its attention and resources away from its mission of managing its housing stock towards implementing the broader aims of the Plan.

### **ALIGNING EXPECTATIONS: NYCHA’S NEEDS VS. NEIGHBORHOOD NEEDS.**

Another challenge is aligning community expectations for the Mott Haven CNI to focus on achievable, realistic outcomes. While the Choice Neighborhoods model views community participation and feedback as one of its major strengths, this feature of the planning process also presents challenges when creating tangible community improvements. The HPD official sees any positive

change as “success,” even if that just means delivering on the pressing need to rehabilitate the Betances Houses: “if [the Transformation Plan] helps upgrade public housing in that area, then that is a great thing.”<sup>98</sup> While some planners may understand that not everything NYCHA’s Transformation Plan sets out to tackle will be accomplished, residents and community members may be less sympathetic regarding these limitations. In taking such painstaking efforts to give residents a stake in all aspects of the planning process, local lead organizations such as NYCHA and LISC may give residents false hope for the future of their neighborhood.

While NYCHA and LISC express optimism about the opportunities for improvement in Mott Haven, all residents do not share this enthusiasm. The South Bronx has been the focus of countless case studies with minimal impacts, which has left many residents wary of any proposed plans. When LISC began its outreach efforts in Mott Haven, the organization was not well received. A NYCHA Deputy Director recalls that many members of Community Board 1 pushed back against LISC at its first presentation. Many did not see a unique approach or message to the project. Residents were experiencing “project fatigue.” They were tired of hearing iterations of similar projects that ultimately amounted to few benefits.<sup>99</sup>

## **INVESTING IN PEOPLE VERSUS PLACES**

In their review of studies on the effect of location on families, Ingrid Ellen and

Margery Turner find no consensus among policymakers on whether to target neighborhoods or people. Programs that focus on “neighborhood effects” are incomplete because “not all individuals and families are necessarily affected by neighborhood environment to the same degree.”<sup>100</sup> Michael Schill points out that “the effects of housing certificates and vouchers on mobility have been modest” and there has been little to no impact on promoting racial integration.<sup>101</sup> One family’s best chance of success may be to move, while mobility may provide little benefit for another.

Choice Neighborhoods focuses on place-based remedies. However, by encouraging comprehensive neighborhood revitalization, Choice Neighborhoods discourages mobility, raising the concern that residents will be “trapped” in poverty. According to NYCHA, rehabilitation of Betances is important because of the neighborhood’s history. The presence of public housing in Mott Haven prevented complete abandonment in the 1970s and its rehabilitation should be a key piece of the plan.<sup>102</sup>

William Julius Wilson argues that public housing developments concentrate poverty, keeping low-income tenants from employment, good schools, and social networks. These conditions further exacerbate poverty and crime in and around public housing.<sup>103</sup> In a study of public housing in Chicago, Robert Massey and Shawn Kanaiaupuni found “a strong relationship between proximity to public housing and the existence of concentrated neighborhood

poverty.”<sup>104</sup> Concentrated poverty affects public housing tenants and the community overall.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **STRENGTHS OF THE MOTT HAVEN CHOICE NEIGHBORHOODS INITIATIVE**

While many improvements envisioned by the plan are still unrealized, the planning process itself has produced benefits in the Mott Haven community. The needs assessment phase of the plan was itself a valuable undertaking. The Final Plan’s Appendix provides a comprehensive inventory of the neighborhood’s existing resources, including housing stock, open spaces, and other community assets. The planning process also helped to identify key neighborhood challenges. No matter the outcome of CNI, interested groups can use this groundwork as a starting point to take on smaller, more manageable neighborhood revitalization efforts.

Some of the goals of the plan may be implemented whether or not NYCHA receives an Implementation Grant. NYCHA applied for a \$1 million grant through the U.S. Department of Justice for the “Mott Haven Neighborhood Safety Project,” which aims to reduce gun violence and to build community crime prevention strategies. The planning process has already helped to attract attention to pressing neighborhood issues that may attract

outside investment for implementation.

In addition to the research efforts, the planning process successfully engaged community members. Community organizations were impressed with LISC’s organizing. Residents attended visioning meetings. A group of Betances youth leaders became actively engaged in planning meetings.<sup>105</sup> One of the greatest achievements of the planning effort was the revitalization of the Betances Residents’ Association. This will be a valuable forum for residents’ voices regardless of whether NYCHA receives an Implementation Grant.

### **CONCERNS ABOUT THE MOTT HAVEN PLANNING PROCESS**

As the Mott Haven CNI proceeds, especially without an Implementation Grant, NYCHA must target its limited resources toward those elements of the plan where they can do the most good.<sup>106</sup> NYCHA should carefully weigh and consider which parts of the plan have the potential to provide the greatest benefits. Access to social capital, peer networks, and close proximity to employed residents are each important factors to consider in assessing the impact of neighborhood effects.<sup>107</sup>

With so many different stakeholders involved in the same project, aligning expectations among parties proves difficult. This may be easier to achieve in a small, less-dense neighborhood with homogeneous needs.<sup>108</sup> In Mott Haven, competing interests must be weighed against one another. NYCHA’s primary obligation is to its tenants,

many of whom expect CNI grant money to go towards much-needed physical rehabilitation and maintenance. During the implementation stage, how NYCHA chooses to prioritize the needs of its tenants versus the needs of non-NYCHA residents will set the tone for the entire project.

Closely tied to this concern is whether a housing authority has the capacity or expertise to implement such an ambitious, comprehensive plan. NYCHA and LISC brought many different voices to the table during the outreach and planning process. However, moving forward, NYCHA will be left to coordinate and manage a significant number of stakeholders and projects, many of which extend beyond the boundaries of its housing properties. Given NYCHA's history of mismanagement, it remains unclear whether the agency has the resources and skills to efficiently manage these projects.

## **GENTRIFICATION AND IMPLICATIONS FOR THE FUTURE OF MOTT HAVEN**

As discussed above, gentrification is a serious concern. While implementation of the Mott Haven CNI plan may improve amenities in the neighborhood for current residents, this will also increase demand for the neighborhood, raise property values, and ultimately raise rents for those tenants and businesses paying market-rate rents now. In addition, NYCHA's proposal with HPD to develop mixed-income buildings could bring in more social capital and expedite this process.

Policymakers and community groups

should be wary of any initiatives that require tenant relocation but guarantee a "saved seat" in a mixed-income community, as there are rarely guarantees that all low-income units will be preserved post-redevelopment and mismanagement has often led to lost tenants. That said, higher incomes are necessary for a broader tax base and higher property values, which in turn promote neighborhood investment. Economic development may result in more businesses that might hire community members. However, the current composition of Mott Haven suggests that the neighborhood may not be at great risk for gentrification in the immediate future. Given the depressed housing market in the South Bronx today, new families who relocate to Mott Haven in the coming years may not be extremely high-income, thus preserving the affordability of the neighborhood for the time being. However, policies should be in place to protect tenants in market-rate units in the event that improved amenities spark a wave of gentrification.

## **IMPLEMENTATION STAGE AND CONTINGENCY FUNDING**

Due to the bifurcation of Choice Neighborhoods funding into Planning and Implementation Grants, full realization of the Mott Haven Transformation Plan depends on NYCHA's receipt of an Implementation Grant. This dependency is one of our primary concerns with the Choice Neighborhoods model. In addition, NYCHA's estimated cost of \$64 million just to rehabilitate three Betances buildings far exceeds the size of any Implementation Grant yet awarded.<sup>109</sup>

The Final Plan provides that NYCHA would use \$25 million of an Implementation Grant toward the rehab.<sup>110</sup> That leaves only an additional \$5 million for implementing the remainder of the plan's housing, people, and neighborhood projects.

## **FINAL RECOMMENDATIONS FOR MOTT HAVEN**

- Continue to organize and facilitate meetings to keep community members informed throughout the implementation process. Such gatherings will continue to serve as important platforms for the community to understand and to provide feedback at every stage of implementation.
- Develop a streamlined system for collecting ongoing feedback from all Mott Haven residents, not only NYCHA tenants. Strategies for community-wide feedback include designating a community liaison to voice community concerns. This will be especially important if NYCHA does not receive an Implementation Grant, and when LISC leaves the project, as non-NYCHA stakeholders will be left without a representative.
- Continue efforts to preserve affordable housing in Mott Haven. This will be of critical importance to families living in multi-family homes that are not rent-stabilized, where rising land values could lead landlords to charge higher rents. Possible mechanisms to preserve affordability include: rent-stabilization programs, vouchers for

displaced tenants, or incentives to prevent landlords from raising rents.

- In the event of rising property values, protect small business owners from being displaced by higher rents. Owners of small businesses in Mott Haven will be especially vulnerable if the neighborhood begins to attract outside investment and businesses. Possible strategies include:
  - Working with the Department of Small Business Services to implement local job training programs.
  - Working with community organizations to form resident coalition groups that will promote the interests of local small business owners.
- Expand existing programs and create new programs to promote homeownership for low-income tenants. Homeownership immunizes residents from rising rents and allows them to gain equity as property values rise. Existing programs include HPD's Down Payment Assistance Program and homebuyer's classes. HPD could also explore community land trusts and affordable co-op models that subsidize affordable homeownership.

## **FINAL RECOMMENDATIONS FOR HUD'S CHOICE NEIGHBORHOODS PROGRAM**

- Combine the Planning Grant and

Implementation Grant into a single grant, contingent upon clearly demarcated deliverables. This addresses the following issues:

- Communities spending two years on developing Transformation Plans and then having no money for implementation.

- Project fatigue. By providing planning and implementation funding upfront, neighborhood residents will have more assurance that the lead applicant will follow through on the plan, potentially encouraging more resident engagement.

- In addition, a combined grant allows for more creativity and pilot-testing. Lead applicants can test out some of the proposals outlined in their plans before wide-scale implementation of those initiatives. This would mitigate the risk of failed initiatives and allow lead agencies to address potential implementation problems early on.

- Increase transparency at HUD when awarding grants to public housing authorities (PHAs) or other entities that HUD already funds. This addresses the following issues:

- Public concern that Choice Neighborhoods grant money is being used to plug holes in the budgets of PHAs or other resource-strapped agencies. This is especially relevant when federal dollars for PHAs have been steadily cut over the past decade.

- A detailed budget would

explain what percentage of CNI money is allocated to the physical rehabilitation of subsidized buildings and would help ensure that this resource allocation is not at the expense of other needed community services.

- When the lead agency is a PHA, require the designation of a non-profit organization to participate in allocating resources. This protects the interests of non-public housing residents and organizations with missions broader than those of the PHA.

Encourage local community organizations to apply for Choice Neighborhoods grants. NYCHA has applied for another Choice Neighborhoods Planning Grant for the Brownsville neighborhood in Brooklyn. We would like to see community organizations apply for and be awarded Choice Neighborhoods grants in New York City and do not think PHAs should be over-represented as grantees.

- Allocate more federal money to PHAs. From 2001 to 2013, NYCHA's annual federal capital grant has declined from \$420 to \$259 million.<sup>111</sup> This leaves the authority resource-starved and increases the likelihood that Choice Neighborhoods funding will simply be used to plug holes in its budget instead of being used for the comprehensive development work that Choice Neighborhoods is designed to promote.

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# REGULATING THE INFORMAL FINANCIAL SECTOR OF INDIA

Christalyn Steers McCrum

**ABSTRACT** *The purpose of this piece is to examine the reasons many Indians choose informal financial service providers over formal ones and to identify how the government can motivate the formalization of informal providers. By reviewing development literature, a case based upon the combination of incentives and pressures is outlined for how the Indian government can draw informal providers into the formal banking system.*

## INTRODUCTION

According to the most recent census, only 58.7% of people living in India use formal banking services.<sup>1</sup> Political, economic, and social institutions drive many Indians away from the formal sector and into the informal. This paper discusses the reasons why Indians may choose informal financial services over formal services, and outlines institutional changes the government can enact in attempting to regulate the informal financial market, relating to applying the proper combination of pressure and incentives.

## UNDERSTANDING INFORMAL FINANCIAL SERVICE PROVIDERS

The Reserve Bank of India claims informal financial service providers (IFSPs) "charge usurious rates of interest and resort to unethical practices for recovery of loans."<sup>2</sup> However, this only describes groups such as loan sharks or slumlords whose motive is to extort individuals.<sup>3</sup> Another group of IFSPs consists of friends, families or shopkeepers who instead take an altruistic or mutually-supportive approach and provide financial help when it is needed.<sup>4</sup> For example, there are savings and savings-and-loan clubs<sup>5</sup> that require members to each put a little money in a pot at given intervals of time. Depending on the type of club, individual members can either take the whole pot for their consumption when it is their turn or pull out a loan in case

of an emergency.<sup>6</sup> No matter who is providing the financial service, various political, economic, and social institutions play a role in the transaction.

## ECONOMIC INFLUENCES BEHIND THE USAGE OF IFSPS

Despite a variety of banks and micro-finance institutions (MFIs) available in India, many Indians turn to IFSPs for their financial activities. They often elect not to use banks because of the large amounts of paperwork and high interest rates.<sup>7</sup> Banks rarely enter rural areas because the high costs and low savings amounts associated with rural, poorer, districts tend to lead to financial loss.<sup>8</sup> These difficulties translate into banks settling in urban regions far more often than rural areas. Unfortunately, this means rural workers<sup>9</sup> must travel long distances to access banks and incur numerous opportunity costs including losing work and potential income, thereby driving them to use IFSPs.<sup>10</sup>

Small firms may also resort to IFSPs if loans are not available to them. Banks prefer to loan to large firms, which may result in the crowding out of small firms.<sup>11</sup> The current banking system produces a variety of disincentives, but these do not apply to another formal economic institution, the MFI.

MFIs are intended to appeal to the poor in rural areas, however IFSPs may still be compelling. Income for the poor and rural often has uncertain timing, and emergencies can crop up

at any time. This high-risk environment requires high liquidity and convenience when accessing money, two needs that many MFIs fail to meet by setting terms on their loans that do not fit with the lifestyles of the borrowers. The poor may need to continue relying on IFSPs if they are unable to adhere to strict MFI repayment schedules that demand a reliable and consistent income.<sup>12</sup> MFIs also often tie loans to entrepreneurship<sup>13</sup> and discourage loans for consumption.<sup>14</sup> If the poor need a flexible loan to make sure they can cover day-to-day living expenses, they often must look elsewhere.

Banking and micro-finance institutions can be too cumbersome and costly for many Indians, and so they prefer to use alternatives. IFSPs are easy to access, local, highly liquid, and sometimes, interest-free. If one borrows from a friend or relative, then she or he may be able to decide when repayment happens and what the interest rate (if any) will be. The one thing IFSPs cannot guarantee is security. For example, recipients of money may choose not to pay back their debt, or members of a savings club may forget to contribute during another member's payout turn. This can certainly act as a strong disincentive, but it appears that the lack of definite security is still not enough to drive people towards the formal sector.

## **SOCIAL INFLUENCES BEHIND THE USAGE OF IFSPS**

In fact, a loose type of security can even be attained through informal social institutions. For instance, family ties and friendship can be a powerful motivator behind the use of IFSPs. Emotional attachment and physical proximity can allow borrowers to trust creditors not to run off with their money when it comes to insurance, and lenders to trust borrowers not to default on their loans. This trust naturally develops between family and friends.<sup>15</sup>

Another informal social institution that provides security is the power of shame and ostracism. The humiliation associated with publicly defaulting on a loan can be unbearable<sup>16</sup> in tight-knit communities in which people must constantly be aware of their reputation and presentation.<sup>17</sup> Additionally, defaulting on a loan or not contributing to the pot may result in ostracism, and essentially, in bad credit.<sup>18</sup>

## **FORMALIZATION**

The ease and flexibility of IFSPs coupled with the monetary and temporal opportunity cost of banks and the inflexibility of MFIs<sup>19</sup> create a powerful combination of incentives and disincentives that impel the use of IFSPs over formal institutions. Approximately 65 percent of Indians over age fifteen<sup>20</sup> forgo the use of bank accounts to meet their financial needs. If the government of India were able to successfully regulate the informal financial market of India, they may be able to provide a reason for those millions of Indians without bank accounts to join the taxable formal

banking sector. This could bring a sizeable financial boost to the Indian economy through the creation of more jobs and through an increase in tax revenues. For instance, with the dual action of IFSPs like shopkeepers and moneylenders becoming formalized and Indians beginning to deposit more money in the formal banking sector, reliable employment will increase and the government will have more opportunities for taxation.

As the range of IFSPs from family members to slumlords is so broad, the prescriptions in this paper may not apply to each kind of IFSP, but may be successful when applied overall.

## **POLITICS AND PREVIOUS ATTEMPTS OF FORMALIZATION**

Political institutions have so far been driving IFSPs and clients together in the absence of successful formalization. The past attempts to formalize the informal financial sector have failed, and were based upon unenforced requirements. Pressure was applied, but there were no incentives to comply with these new financial reporting requirements, let alone knowledge of how to navigate a complex financial and heavily-bureaucratized system.

For instance, according to the *Kerala Money-Lenders Act*, IFSPs in Kerala are required to submit financial information and obtain licenses.<sup>21</sup> However, the information that is submitted is often incomplete or inaccurate, and many IFSPs still do not

formalize.<sup>22</sup> On top of this, some consider the Indian police force to be one of the most corrupt in the world. The police can "accuse, arrest, and harass even an honest person."<sup>23</sup> Regulation enforcement can be difficult when the enforcers themselves are not subject to adequate regulation.

In 1977, with an attempt to draw more Indians into the formal financial sector, the government of India mandated that banks set up four branches in rural areas for every branch in an urban location. However, due to high rates of default, the mandate failed to be helpful.<sup>24</sup> In 1988, default combined with a sluggish court system resulted in a backlog of eight years for 40 percent of the cases of bankrupt borrowers.<sup>25</sup> If the government has so much trouble regulating the formal sector, the difficulty the government faces in attempting to enforce regulations on an informal industry must be even greater.

Can formalization be encouraged? And if so, how? Development literature has demonstrated that a combination of pressures and incentives may be key to motivate compliance. The five examples detailed below will be used to clear a path for the formalization of India's IFSPs.

## **MODELS OF THE RELATIONSHIP BETWEEN PRESSURES AND INCENTIVES**

This combination of pressures and

incentives was illustrated by Andrew Schrank in his article on the Dominican Republic (DR);<sup>26</sup> the government of the DR discouraged unwanted practices while simultaneously incentivizing desired behaviors. The DR rewrote labor laws to include more aggressive enforcement against child labor, but also linked eligible workers to education, training, and financial institutions so that the workers could have access to new opportunities and support while simultaneously upholding the new laws. This incentive of further opportunities encouraged the compliance with the pressures of the new laws, and the training on how to follow the labor laws made it easier to do so. This balance of pressures and incentives has "formalized thousands of firms" and "registered of dozens of unions" while obtaining the desired outcome of removing children from the labor force.<sup>27</sup>

Again pressures and incentives resulted in a successful outcome, this time between the government and small enterprises in Ceará, Brazil.<sup>28</sup> By developing small-firm associations, the government was able to keep the small firms with which it worked accountable. Instead of awarding multiple contracts to fragmented small firms competing against each other, the government encouraged the formation of an association of small firms for whom it would award one contract that the firms in the association could work together to fulfill. The income received by the association for a contract with the government was dependent on the performance of all the small firms involved, and if the quality was not satisfactory, the government would

seek to establish contacts with other associations. This encouraged discipline and mutual support among the small firms in the associations. The incentive was receiving the government contract, and the pressure was generated within the associations by the government's performance-dependent pay. No firm wanted to be responsible for the loss of the incentives.

This next example reverses the sources of pressure and incentives. Instead of the government providing the incentives, it provided pressure by establishing a new mandate, and a business association responded by incentivizing compliance. Salo Coslovsky illustrates how an association in Bolivia helped elevate Bolivia to the position of the world's leading exporter of Brazil nuts, even over Brazil.<sup>29</sup> The government of Bolivia mandated testing of Brazil nut quality in order to conform to rigid European Union standards. A business association helped member producers to meet this new requirement by upgrading their facilities, streamlining the process for acquiring an export license, and creating a new testing lab. This support within the association provided the necessary incentive for the Brazil nut producers to conform to the new government pressure.

These final two examples demonstrate how the government can place a combination of pressures and incentives on its workers to produce desired behavior. Tandler and Freedheim show how an increase in pressure and in incentives motivated government workers in Ceará, Brazil, to excel in their jobs. The State

generated an air of honor and status around their health agency jobs by publicizing an intense and highly selective hiring process.<sup>30</sup> Prizes were awarded publicly for good performance, and the pride and achievement of having such a prestigious and rewarding job developed into an incentive. The State increased the pressure by the publicity as well; the community participated in the monitoring process and held the health agents accountable to their responsibilities.

Jennifer Davis<sup>31</sup> discusses how an increase in accountability and the moral cost of inappropriate behavior resulted in a decrease in corruption in many South Asian countries. The governments in Davis' study simultaneously applied pressure and offered incentives by also publicizing their workers' dealings within the sanitation and water sectors. Meetings were held in publicly-observable spaces so as to make bribery more difficult, but these viewable meetings

allowed the worker to be on display to the public in their air-conditioned, modern offices, allowing prestige to also be demonstrated. Community leaders were also trained in how to evaluate quality and how to document and report on any issues that may arise, and NGOs were involved to facilitate this process. Again the community is involved to increase pressure and incentives.

## MOTIVATING INFORMAL FINANCIAL SERVICE PROVIDERS IN INDIA

How can these lessons be applied in India to make informality bad for business and formality desirable? There are several ways the government can combine pressures and incentives to formalize IFSPs. The first step is to put more pressure on IFSPs to formalize. By explicitly

**Table 1.** Outstanding cash debt held by informal financial service providers by type as of June 30, 2002

Landlords	2%
Money-lenders	69%
Traders	6%
Relatives and friends	17%
Others	6%
Total	100%

*Source:* Reserve Bank of India, 2013



requiring IFSPs to submit required financial information and obtain licenses, IFSPs will be drawn into the system. The Reserve Bank of India details a legal framework meant to protect citizens from the more usurious of IFSPs, but the framework lacks a means of incorporating them into the system.<sup>32</sup> However, this government pressure was not effective by itself in Kerala as was demonstrated previously. Many IFSPs did not formalize, and the ones who tried did not understand how to properly fill out or submit the necessary documents. However, with the proper application of incentives, this problem may be eliminated.

To follow the pattern of the DR, the government could create a program in which they offer to provide the necessary formal financial training for interested ISFPs. This training would be unique to the needs of the government, essentially teaching these IFSPs how to navigate the formal financial sector by preparing balance sheets, managing holding accounts, and other necessary activities. To incentivize this program for IFSPs, once the training is completed, the opportunity to join a government-instigated creditors' association may arise.

Due to the success of associations in Cearà and Bolivia, the government could form voluntary creditors' associations for graduates of the training program. These linked associations for formal lenders could increase compliance, accountability, and the use of appropriate financial dealings. They would conduct ongoing training to supply and improve the

relevant skills for the newly-formal financial service providers. To provide further motivation, if associations are able to keep up their reporting in a proper manner, then the government could offer subsidies to the associations to offset the initial outlays of normal financial transactions and interactions, which would be disbursed among the members. The amount of the subsidy can be drawn from the newly-acquired tax revenues obtained through the formalization of these formal financial service providers. A caveat is that a pilot program is generally advisable when implementing any untested idea in a new region. It would be best to implement this coupling of pressures and incentives on a small scale through randomized controlled trials to make sure that it will work in India first.

Out of all IFSPs, the majority (69%) are some sort of money-lender, which is outlined on Table 1.<sup>33</sup> Money-lenders are considered to be "an unincorporated body of individuals, who or which,--carries (sic) on the business of money-lending in the State."<sup>34</sup> A panchayat, a local government council, could offer a well-publicized and visible training program, ideally creating a sense of prestige, targeting the moneylenders and other IFSPs at the village level. The panchayat could then appoint a leader for a creditors' association, which may span several villages in the region. This leader could be selected in a number of ways depending on the needs and desires of the villages in the region. For instance, it could be a member of the panchayat in concert with a well-respected moneylender, or

it could be a trusted community leader.

## THE SPECTER OF CORRUPTION

"Absolute authority in the hands of bureaucrats paved a way for corrupt practices and decision-making in line with vested interests. No wonder, corruption has become the hallmark of today's Indian administrative culture."<sup>35</sup> India has been haunted by corruption over the years--what is to stop the proposed idea above from being susceptible to the same fate? By incorporating the lessons learned from Ceará and South Asia, corruption may be fought off before it gets a chance to take root. The publicity and honor both pressurized and incentivized workers' behavior. This reputation of prestige should be created around the associations. Acceptance into an association can be seen as a high honor, and the training programs before and during acceptance should be publicized as a certification of responsible and knowledgeable financial dealings that can be had with this association. In order for associations to keep their status, trustworthiness, and financial subsidy, they will need to maintain the documentation and reporting of their members. This provides dual motivations for newly formalized financial service providers to stay in their association and for associations to keep track of their members.

## CONCLUSION

The argument to provide a combination of pressures and incentives in this case is to reward

regulation and to wean people off of negative labor practices while providing the support and motivation needed to do so. Instead of preventing the individual from engaging in misconduct solely with pressure, the addition of incentives can be a way to elicit commitment in a way that increases the internal pride and external respect. Through applying pressures and incentives, the government of India may be able to formalize their informal financial sector. It is hoped that the examples outlined in this piece provide a robust enough place to start in testing this theory through randomized controlled trials.

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# WORKFORCE DEVELOPMENT PROGRAMS IN THE 21<sup>ST</sup> CENTURY: INSIGHTS FOR EMPOWERING DISADVANTAGED WORKERS

Annie McWilliamsNdumele

**ABSTRACT** *The purpose of this article is to recommend strategies for improving workforce development programs for disadvantaged workers. This is a critical issue given the country's oversupply of labor for low-wage jobs and skills shortage for middle-wage jobs. At a time when the country is facing a large and growing income gap, preparing our labor force for higher paying, better quality positions should be a focus. Workforce development has generally demonstrated only modest impacts on employment outcomes for disadvantaged workers; but there are some important lessons that can still be learned from the history and current state of different approaches. This article surveys relevant legislative actions and highlights best practices across programs providing adult education, job placement and sector-based strategic services. These insights inform recommendations including increasing funding to hire qualified counselors, emphasizing the development of specific skillsets, expanding retention and advancement efforts, and strengthening childcare, healthcare and transportation infrastructure.*

# INTRODUCTION

Funding for workforce development programs has decreased significantly since the 1970s; yet work skills and educational attainment are more important than ever.<sup>1,2</sup> There is an oversupply of labor for low-wage jobs and an undersupply of labor for middle-wage jobs. An estimated 55 percent of jobs in the United States require middle-level skills but only 45 percent of American workers have the qualifying skillset.<sup>3</sup> Furthermore, training and placement services for adults no longer primarily target disadvantaged workers. The significant reduction in funding combined with efforts to reach a broader participant base have led to a gap in services for the workers who need the most support.

This paper outlines the scope and history of workforce development policies in the past few decades and examines programs that have worked and why they were successful. Workforce development legislation has generally developed in response to the health of the economy and shifting attitudes on government support. As the country has moved towards a welfare-to-work approach, government programs have emphasized job placement programs rather than training and advancement initiatives. Service providers have responded accordingly although there are thought leaders in the space who have continued to experiment with other approaches. While evaluations have generally demonstrated only modest impacts of workforce development programs on employment outcomes

for disadvantaged workers, some programs have been hugely successful and should be replicated.

Insights garnered from these best practice programs and analysis of the challenges facing disadvantaged workers highlight factors that drive workforce development and suggest how to improve programs and policies in this space. Ideally, the future of workforce development will reflect the rapidly changing skills needed by the workforce and the realities of the job search process. Skills development, job placement, and a focus on retention and advancement services are key success factors. Additionally, support from the government and other organizations to ensure adequate childcare, reliable transportation, and healthcare services are relevant and necessary. Of course, all of this will require additional federal resources. If America is to close the wage gap, it must invest in its workers.

## DEFINING WORKFORCE DEVELOPMENT

Workforce development is a broad category of policies and programs that share the common goal of ensuring job stability and advancement for workers. The *Annie E. Casey Foundation* has defined workforce development broadly as incorporating, "...substantial employer engagement, deep community connections, career advancement, integrative human service supports, contextual and

industry-driven education and training, reformed community colleges, and connective tissue of networks.”<sup>4</sup>

Workforce development has traditionally been approached from two different angles, supply-side and demand-side. Supply-side workforce development services are focused on employees and may include youth vocational training, adult education, job placement services, skills training, career counseling, and mentoring. Demand-side services are focused on employers and may include the creation of sector strategies and identifying skills standards. Programs have a variety of structures and may emphasize different aspects of workforce development.

During the passage of the Workforce Investment Act (WIA) of 1998, the Clinton Administration described the workforce investment system as having the following purpose:

“To increase the employment, retention, and earnings of participants, and increase occupational skill attainment by participants, and as a result improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation.”<sup>5</sup>

This description is significant because the 1998 WIA is one of the last major pieces of legislation on workforce development policy. The language reflects changing political views on both workforce development and disadvantaged populations since the first relevant legislation was passed in the mid-1800s.

## **WORKFORCE DEVELOPMENT POLICY IN THE UNITED STATES SINCE 1862**

Events in workforce development programming in the past few decades explain how the issue area has lost urgency. The earliest federal workforce development legislation funded vocational programs that promoted educational attainment and work preparedness for young people. The Morrill Act (1862) authorized the donation of public land and seed funding to each state for public colleges.<sup>6</sup> The Smith-Hughes Act provided additional funding for vocational programs that initially included agriculture and home economics but now includes fishery, education, and health care.<sup>7</sup> The National Apprenticeship Act (1937) created and promoted apprenticeship programs in the majority of states.<sup>8</sup> The trend of funding and expanding vocational education continued into the mid-20<sup>th</sup> century.

Following the expansion of government during the Great Depression, legislators paid more attention to job creation and placement.<sup>9</sup> The structures needed for this attention shift were put into place with the Wagner-Peyser Act (1933), which established employment services offices and the Works Project Administration (1935), which formed the first U.S. public service employment program.<sup>10</sup>

The federal government initially made efforts to provide direct skills training

in the 1960s, coinciding with President Johnson's "Great Society" programs.<sup>11</sup> The Manpower Development and Training Act (MDTA) (1962) is considered a predecessor to current federal workforce development legislation. The MDTA was created to retrain and prepare workers displaced by automation. It was later expanded to include services for older workers, workers without a high school diploma, formerly convicted individuals, and individuals with disabilities. The MDTA provided direct federal grants to local service providers and funded Job Corps.<sup>12</sup>

Around this time, the Department of Labor (DOL) created an initiative, called the Concentrated Employment Programs, to address poverty by providing one-stop jobs-related programming in specific areas.<sup>13</sup> The DOL also created the Work Incentive Program (WIN), established to help those receiving assistance under Aid to Families and Dependent Children (AFDC) find jobs and become self-sufficient. At its peak, WIN had nearly 1,000,000 participants and over \$350,000,000 in funding.<sup>14</sup>

Following two recessions in the 1970s, government policy shifted towards local control and private sector partnership. The budget challenges caused by the dual limitations of inflation and unemployment forced the federal government to reduce spending on workforce development.<sup>15</sup> The Comprehensive Employment and Training Act (CETA) of 1974 gave states and municipalities more responsibility and ownership over the creation and management of job training and public service employment

programs.<sup>16</sup> CETA was later amended to increase services for veterans, migrant workers, and displaced homemakers.<sup>17</sup> It also called for closer monitoring of program effectiveness and private sector partnerships. The Trade Adjustment Assistance Act (1974) provided benefits and funding for services targeting dislocated workers impacted by increased imports and an increase in private sector hiring of foreign workers.<sup>18</sup>

In the 1980s, significant program reductions took place as a result of shifting views towards supply-side economics and limited government.<sup>19</sup> The Job Training Partnership Act (JTPA) of 1984 replaced CETA.<sup>20</sup> JTPA gave further control over programming to states and municipalities. It also called for heavier reliance on the public sector and training for unsubsidized jobs. JTPA also eliminated public service employment and dispersed funds to private industry counsels in an effort to better respond to local labor needs.<sup>21</sup>

In the 1990s, workforce development policy concentrated on skill development because low levels of unemployment and a growing demand for skilled labor moved job placement away from low-skilled positions. The US Department of Education created the School-to-Work Opportunities Act (1994) to fund and support educational initiatives that prepare students for 21<sup>st</sup> century labor skills. Both vocational and traditional programs targeted secondary and postsecondary levels. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) replaced AFDC with Temporary Assistance for



Needy Families (TANF) and, most importantly, tied benefits to work participation requirements.<sup>22</sup> The Workforce Investment Act (WIA) of 1998 focused the country on a demand-driven approach to workforce development through the creation of workforce investment boards and one-stop training centers.<sup>23</sup> Under WIA, workers continue to receive individual training accounts (ITAs) and can spend the funds discretionally.<sup>24</sup>

The past decade has seen limited policy change in the workforce development space in terms of rules and significant change in terms of financing. The 2009 American Recovery and Reinvestment Act (ARRA) significantly increased federal funding for workforce development-related initiatives following the Great Recession. Funding for programming under WIA was nearly doubled, and funding for Pell Grants, work-study programs, and TANF Emergency Funds were increased.<sup>25</sup> Despite this four billion dollar surge under President Obama, funding has never been restored to the amount that was dedicated to workforce development in the 1970s.<sup>26</sup>

## **AN OVERVIEW: PLACEMENT, RETENTION AND ADVANCEMENT**

### **FINDING “GOOD” JOBS**

In “The Road to Economic Self Sufficiency: Job Quality and Job Transition Patterns after Welfare Reform”(2003), Johnson and Corcoran

analyzed the relationship between education, skills, and employment patterns with job quality outcomes for disadvantaged female workers. This study was undertaken following the implementation of PWORA, which ended AFDC and created TANF. The main goal of PWORA was to move recipients off of welfare and back into the workforce. As Johnson and Corcoran noted, PWORA was predicated on the assumption that “consistent work will eventually lead to a living wage and economic self-sufficiency;” however, their findings indicated that welfare recipients had a difficult time finding jobs that would guarantee a living wage.<sup>27</sup>

To explore whether consistent work would lead to self-sufficiency, the authors surveyed single mothers receiving cash welfare and employers of welfare recipients between 1997 and 2002 in Michigan.<sup>28</sup> They found employment instability coupled with insufficient job skills and work experience made it difficult for welfare recipients to be hired for full-time positions with healthy wages, benefits, and opportunities for advancement.<sup>29</sup> Welfare recipients had a difficult time finding good jobs that would, in fact, reduce dependence on welfare.

The results indicated a positive and significant relationship between post-secondary education and work experience with transitions into a good job. Compared to a high school dropout, individuals with some post-secondary education increased the probability of moving into a good job by 40 percent.<sup>30</sup> Each additional year of work experience increased that

probability by 3.4 percent.<sup>31</sup> It is important to note that education and years of work experience became less impactful if a worker had a broad and relevant skillset. Workers with daily responsibilities that called for reading, writing, and computer skills and those charged with supervising other employees were significantly more likely to transition into good jobs.<sup>32</sup> Those with customer service responsibilities were significantly less likely to transition.<sup>33</sup> Furthermore, the study provides evidence that the jobs with the most chance for upward mobility required significant hard skills.<sup>34</sup> This indicates that training programs focused on hard skills valued in the labor market will have the most impact. Additionally, placement services that emphasize finding roles that require the use of hard skills may increase mobility.

The ability to consistently hold a job also improved the chance of transition. Job instability had a statistically significant negative impact on transition; individuals able to hold a stable job were 24 percent more likely to transition into a good job.<sup>35</sup> The reasons for instability are sometimes addressable. Approximately one-third of participants reported the primary reason for job separation as either childcare concerns, health problems or transportation problems.<sup>36</sup> Voluntary job mobility, however, was positively correlated with transition to a good job likely because it indicated that a worker was able to negotiate new or better roles within the same organization or outside it.<sup>37</sup> Since the findings reveal that job stability is key to career advancement, avoidable matters that might prevent job loss,

such as absence due to lack of reliable childcare, transportation or preventative healthcare, must be addressed.

Johnson and Corcoran effectively illustrate the gaps in workforce development services that may prevent economic self-sufficiency. Since most welfare-to-work programs focus on immediate job placement and not longer-term issues like hard skills development, there is evidence that not enough programs are helping the working poor find “good” jobs. Additionally, their research highlights the need for other support mechanisms that will improve job stability. Specifically, improved access to quality childcare, preventative health services, and reliable transportation are important areas to consider.

## **RETENTION AND ADVANCEMENT**

In the policy brief “How Can We Encourage Job Retention and Advancement for Welfare Recipients?” Holzer and Wissoker note that while welfare reform has increased employment rates among current and former welfare recipients, it has not improved job performance, retention, or advancement, which poses a barrier to attaining the levels of wages and benefits that help families achieve self-sufficiency.<sup>38</sup>

Holzer and Wissoker conducted a survey of 3,000 employers across four major Metropolitan areas to investigate employer experience with hiring women on welfare. Respondents felt that 84 percent of recipients were just as good or better than other

workers. Only 16 percent were considered worse. Relatively few suffered from deficiencies in basic or job related skills (10%) and far fewer experienced difficulties with substance abuse (2%). The study did, however, indicate issues with absenteeism (40%), attitudes toward work (15-20%), and relationships with coworkers (15-20%).<sup>39</sup> Absenteeism was often caused by lack of childcare and issues with health and transportation. The study suggests that workers faced difficulties with reliable childcare and transportation or had healthcare concerns that hurt their ability to maintain a regular schedule.<sup>40</sup> Problems with soft skills, such as work readiness and social skills, were more prevalent than those associated with hard skills, such as cognitive or task-related requirements.<sup>41</sup>

One limitation of this study's results is that the sample doesn't include individuals who are the hardest to employ, such as workers with extremely limited skills or experience. Many of the employees were women who had high school degrees and half had specific work experience. Since the majority of hired recipients included in the study had diplomas and work experience, this may explain why they were able to keep jobs and performed at least as well as coworkers. Individuals that have even less experience or education may have different needs.

Holzer and Wissoker's findings have several implications. First, finding a job immediately is a good approach because it maximizes work experience and skill attainment. Second,

absenteeism should be addressed through improved transportation, health care, and childcare services. Third, education and training for soft skills are key for job mobility.

## **EFFECTIVENESS OF DIFFERENT WORKFORCE STRATEGIES**

### **SECTORAL STRATEGIES**

In 2004, the Aspen Institute's Workforce Strategies Initiative published a review of sectoral strategies. The sectoral approach involves focusing on a specific industry sector or occupational group over time to influence systemic change in the hiring, retention, and promotion process within a given field. This area of workforce development is relatively new and there are not yet standards of practice or measurement.<sup>42</sup> Activities among sectoral partners range from research and advocacy to organizing workers and advising corporations.

The *National Network of Sector Partners* defines sector-based workforce development as sharing four common, distinguishing elements:

1. Targets a specific industry to allow for customized solutions;
2. Involves a strategic partner with knowledge and relationships in the targeted industry;
3. Focuses on servicing low-income individuals including unemployed, underemployed, and "hard to employ" groups; and
4. Promotes systemic change that will benefit both employers and

employees.<sup>43</sup>

The main risk associated with the sectoral approach is that heavy investment in one industry makes that specific industry's success critical to the success of any related programming. As noted in "The Road to Economic Self Sufficiency: Job Quality and Job Transition Patterns after Welfare Reform," the business cycle is a strong predictor of the levels at which the working poor will be hired, paid, and retained.<sup>44</sup> For example, reliance on the real estate industry just prior to the Great Recession would have left any workers trained specifically on real estate construction in a difficult position. Once the real estate bubble burst, the home construction industry came to a halt. Of course, in the early 2000s, real estate would have made a very logical sector focus.

The sector-based approach seems promising. A report published by *Public/Private Ventures* (P/PV) in 2010 highlights the key findings from their two-year *Sectoral Employment Impact Study*. The authors used an experimental design to evaluate three programs: 1) The Wisconsin Regional Training Partnership, 2) The Jewish Vocational Service in Boston, and 3) Per Scholas in New York City.<sup>45</sup> The key question that P/PV wanted to answer was, "Do mature sector-focused programs result in significant labor market gains for low-income, disadvantaged workers and job seekers?"<sup>46</sup> The treatment group participants were screened to ensure they possessed basic academic skills, which ranged from sixth grade to tenth grade reading and math levels.<sup>47</sup> The

control group was restricted from receiving services at the study sites for 2 years although they could seek other services elsewhere.

The key findings are telling. Participants in the sector-focused programs earned an average of 18 percent more than the control group over the entire two-year period and an average of 29 percent more over the second year of the two-year period.<sup>48</sup> This indicates that a longer training period will result in greater gains. The higher earnings are a function of participants working more consistently and at higher wages. Participants worked 1.3 more months than the control group and were 11 percentage points more likely to work the entire year.<sup>49</sup> This is evidence that sector-focused strategies can improve job stability. Sector-focused strategies can also improve access to "good" jobs. Participants were 14 percent more likely to work in higher paying roles and 10-20 percentage points more likely to have health benefits through their jobs.<sup>50</sup> These findings held true across race and age and whether participants were formerly incarcerated or welfare recipients.<sup>51</sup>

## **ADULT EDUCATION**

The Manpower Demonstration Research Corporation (MDRC) conducted an evaluation of welfare-to-work strategies designed to improve basic skills. It examined the efficacy of adult education in improving job prospects for welfare recipients without a high school diploma or a GED. Most participants were jobless and single parent women. Key areas of examination included the quality of the

education, how often recipients participated in welfare-to-work programs, whether a high school equivalency was actually obtained, and how valuable additional education is in the labor market.<sup>52</sup>

Participants were compared with other welfare recipients who did not pursue additional education. The participants were mandated to join the program, since they were not currently working.<sup>53</sup> In a typical setting, participants voluntarily join these programs. Since they have opted in, they are likely motivated to take advantage of what the program offers. Mandatory participation presents the risk that participants are not as determined, which will skew results. However, despite potential motivation concerns, both groups gained similarly in literacy and math skills.<sup>54</sup> While the programs did double the proportion of recipients that earned a GED as compared with the control group, the absolute number of recipients who earned that credential was minor (11%).<sup>55</sup>

As might be expected, the longer a recipient participated in the program, the greater the reported learning gains were.<sup>56</sup> The greatest gains were observed in cases where students were significantly lacking in reading and math skills. Another important factor was the teacher's experience, which made class time more meaningful.<sup>57</sup> One important consideration was that the programs did not adjust teaching methods or curricula to meet the needs of the many women, an estimated 25-50 percent who had learning disabilities.<sup>58</sup>

MDRC found that GED attainment is associated with an increase in earnings and reduction in welfare reliance. After three years, earnings increased by \$771 and welfare benefits were reduced by \$331.<sup>59</sup> The authors credit this gain to the credential itself and not necessarily an actual gain in skills. Furthermore, a GED's impact was substantially higher for those participating in the program because of the additional services, such as job placement and career counseling, that could immediately help participants leverage the degree.<sup>60</sup>

## **JOB PLACEMENT SERVICES AND BEYOND**

In "How Effective Are Different Approaches Aiming to Increase Employment Retention?" Richard Hendra and his colleagues evaluate the effectiveness of the Employment Retention and Advancement Project (ERA). The ERA was conceived and funded by the Administration for Children and Families (ACF) under the U.S. Health and Human Services Division, and launched in 1999. Since state and local funding support each location, program design reflects political choices made on the target population.

ERA's mission is to promote steady work and career advancement for current and former welfare recipients and other low-wage workers.<sup>61</sup> This approach is supply-side, or worker-based, and attempts to address obstacles to economic success. ERA intended to build and improve on past efforts in employment retention and advancement compared to simple job placement. To do so, ERA has

partnerships with community colleges, one-stop contractors, nonprofit employment providers, and community-based organizations. This allows for more efficient leveraging of resources and staff schedule flexibility, both of which make it easier for clients to receive services. Many participants in the programs are single mothers who work “unstable, low paying jobs” with no advancement opportunities.<sup>62</sup>

A random assignment research design was used to evaluate twelve program sites over four years.<sup>63</sup> The findings revealed that only three of twelve programs had positive economic impacts of increased employment retention and advancement. Increases in retention and earnings were largest in Corpus Christi and Fort Worth, TX; Chicago, IL; and Riverside, CA.<sup>64</sup> These programs increased annual earnings between 7 percent and 15 percent relative to control groups.<sup>65</sup> Each program served different targets so there is evidence that it can work across populations. Most programs (nine out of twelve) did not see impacts.

All sites offered one-on-one staff interaction and an in-depth assessment of needs completed to identify interests, barriers, and potential mental health or substance abuse problems.<sup>66</sup> Some programs provided financial incentives and others simply encouraged job changes or education/training and counseling on job related issues.<sup>67</sup>

Texas ERA offered a \$200 stipend per month for former TANF recipients working at least 30 hours per week enrolled in the program.<sup>68</sup> The Corpus

Christi location increased average annual earnings by \$640, or approximately 15 percent, over the four-year period when compared to the control group.<sup>69</sup> These results indicate a long-term impact. The Fort Worth location increased earnings by \$900, or 17 percent, in the third year of follow up as compared to the control group.<sup>70</sup> This program appeared to improve recipients’ employment outcomes over time.<sup>71</sup>

The Chicago, Illinois site was a mandatory, work-focused advancement program. The program raised average annual earnings by almost \$500, or seven percent, relative to the control group.<sup>72</sup> Even though the site increased retention and earnings in the short-run, the advancements weakened over time.<sup>73</sup>

The Riverside, California site was characterized by voluntary and individualized services through three community-based organizations and a community college.<sup>74</sup> The program’s increased retention and earnings gains were large and consistent. Specifically, the program increased average annual earnings by \$870, or 10 percent, over a four-year period.<sup>75</sup> Additionally, it had the largest impact on earnings in the last year of the study with a gain of \$970.<sup>76</sup> This is evidence of potentially increasing impacts on earnings, indicating longer-term gains.<sup>77</sup>

There were several key challenges that each site faced. A main barrier to success was effectively engaging and motivating individuals to enroll in employment and retention services at high levels.<sup>78</sup> A lot of marketing and

outreach was needed to get people into programs.<sup>79</sup> Initial contact was common but sustained contact was difficult. Additionally, job loss was often so swift and unpredictable that staff constantly had to refocus their efforts on job placement rather than advancement counseling; there simply were not enough resources to do both consistently.<sup>80</sup>

An understanding of the challenges from each program highlights key learnings. Job placement can be effective but needs the right employees. Effective staff members need to have strong outreach and motivation skills. Additionally, identifying and hiring the right staff that is trained to counsel on retention and advancement, beyond placement, is also important.

## CONCLUSION

Based on the academic literature on workforce development and evaluation insights on similar programs, there are four recommendations that can improve the results of workforce development efforts for disadvantaged workers:

1. Focus skills development on relevant hard and soft skills;
2. Improve job stability with access to reliable childcare, preventative healthcare, and accessible transportation;
3. Continue the practice of immediate job placement, but do not neglect advancement and retention services; and
4. Increase federal funding to expand services and allow for hiring of skilled staff.

Skills are critical. Disadvantaged workers with the right skills can find work even if they don't have certain educational credentials or many years of work experience.<sup>81</sup> It is necessary to focus on relevant and in demand skills. For example, based on employer needs, there should be a focus on computer skills over customer service skills. This will ensure access to good jobs. Additionally, soft skills also matter and are a contributing factor to retention and advancement.<sup>82</sup>

Job stability is an important component in retention and advancement.<sup>83</sup> Absenteeism is a threat to an employee's ability to keep a job.<sup>84</sup> This is a challenge for the working poor, often due to unreliable childcare service, inaccessible transportation or poor health. Local and state level agencies and community-based organizations should partner to improve the services in these areas. Strengthening the availability of adequate childcare and transportation as well as improving healthcare access will ensure residents can consistently show up to work, thereby reducing absenteeism and increasing retention rates.

Immediate job placement is the right approach. It reduces financial pressures on workers and may provide relevant work experience that will be useful in future roles.<sup>85</sup> However, retention and advancement efforts are just as important because they improve the chance for self-sufficiency. The literature indicates that the types of resources and counseling skills needed for job placement versus retention and advancement are distinct. The careful

selection and allocation of staff members to each goal may help balance appropriate attention levels.

Finally, critical to positively impacting the workers most in need of help is restoring funding levels for relevant programs. As discussed under the history portion of this paper, workforce development efforts have lost both funding and focus over the years. If the United States is to close the wage gap, it will need to devote more resources to this important issue.

Workforce development is a broad and changing space. While early focus on vocational training has remained core to the heart of this area, how that training is delivered and under what circumstances has evolved. This paper explored the effectiveness of three different approaches: sector-based strategy, adult education, and job placement services. Each of these approaches offers value to workers. The evaluations discussed here indicate that the sectoral strategy is a very effective approach because of the marked increased earning potential, improved job stability, and consistent impact across different subgroups.<sup>86</sup> Adult education and job placement, however, should not be discounted. A GED credential and immediate job placement is a straightforward way to quickly impact earnings (US).<sup>87,88</sup> Based on these insights, a mix of strategies that are tailored to individual needs and abilities is likely the most effective approach to improving workforce development programs. Legislators and leaders in this field should incorporate the best aspects of each strategy in their efforts to empower disadvantaged workers.

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# UNDERUTILIZATION OF HOSPICE CARE IN NEW YORK CITY: AN ANALYSIS OF THE 2012 DARTMOUTH ATLAS

Anna Rosenblatt & Sarah Cunningham

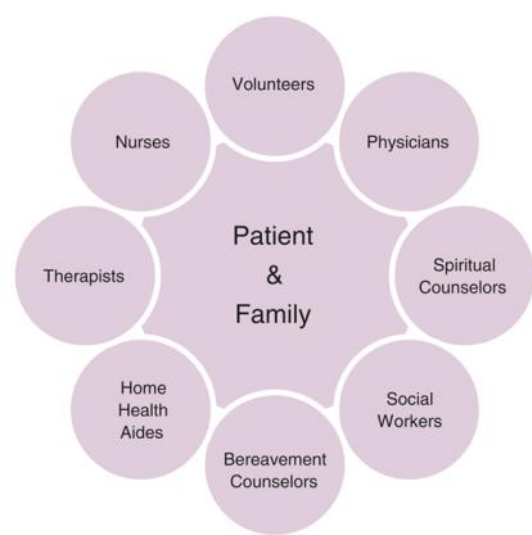
**ABSTRACT** *Hospice care, designed to help patients live the end of their life in the most comfortable and fulfilling manner possible, is being underutilized in some parts of the United States, both in duration of service and referral for hospice service at all, with substantial variation across the country. Low utilization of hospice leads to more people dying without comfort centered care and using expensive and often painful measures at end-of-life. The 2012 Dartmouth Atlas of Health Care provides data on variation in clinical care among the health care market in the U.S. based on Medicare claims data. This paper uses data in the Dartmouth Atlas to explore variation in hospice referrals and duration of use in New York City and around the country.*

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# INTRODUCTION

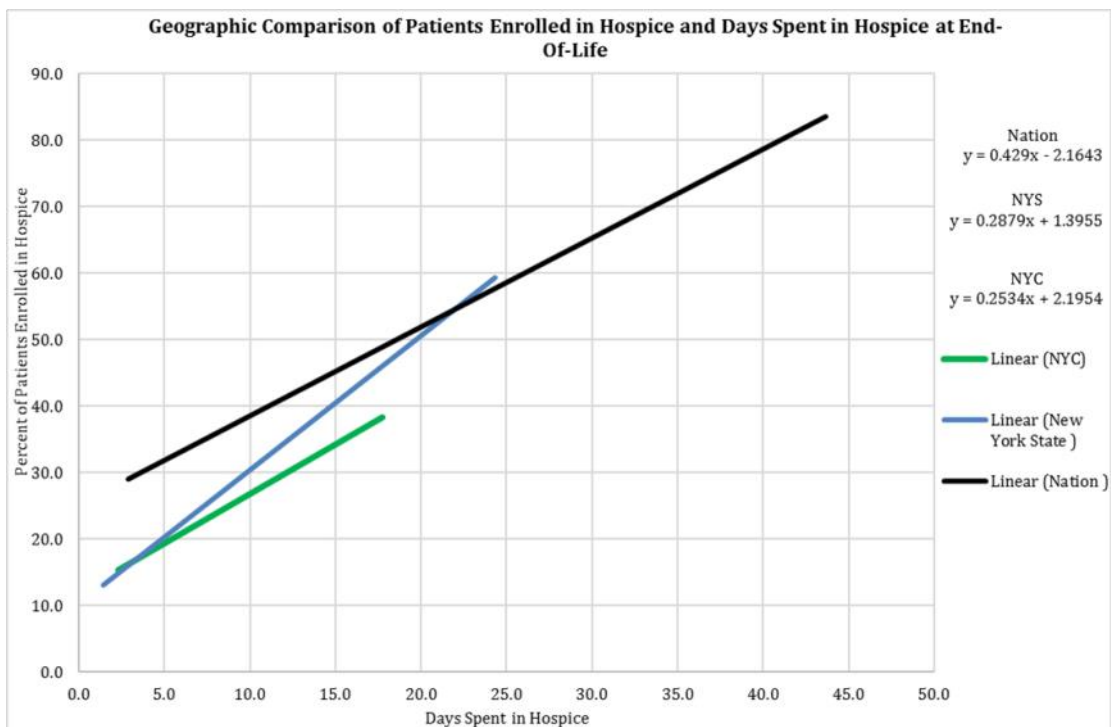
Hospice care covers a range of services for patients in their last six months of life and their loved ones, including palliative care, emotional and spiritual support, and grief counseling. These services can be delivered in the patient’s place of residence or in designated hospice residential facilities, such as a hospice designated floor of a hospital.<sup>1</sup> Hospice is designed to help patients live the end of their life in the most comfortable and fulfilling manner possible and to cater to the specific needs of family members as they cope with the impending death of a loved one. An interdisciplinary team (Figure 1) of health care professionals collaborates to make a customized plan for palliative care and symptom control for each individual patient.<sup>2</sup> Hospice coordinates plans and allow patients control in their last months.



**Figure 1:** The Interdisciplinary Patient & Family-Centered Care Model of Hospice Care  
Source: National Hospice and Palliative Care Organization

Currently, hospice care is being underutilized in some parts of the United States, both in duration of service and referral for hospice service at all, with substantial variation across the country. Low utilization of hospice leads to more people dying without comfort centered care and using expensive and often painful measures at end-of-life.<sup>3</sup> The 2012 Dartmouth Atlas of Health Care provides data on variation in clinical care among the health care market in the U.S. based on Medicare claims data. This paper uses data in the Dartmouth Atlas to explore variation in hospice referrals and duration of use in New York City and around the country. Although hospice is offered to patients expected to be in their last six months of life, the Dartmouth Atlas measured patients who were put on hospice services at some time in their last two years of life, so the data in this paper will be based off of a two year time period.

The national average of patients utilizing hospice in their last two years of life is 51%, while in New York State the number is lower at 31.4%. Surprisingly, in New York City, with some of the most advanced health care facilities in the nation, the average is even lower at 24% of patients enrolled in hospice at end-of-life.<sup>4</sup> The hospitals that are referring patients to hospice tend to do so earlier than hospitals that have lower admission rates. According to data from the Dartmouth Atlas, seen in Figure 2, hospitals in New York City that report higher enrollment in hospice also report higher days of utilization per patient, meaning patients are in hospice care for a



**Figure 2:** Percentage of Patients Enrolled in Hospice During the Last 2 Years of Life and Average Number of Days in Hospice Care per Patient: Comparison of National Average, New York State and NYC Practice

Source: The Dartmouth Atlas, 2012

greater number of days, although the number of enrollees in hospice is still underutilized overall.<sup>5</sup> This comparison is illustrated in Figure 2.

There are several potential explanations for the low rate of referral for hospice care in NYC, as compared to the national average. This paper will explore several of these possibilities, in hopes of identifying ways to increase the use of this valuable service.

## PHYSICIAN UNCERTAINTY HYPOTHESIS

One common reason for unexplained variation in clinical care is known as the “physician uncertainty hypothesis.”<sup>6</sup> This hypothesis is based

on the concept that when there is a lack of clarity within clinical practice about what practice is best or when to refer for care, variation arises as different physicians legitimately make different choices. As David Eddy described in his Health Affairs article, “It is not possible for anyone, even physicians, to accurately process in their heads all of the information needed for a complex medical decision. Decisions could not be based solely on the art of medicine or clinical judgment; some other anchor had to be found.”

In particular, physician uncertainty arises where there is a lack of clear clinical guidelines. This is the case with hospice care.

Physician uncertainty about treatment plans for patients at end-of-life is a significant factor explaining this variation of medical practice. There are few consistent guidelines for clinicians regarding how to determine when to stop applying end of life measures, and few incentives to ensure that patient preferences are informed and fully understood by the clinician. Because physicians are often making medical decisions for their patients based upon "if...then" statements instead of reasoned, evidence-based medicine,<sup>7</sup> it can be easy for them to want to try all kinds of treatment available if a patient is at end-of-life. Overtreatment in the last months of life is just beginning to be researched. The authors who are a part of the Dartmouth Atlas project produced a paper in 2010 documenting the '*Quality of End-of-Life Cancer Care for Medicare Beneficiaries Regional and Hospital-Specific Analyses*' Their findings showcased how little counseling is provided to patients regarding the extent of their prognosis and the full range of care options, often resulting in overtreatment that diminishes quality of life. Their findings concluded that; "[t]he patterns of end-of-life cancer care presented in this report are partly the expression of patient preferences, but much more of local approaches to care and patterns of practice."<sup>8</sup>

Physicians have a responsibility to present all treatment options to their patients who are faced with the difficult decisions at end-of-life, including early palliative care and hospice. Physicians who don't introduce these comfort centered care options to the patient are relying more heavily on disease treatment, creating

a stark divide between sustaining life and doing nothing. The options of treating the symptoms (palliative care and hospice) and treating the disease should be presented by the physician as equal.

Sociocultural factors in medical training and care may also influence the underuse of hospice by physicians. Physicians may be reluctant to discuss end-of-life options because they do not want their patients to feel like they are giving up on them. Diane Meier elaborates on this idea in her *Health Affairs* article titled '*I Don't Want Jenny to Think I'm Abandoning Her': View on Overtreatment*.'<sup>9</sup> Meier describes a physician's approach to end-of-life care: "It seemed that the only way Jenny's oncologist knew to express his care and commitment for her was to order tests and interventions. He felt that to stop doing this was akin to abandoning her. His words transformed my understanding of what I've viewed as inexplicable behavior in the face of progressive and terminal illness."<sup>10</sup> Meier claims that this is a standard perception for physicians.

## **LACK OF KNOWLEDGE HYPOTHESIS**

In addition to physician uncertainty about best course of end-of-life care, another hypothesis that could explain why physicians are not referring patients to hospice at a below average rate in NYC is because physicians are uncomfortable having a frank consultation with their patients about end-of-life considerations. This

practice style is thoroughly discussed in Meiers' article as well. She explains, "Over treating patients near the end-of-life is a major driver of low-value care. To improve the quality of care and reduce costs, future clinicians must be trained in the core skills of care during serious illnesses and near the end-of-life: communication with patients and families about what matters most to them, expert pain and symptom management, and coordinated care across the trajectory of an illness."<sup>11</sup>

Current under-utilization of hospice care may be attributable to physicians being unwilling, or perhaps unable, to have frank discussions about end-of-life with their patients, in conjunction with patients' unawareness about the benefits of hospice enrollment.<sup>12</sup> Mortality can be a terrifying fact of life. A common phrase physicians hear from families is, 'do all you can'; out of fear of giving up on their patients, and based on clinical training, many physicians do just that. This second explanation for why such a small percent of patients in their last two years of life are enrolled in hospice programs in New York City attributes this variation to physician lack of knowledge.

In medical schools, young physicians in training are taught how to heal patients, however they lack education in how to best care for dying patients. In four years of medical school training, only seventeen hours are devoted to end-of-life discussion.<sup>13</sup> With end-of-life care not a central part of their medical training, physicians may not feel like it is their role to

broach the topic with their patients or be adequately prepared to do so.

Physicians may also reasonably assume that another health care provider is the primary source for end-of-life options information. Patients receiving end-of-life care in New York City see an average of 14 physicians for an average total of 45.6 physician visits.<sup>14</sup> Lack of communication between providers could explain the poor rates of referral for hospice in NYC, with providers shifting the responsibility for be uncomfortable end-of-life conversations for which they are poorly trained to other providers.

Patients and their families may prefer treatment at end-of-life to take place in an Intensive Care Unit (ICU), where the patient receives round-the-clock medical attention. They may not realize the exorbitant costs associated with that type of care often do not produce any greater results for the patient. If patients and their families become educated about hospice care, they may decide that the quality of life benefits outweigh the intense medical care.

There is an ingrained notion among physicians that they must always be able to heal, and so they themselves have difficulty accepting that a patient is beyond their ability to save. In order for physicians to be able to lead proactive discussions with patients about hospice, they first must be able to identify when patients are within the last six months of their life and be comfortable leading a discussion about the options and road ahead. Not only does this stem from a lack of

guidelines on this, but also a serious lack of training. Physicians are vital to directing patient care, it is important that they recognize the limits of their training.

## **LACK OF ACCESS HYPOTHESIS**

Patient access to hospice requires patient knowledge of hospice, which in most cases would need to come from a treating physician, due to the relative unfamiliarity of many patients with end of life options. It is possible that so few patients are enrolled in hospice care in NYC because few patients were introduced to hospice in an appealing way or educated about hospice at all. Hospice is not yet a term that has entered the American vernacular. If a patient has leg pain after a fall, he or she would know to request an x-ray or other imaging scan to determine if the leg is broken. If a patient is not familiar with hospice, then he or she is not educated enough to request to be enrolled in that type of care. Because at present health care is largely patient-driven, hospice is, for now, a discussion that the physician must initiate. However, because physicians are tentative at best, as established above, to talk about end-of-life with patients this avenue is all but closed, resulting in a lack of access.

## **PATIENT PREFERENCE HYPOTHESIS**

Neighborhood influences may also be instrumental in explaining variation from the mean for NYC hospice care.

There may also be a so-called “neighborhood effect” at play, where the popularity of hospice among people living in the same geographic area is directly related to the utilization.<sup>15</sup> New York City’s utilization of hospice is well below the national average and still below New York State’s average. This might be due to a reverse neighborhood effect where it is perceived by patients that hospice care is undesirable, as they do not have peers who select it, or that no quality hospice care exists in New York City. If a city, or any geographic area, were to have a particularly high quality hospice with patients and their families having positive experiences, it might change the culture and social norms in that city.

New York City appears to not boast a neighborhood effect through which patients are keen to enroll in hospice care.

## **SUGGESTIONS FOR INTERVENTIONS**

Physician lack of knowledge could be addressed through increased training in communication skills for discussing end-of-life care options with patients and family members. Education and training at medical school and residency can be a pathway to transform physician culture and certainty regarding patient communication. But communication about end of life is not currently just a challenge for physicians. All health care providers, from nurses and technicians, to physical therapists and social workers, should be versed in



proactively bringing up the topic of end-of-life care before patients' health situations become dire. Making communication a part of the medical education curriculum for all health care providers would go a long way toward reducing unwarranted variation and underutilization in hospice services.

Physicians may not have the medical training to communicate decisions about end-of-life care to their patients, but overtreatment at end of life, the current standard practice in low hospice parts of the country such as NYC, is not the solution. Promotion of hospice use through channels addressing each of the potential mechanisms discussed above presents an opportunity to reduce cost and increase quality.

Physician uncertainty would also be reduced through increased training in the value of hospice services. Physicians should have a comprehensive understanding of what hospice care is, how it is delivered, and how it differs from other types of pain management and palliative care when they graduate from medical school.

The access barrier to access noted above could be addressed by expanding the number of providers empowered to present end-of-life options to patients. Hospice education should be extended to all health care providers, including nurses, to bridge this barrier to access. Because nurses interact with patients more regularly than physicians, they may be better equipped to notice subtle signs indicating a patient's readiness to discuss end-of-life decisions. Nurses could initiate discussions with

physicians as well as lend support and information to patients and families post-consultation.

Along with increased medical training for hospice and end-of-life care for medical professionals, a public awareness program would help to break down barriers to care and reverse the negative neighborhood effect hypothesized for NYC. If the New York City Department of Health and Mental Hygiene, New York City hospitals, community health centers, and private practices were joined together in support of hospice care and voiced that support through their various networks and channels, the number of patients enrolled in hospice may increase through neighborhood effect and through increased physician referral. There is an opportunity to educate the general public and create more public awareness around options at end-of-life. Having informed patients could also change the way care is delivered.

## CONCLUSION

New York City's underutilization of hospice can be attributed to professional uncertainty, lack of knowledge, lack of access to care, or a neighborhood effect; any of these factors, and others left unexplored, could combine to produce the unwarranted variation in end of life care observed in NYC. Updating the medical education curriculum to include end-of-life care clinical knowledge and communication skills could go a long way in transforming New York City's hospice enrollment from 24.4% towards the national

average. It is also important that hospice enter the vernacular. One way to address this would be through a public awareness campaign. Any of these approaches alone may not address the underlying cause of the low rate of hospice referral in NYC, so they are best used in combination. If adopted, these solutions could offer stronger care and reduce costs across NYC.

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*Sarah Cunningham is a health policy graduate student at New York University's Wagner School of Public Service. She is a strategy and communications consultant for Booz Allen Hamilton, helping military health clients and government health agencies solve complex public health problems. She earned a bachelor's degree in Government from the College of William and Mary.*

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## 421-A – THE DEVELOPERS’ TAX BREAK

Jesse Schwartz

**ABSTRACT** *This paper explores the theoretical underpinnings of New York City’s 421-a property tax abatement program. It makes the claim that 421-a is neither an efficacious tool for incentivizing new developments in bear markets, nor is it efficient at generating affordable housing even in bull markets – an unfortunate irony considering these constitute the purported raison d’être for the law. The prodigious opportunity costs of 421-a tax expenditures – the foregone revenue that would have otherwise been collected had no tax break been afforded – and the gross public finance distortions it engenders are discussed. It is subsequently argued that the law, a holdover from 1971, “is a prime example of a New York City housing policy that benefits the wealthy and does little to serve the public interest” (Williams 2015). Subsequent recommendations for remedying these ills are expounded.*

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# INTRODUCTION

This paper explores the theoretical underpinnings of New York City's 421-a property tax abatement program. It makes the claim that 421-a is neither an efficacious tool for incentivizing new developments in bear markets, nor is it efficient at generating affordable housing even in bull markets – an unfortunate irony considering these constitute the purported *raison d'être* for the law. The prodigious opportunity costs of 421-a tax expenditures – the foregone revenue that would have otherwise been collected had no tax break been afforded – and the gross public finance distortions it engenders are discussed. It is subsequently argued that the law, a holdover from 1971, "is a prime example of a New York City housing policy that benefits the wealthy and does little to serve the public interest."<sup>1</sup> Subsequent recommendations for remedying these ills are expounded.

## WHAT IS 421-A?

In its current iteration, the 421-a tax incentive program is a supply-side benefit granted to developers, which provides ongoing tax relief for 10, 15, 20, and 25 years for new multi-family constructions.<sup>2</sup> According to the New York City Department of Finance (DOF), it serves "to promote construction of multi-family residential buildings with at least three dwelling units by providing a declining exemption on the new value created by the improvement."<sup>3</sup> To understand the controversy and enmity this statute inspires, a further examination of its genesis and development are in

order.

## THE POLICY LANDSCAPE

The 421-a program traces its origins to 1971 New York City, a city far different than today's. By the early 1970s, one in every seven apartments was abandoned, and the city was beginning to experience the throes of a recession that would soon cost it nearly half a million jobs and a large percentage of its manufacturing base.<sup>4,5</sup>

Coinciding with this emerging economic reality, poverty and crime began to ravage the city. By 1980, there were close to 2,000 murders a year. "White flight," or the large-scale migration of white residents to the suburbs, took hold – and the city witnessed its population and tax base rapidly decrease from eight million to roughly seven million in just a decade.<sup>6</sup>

When Mayor Lindsay received state legislative approval in 1971 for the first 421-a provision, New York City had not yet reached its fiscal and social nadir. Nevertheless, the housing market had begun to exhibit troubling signs, a historic harbinger of tough times ahead. The number of privately-owned, new residential building permits had precipitously dropped from over 25,000 in 1965 to nearly 15,000 just five years later.<sup>7</sup> Furthermore, nearly all of that new housing construction was confined to Staten Island and Manhattan as a result of the Comprehensive Amendment to the New York City Zoning Resolution, which had passed in 1961.<sup>8</sup> When coupled with the

aforementioned trends, the city's overall economic outlook had become quite ominous.

## THE BIRTH OF 421-A

Given this inauspicious economic landscape, New York State enacted Section 421-a of the Real Property Tax Law in 1971. As conceived, 421-a was created to spur demand in the downtrodden housing market and, in due course, energize the suffering economy.

The program dictated that taxes on the construction of new multi-family homes on vacant or underutilized land be granted a full "exemption on the increased value during the period of construction and for 10 years thereafter. In exchange for the tax break, the residential units had to be leased at 15 percent less than market rents and were subject to rent stabilization throughout the benefit period."<sup>9</sup>

For illustration's sake, the Marais, a building at 520 W. 23<sup>rd</sup> St., had an assessed value of \$313,280 on its property and existing edifice, resulting in an annual property tax bill of roughly \$34,000. Upon completion of the new building, the assessed value of the property would have increased to approximately \$7.75 million. Before the 421-a arrangement, the building's owner would have had to pay close to \$1 million in yearly property taxes due to the increase in the property's assessed value. Following 421-a, however, the owner would now pay only \$40,000 in property taxes for each of the ensuing 10 years – the \$6,000 jump from \$34,000 being the

result of a small hike in the city's property tax rate.<sup>10</sup>

By affording tax exemptions, the city and state sought to provide a more financially attractive environment for developers to build condos, co-ops, and rentals – all of which remain covered by the program. Apartment owners and renters, the belief went, would reap those tax benefits and soon move in.

Before proceeding, it is important to note that the original 1971 law was not drafted with any intent to catalyze the development of affordable housing, despite the 15 percent discount allotted to 421-a apartments. By trading public dollars (through granting tax exemptions), the city was simply seeking to promote "new construction of *any* multi-family housing developments through the use of tax abatements to developers, regardless of whether they were affordable or market-rate."<sup>11</sup>

The city narrowly averted bankruptcy in 1975, yet it continued to traverse a path with fiscal doom until as late as 1979. In fact, it was not until 1985 that the city once again became self-reliant. This marked the first year in a decade that the city no longer required the financial assistance and oversight of the Municipal Assistance Corporation, which had been created to manage its financing throughout the bankruptcy crisis.<sup>12</sup> Around this time, the housing market started to recover and 421-a began to look less like a tool for economic development and more like a free tax give away, particularly for luxury developments in Manhattan.

Between 1971 and 1987, over 60,000 units were constructed under the auspices of 421-a. To that point, the estimated tax exemptions had cost the City \$550 million.<sup>13</sup> In due time, though, there “was a growing consensus that the costs were outweighing the benefits, rendering the program inefficient.”<sup>14</sup> In the aforementioned Marais example, New York City was receiving an increase in tax revenues of only \$0.55 for every \$1 it had foregone through the tax exemption.<sup>15</sup>

Additionally, “The original intent of the program was continuously shrouded in controversy as many claimed that the exemptions were given to projects that would have been built without such incentives,” an assertion that persists to this day.<sup>16</sup> Paramount among those concerns was that “the tax exemption program was unjustifiably advantageous to luxury developers and that communities in Northern Manhattan and the outer boroughs were not benefiting enough under the law.”<sup>17</sup>

#### **TRUMP TOWER: 421-A ELIGIBLE?**

Events came to a head on July 5, 1984, when the New York Court of Appeals ruled that the site for the Trump Tower – located at the tony intersection of Fifth Avenue and 56th Street – “qualified for the ‘underutilized sites’ definition and was, therefore, eligible for \$20 million” in tax exemptions under 421-a.<sup>18</sup>

The program was soon amended when the New York State Legislature endorsed a 1985 City Council proposal

to eliminate the unnecessary, “as-of-right” tax breaks to developers for some of the world’s most innately desirable land. A geographic exclusion area (GEA) was designated, stretching roughly from 96<sup>th</sup> to 14<sup>th</sup> street in Manhattan.

Within the GEA, a development would only be 421-a eligible under two conditions. 1) If the developer agreed to provide 20 percent of the on-site units in the form of affordable housing. Or 2) for those developers who sought to build exclusively market-rate housing, a tradable “negotiable certificate” had to be purchased. It would then be used to create affordable housing elsewhere in the city.<sup>19,20</sup> This represented a serious departure from the 1971 law’s initial objective, as affordable housing had now entered the lexicon. Outside of the GEA, however, developers retained their as-of-right status to tax expenditures without concessions to the city or its residents.

The reform also swapped out the original 10-year tax exemption provision for a new tax abatement feature. Upon completion of any new 421-a eligible buildings, tax exemptions would begin to phase out an increasing rate every two years. In other words, a 421-a building would only receive complete tax exemption for the first two years of its existence. But the length of the abatement period, under which 421-a buildings received reduced property tax assessments, was extended from 10 years (to 25 years now) as a concession to developers.

The program’s original intent had thus

shifted. Originally aimed at catalyzing housing starts in exchange for 10 years' of foregone tax revenues, 421-a remained a program quasi-g geared toward the goal of jump-starting the real-estate market. Although, now, there was a different tax-relief timeframe in place, and affordable housing – built *anywhere* in the City – had become a caveat for rights to tax-abated development within a prime swath of Manhattan real estate.

## ANALYSIS

### TRENDS CAPTURED OVER TIME

The data that inform this section of the paper are drawn from the 1998-2013 DOF annual reports on tax expenditures. These reports are mandated by New York City's charter and utilize a targeted, narrow approach to calculate expenditures via "provisions of city-administered taxes that are intended to confer special tax benefits."<sup>21</sup> The New York City Independent Budget Office (IBO) provided data for 2014-2015 calculations.

In breaking down the DOF's annual reports on tax expenditures across variables of interest, an illustrative pattern begins to emerge. Even a cursory glance at the city's enormous increase in 421-a tax expenditures over the past 17 years should raise eyebrows. Simply put, the program costs the city a tremendous amount of money in foregone revenues, which amount to government subsidies for the developers who receive them.<sup>22</sup>

In 1999, the 421-a tax program cost

New York City nearly \$79 million in foregone revenues. This represented 31 percent of all the city's housing development expenditures and 12 percent of the City's roughly \$662 million in total foregone revenues.

By 2007, the first year under which 421-a constituted the city's largest expenditure program, 421-a cost the city \$500 million in foregone revenues, and had swollen to 59 percent of housing expenditures and 25 percent of all city expenditures.<sup>23</sup> Whether viewed in absolute or percentage terms, these increases are stark. What was driving this astounding expansion in program costs? The simple answer is the boom in market-rate and luxury developments, and the tax breaks afforded to them by 421-a.

### CONNECTIONS BETWEEN DATA TRENDS AND FURTHER CHANGES IN POLICY

By 2003, 69,000 New York City housing units had been subsidized by 421-a since the 1985 reform. Of those, only seven percent were deemed affordable to low or moderate-income families.<sup>24</sup> Adding insult to injury, the negotiable certificate program allowed 421-a developers within the GEA to "contribute as little as 12 to 15 cents for affordable housing (in the Bronx) for every \$1 of forgiven taxes on luxury buildings (in Manhattan)," effectively rendering the policy objectives of the 1985 reform obsolete.<sup>25</sup>

As increasingly "hot" areas of Manhattan fell outside the GEA, 421-a was still subsidizing developments that

Year	421-a Tax Expenditures	% Change	Total Housing Development Expenditures	421-a as % of Total City Housing Expenditures	Total City Tax Expenditures	421-a as % of Total City Expenditures
1998	\$87,900,000		\$260,800,000	33.7%	\$576,400,000	15.2%
1999	\$78,900,000	-10.24%	\$253,900,000	31.1%	\$662,500,000	11.9%
2000	\$104,800,000	32.83%	\$283,400,000	37.0%	\$724,100,000	14.5%
2001	\$111,300,000	6.20%	\$289,200,000	38.5%	\$778,000,000	14.3%
2002	\$130,000,000	16.80%	\$333,800,000	38.9%	\$873,900,000	14.9%
2003	\$181,600,000	39.69%	\$402,500,000	45.1%	\$1,014,000,000	17.9%
2004	\$251,800,000	38.66%	\$505,500,000	49.8%	\$1,241,300,000	20.3%
2005	\$322,500,000	28.08%	\$616,800,000	52.3%	\$1,660,200,000	19.4%
2006	\$408,300,000	26.60%	\$728,800,000	56.0%	\$1,859,300,000	22.0%
2007	\$500,500,000	22.58%	\$846,400,000	59.1%	\$2,020,100,000	24.8%
2008	\$540,600,000	8.01%	\$922,700,000	58.6%	\$2,190,200,000	24.7%
2009	\$606,800,000	12.25%	\$989,700,000	61.3%	\$2,342,400,000	25.9%
2010	\$754,700,000	24.37%	\$1,146,200,000	65.8%	\$2,370,900,000	31.8%
2011	\$911,600,000	20.79%	\$1,310,800,000	69.5%	\$2,657,500,000	34.3%
2012	\$1,032,700,000	13.28%	\$1,443,800,000	71.5%	\$2,863,400,000	36.1%
2013	\$1,062,900,000	2.92%	\$1,533,700,000	69.3%	\$3,010,400,000	35.3%
2014	\$1,102,417,138	3.72%				
2015	\$1,149,611,429	4.28%				
<b>Total</b>	<b>\$9,338,928,567</b>	<b>291%</b>				



would have likely been built anyway. Matthew Schuerman, a reporter for the *New York Observer*, found that over 80 percent of the 421-a development exemptions from 1987 to 2006 were given after 1999, with a majority occurring between 2004 and 2006, when the real-estate market was fecund and had attained new, post-September 11<sup>th</sup> heights.<sup>26</sup>

This would seemingly indicate that 421-a was not a causal mechanism in catalyzing housing starts in depressed markets, but rather a tool utilized by developers to reap tax rewards whenever the market dynamics were instead ripe for new starts. This is supported by time-series data correlating increased housing starts within New York City not with 421-a, but with population growth, increased gentrification, and declining interest rates on loans.<sup>27</sup>

All of SoHo, NoHo, TriBeCa, the Lower East Side, the East Village, and the Financial District were located outside of the GEA – as was the entirety of Brooklyn (aside from Williamsburg) and all other New York City boroughs. All across the city, as-of-right luxury housing had begun proliferating at an incredible pace. However, only a paucity of new growth came in “up-and-coming neighborhoods where development might need to be nourished.”<sup>28</sup> In the words of Schuerman, “Far from trailblazing, it looks as if the 421-a program is merely gilding a well-traveled road.”<sup>29</sup>

## **MASSIVE OVERHAULS – SIMILAR OUTCOMES**

During the program’s entire history,

spanning from 1971 to 2007, less than 5,700 units of affordable housing had been sponsored under 421-a.<sup>30</sup> Yet, between 1999 and 2007 alone, nearly \$2 billion in tax breaks associated with the program (see above table) had been showered upon developers and their tenants – often millionaires and billionaires.

These stark disparities prompted lawmakers to alter the program in late 2006. Paramount among the changes, enacted by July 2008, were:

- The expansion of the GEA to include all of Manhattan south of roughly 125<sup>th</sup> street, portions of gentrified Brooklyn and the waterfront from Red Hook north to Astoria;
- The extension of as-of-right benefits to 25 years for developments outside the GEA that included affordable housing, and the elimination of all other 25-year as-of-right benefits;
- The abolition of the negotiable certificate program – which essentially made on-site affordable housing a requirement for any developments within the GEA. Outside the GEA, developments with five or more units maintained their as-of-right discretion to build under 421-a’s benefits program without providing any requisite public benefit;
- An initial exemption cap of \$65,000 for any market-rate unit outside the GEA that receives the 421-a exemption;
- A 95 percent property tax reduction for eight to 21 years, after which taxes are gradually raised back to normal rate over the

final two to four years;

And a thirty-five year affordability and rent stabilization requirement for units built within the GEA.<sup>31,21,33,34,35</sup>

## **INFORMATION FOR FORWARD-LOOKING POLICYMAKERS**

The 2006-2008 reforms should have amended the follies of 1985 and brought the program in line with the city's priority to address its affordable-housing shortfall – the ostensible rationale for maintaining this developer tax break. Regrettably, the law's revamping has “not changed the program much,” claims Thomas Waters, a housing policy analyst at the Community Service Society.<sup>36</sup>

To illustrate this point, for new construction outside the GEA, developers are given the option of deciding between a 15-year subsidy without affordable housing or a 25-year subsidy that includes 20 percent affordable housing. Virtually none choose the latter.<sup>37</sup> A recent analysis of 421-a beneficiaries from 2014 provides further evidence of this. 153,121 residential units in the study received a 421-a break last year, but best estimates indicate that only 12,748, or 8.6 percent, of those are actually affordable housing units.<sup>38</sup>

Thus, the mid-2000 reforms have done little to ameliorate the inefficiencies associated with the 421-a tax break. The compiled DOF data demonstrate that 421-a tax expenditures, 421-a as a percent of total city housing

expenditures, and 421-a as a percent of total city expenditures have continued to grow at astounding rates since 2007.

This, in and of itself, is not inherently problematic if the city is meeting its objectives, which at this point have become muddled by the law's mutations. What is problematic, however, is that over a 10-year stretch from 2004-2013 the city had, by best estimates, only garnered 10,000 to 15,000 new affordable housing units under 421-a at an astounding cost of \$6.4 billion in foregone revenues (the sum of 2004 to 2013 421-a tax expenditures).<sup>39</sup>

### **OPPORTUNITY COSTS**

The opportunity costs of the program are, in fact, staggering. Using conservative estimates, the city could have produced four times the amount of affordable housing if it had utilized those funds directly.<sup>40</sup>

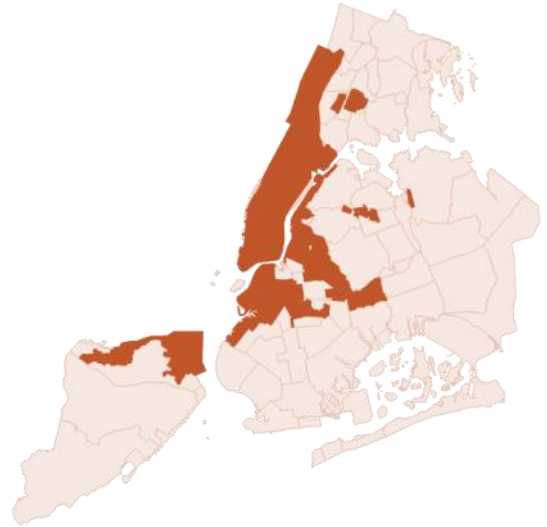
The IBO estimates \$1.15 billion in foregone revenue stemming from 421-a for FY 2015 – the highest total ever. To put this in perspective, consider that the cumulative estimated costs for all Mayoral (FY 2014 and 2015 combined) and City Council (FY 2015) priorities comes in at just under \$800 million. Those include all funding for major initiatives and improvements to health, housing, and social services; the New York City Housing Authority; public protection; education; transportation and small business services; and assorted borough-wide programs and City Council local initiatives.<sup>41</sup>

With \$1.15 billion in foregone revenue, the city could have funded each of the following 15 initiatives (at \$10 million each) and *still* have had \$1 billion dollars remaining:

- 887 Head Start slots for child care;
- 159 new teachers;
- 12.4 billion gallons of wastewater treatment;
- Nine new fire trucks;
- Early intervention health services for 719 children;
- 272 homeless family shelter units;
- 1010 summer pool and beach lifeguards;
- 80 police officers per year;
- All annual safety net assistance grants for 2,100 recipients;
- 10 days of garbage disposal;
- Two days of running the incarceration system;
- 1.3 million home-delivered meals to senior citizens;
- 65 lane miles of city streets;
- 11,328 job placements;
- \$4.47 in personal income tax savings per city taxpayer.<sup>42</sup>

#### **GEOGRAPHIC EXCLUSIONARY AREA – IN NEED OF AN UPDATE**

The GEA, as it is currently drawn, continues to miss the mark and excludes large sections of Central Brooklyn and Western Queens, “examples of neighborhoods where previously ‘cool’ real-estate markets are now booming with new residential developments.”<sup>43</sup> The consequence is that developers remain entitled to public subsidies without providing public benefits in return (in the form of the 20 percent on-site affordable housing that is required within the GEA).



GEA image courtesy of ANHD

#### **THE TRIPLE-DIP LOOPHOLE**

Outside of the GEA, developers also continue to take advantage of the tax code, almost always “triple dipping” into the public coffers by counting the same 20 percent “set aside for affordable housing units for three different programs, combining their 421-a tax break with the density bonus from the city’s inclusionary zoning program, and with direct subsidies from the city, all for the same units.”<sup>44</sup>

The problem, insists Emily Goldstein of the Association for Neighborhood Housing Development, is that “we’re not getting any additional public benefit.” That is, “If a developer is receiving subsidies from two programs,” for example, “then they should have to set aside twice as many affordable units.”<sup>45</sup>

## INSIDE THE GEA

Meanwhile, the majority of 421-a properties remain in the city's wealthiest areas, and the Pratt Center went to great lengths to detail 54 luxury condos that would continue to receive 421-a benefits despite not providing a single unit of affordable housing – even after the 2008 reforms.<sup>46,47</sup>

The most egregious 421-a tax exception, though, is associated with One57, an ultra-luxury tower with a \$100 million penthouse. One57 managed to secure a retroactive 421-a tax break for its development – most likely the result of \$1.5 million in campaign donations to Albany decision makers – despite its plush location overlooking Central Park and a complete absence of on-site affordable housing.<sup>48,49,50</sup>

As *The Daily News* reported, the One57 tax breaks “will save its very well-heeled condo owners \$44 million over the next 10 years. In return, Extell [Development] spent \$5.9 million on affordable housing and \$1.8 million on fees – for a lopsided benefit of \$35 million.”<sup>51</sup> According to Thomas Waters, Extell actually spent closer to \$3.5 million, not the \$5.9 million reported by *The Daily News*, to subsidize just 66 affordable housing units, all of which were built in the South Bronx.<sup>52</sup>

Besides the incredibly bad deal for the city's taxpayers, “A tax incentive given retroactively,” State Senator Liz Krueger decried with regard to the One57 boondoggle, “is the stupidest thing in the world.”<sup>53</sup> After all, One57

cost \$1.3 billion to build and its penthouse was listed at \$115 million. Surely \$35 million in public dollars (after the fact!) is not what induced its erection.

## PUBLIC FINANCE DISTORTIONS

The law also engenders a surfeit of public finance distortions. It grossly inflates the initial sale value of new 421-a co-ops and condos, as the property tax exemption is capitalized into the unit's offering price. Recall that these apartments are tax exempt for the first two years and may remain abated for upwards of 25 years.

The benefits are then passed on to developers twofold: 1) by virtue of the inflated sale prices, and 2) through the price precedence, which artificially swell the prevailing market rates for purchasers and renters regardless of whether a building is 421-a or not.<sup>54</sup> After all, perception and, more so, comparisons rule the roost in New York real estate.

To the extent that affluent residents benefit from 421-a, it also treats the property taxes on hypothetical next-door neighbors whose property is assessed at the same value differently depending on whether they live in a 421-a residence or not. This horizontal inequity pales in comparison to the law's vertical inequities. “Because the tax is based on the value of new construction, a tax abatement saves the priciest properties the most.”<sup>55</sup> This amounts to a regressive property tax, whereby those wealthy enough to afford a 421-a luxury unit receive, at a minimum, 10 years of reduced taxes. Due to the city's housing shortage, the

average New York City renter, on the other hand, foots the economic burden of property taxation through their monthly rent.

Foregone 421-a tax revenues also have to be recouped by increasing other city taxes. (The alternative is to cut the city's budget by the exact same amount as yearly 421-a tax expenditures, a proposal absolutely no one is considering.) Property and sales taxes, for example, are higher than they would need to be absent 421-a's existence. Developers ironically, and perhaps unwittingly, support this conclusion – an axiom of public finance – when they make claims such as, "The 421-a program is critical to constructing most multi-family housing in the city" due to "the massive burden of property taxes on condos and rental units."<sup>56</sup>

Without 421-a, however, property taxes would certainly be lower than they currently are, and this already dubious protestation would be further rendered moot. Moreover, as the resulting deadweight loss (the forfeiture of economic activity resulting from taxation) is roughly quadratic with the tax rate, meaning it rises at an increasing rate as taxes increase, it behooves those in charge of city finances to seek greater parity across tax streams.

## FURTHER CONSIDERATIONS

Remarkably, neither the city nor the state maintains a comprehensive database of 421-a buildings or the

number of apartments within them that rent for less than market rate.<sup>57</sup> Such a resource must be compiled and made public immediately. Without one, the discussion is subject to too much guesswork from affordable housing advocates and reciprocal obfuscations, remonstrations, and ultimatums from the Real Estate Board of New York and their allies.

A simple yet smart consideration, put forth by NYU's Furman Center for Real Estate and Urban Policy, calls for modifying the 421-a program to calibrate the appropriate incentive levels to induce development by utilizing those tax and rental records that *are* readily available to the city. This approach would curtail any further "unnecessary windfall to developers," which has clearly come at great public expense.<sup>58</sup>

After all, the city and state should aim "to tie the value of the tax benefit to the value of the housing" that it is getting, insists Thomas Waters. "Right now, it's not even 10 cents for every dollar" in tax expenditures.<sup>59</sup>

If the law is to remain on the books, retroactive tax breaks must be abolished. They promote venality – already an endemic scourge in Albany – and are a shameful violation of the public trust. The Geographic Exclusionary Area should be subject to yearly redrawing from an apolitical entity. Its boundaries simply do not keep up with the pace of gentrification, and it is reviewed far too infrequently. The aforementioned "triple dipping" must certainly be stamped out, and policymakers should determine what continues to further

drive 421-a costs in both absolute and percentage terms.

As taxpayers grow more and more aware of the enormity of the 421-a tax exemption, the public will demand answers. And with 421-a due to sunset in June 2015, public officials need to fundamentally question whether the law makes sense given current economic conditions. Gone is the foreboding unease of the 1970s. The real estate market is sizzling, the economy has bounced back, "the market will, on its own, incentivize development," and, as such, "tax abatements for constructing market-rate housing are no longer necessary in today's city."<sup>60,61</sup>

It is imperative to ask whether 421-a is really worth the cost. Affordability, not abandonment, is the plight our times. Today, 421-a is either an anachronistic affront to the public's sensibility and common sense – surely, One57's prosperous owners don't need tax breaks from the city – or it is an utterly inefficient use of public dollars for generating affordable housing through an indirect, trickle-down approach. It is high time our elected officials recognize as much and act accordingly.

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