

The New York State Rural Advocates and the New York State Rural Housing Coalition hereby submit our comments regarding the draft 2011-2015 Consolidated Plan and the 2011 Action Plan. We wish to thank you and your staff for this opportunity to comment and for the effort that has been made to solicit the views of ourselves and other interested parties. We understand the challenges faced in meeting the State's growing housing need with extremely limited resources. We offer our comments in hope they are constructive and upon implementation, can create more housing opportunities for the lowest income residents of New York State.

## **2011 – 2015 New York State Consolidated Plan**

### **Needs assessment**

The discussion of Affordable Housing Needs is generally good. We do note that for rural communities in particular, some of the available data is either inadequate or seriously dated. The 2010 Census did away with the long form which provided much essential information about housing, households and economic conditions in rural New York. While the American Community survey will provide useful statistical data for communities with populations greater than 60,000, the data available for smaller communities and rural places is lacking as a result of less frequent sampling and small sample sizes in smaller communities. Therefore we caution against over reliance on ACS data as it is likely to under-represent rural communities when viewed in statewide context and will be subject to very large margins of error when applied to smaller communities.

We wish to complement the New York State Division of Housing and Community Renewal for its efforts to gather information about the State's housing needs through outreach meetings conducted by staff of DHCR's policy unit. We think that with respect to the limited number of topics that have been dealt with, these meetings have resulted in some good information and have, in most cases, resulted in appropriate policy and programmatic responses.

However, there is a limit to which we think policy should be informed by anecdotal information. As we have mentioned above, changes in the information gathered in the decennial census and the unimpressive nature of the ACS data with respect to rural and small town communities, severely limits the information available to all of us. Further, we understand that State workforce reductions have decimated staff at the New York State Data center. We urge New York's housing agencies to support efforts to improve the quality of empirical data about our smaller communities.

Homeless Needs – Several of the “responses” included in this section of the report have been severely curtailed apparently as a result of State budget constraints. The SRO Supportive Services Program and the Supportive Housing for Families and Young Adults, for example have sustained damaging cuts in the current State Fiscal Year.

General Characteristics – Rural Needs, page 58. We strongly agree that there is a need for further investment in small projects and we urge New York’s housing agencies to expedite the re-introduction of the Small Project Initiative. The large demand for the small project initiative in itself demonstrates that additional resources along with streamlined administrative processes would have a significant impact on affordable housing in rural communities.

## **Barriers to Affordable Housing**

NIMBY page 140

NIMBY is a serious barrier to the development of affordable housing in rural New York, particularly with respect to the goal of creating affordable housing opportunities in some communities where economic opportunities are concentrated. There are barriers that are not addressed in New York’s Consolidated Plan.

While this section of the Consolidated Plan points out that “New York State’s Constitution grants jurisdictions the right to control land use at the local level” we don’t believe that this would absolve New York State from its legal and moral obligation to insist that those jurisdictions act in accordance with fair housing laws. This would be particularly true when those jurisdictions are using State Laws to obstruct the development of affordable housing. We are disappointed to see that the State Environmental Quality Review Act, (SEQRA) is often used as a device to discourage the development of affordable housing. We must be clear: The not-for-profit, rural housing community strongly supports SEQRA and we believe that the act has in fact been a useful tool to insure that local land use and policy decisions do nothing that compromises the quality of our environment. We are concerned however that SEQRA has also become a tool of choice for NIMBY. With the cooperation of sympathetic local officials, SEQRA can easily be used to delay affordable housing proposals and to make them cost prohibitive. This problem has been widely discussed in New York State. The State is aware of the problem and we suggest that changes need to be made to the act to prevent it from being used as a tool to discourage the development of affordable housing. Simply requiring a timeline for decision making could prevent wasteful expenditures of time and precious public and private resources. Third party professional mediation services might also be considered as an effective tool to intervene in standoffs involving SEQRA review or other land use decisions and to help bring protracted land use battles to an end.

While we agree that educating local officials of the benefits of a balanced mix of housing opportunities is a good and necessary activity, education of local officials alone is not going have the impact on NIMBY or exclusionary activities in some communities. The Consolidated Plan suggests “linking school, transportation or other infrastructure funds from the State and federal government in exchange for community support of affordable housing.” This strategy has been discussed for years but to our knowledge it has never been applied. We recommend that the

New York State develop a policy that *requires* communities to implement affordable housing plans as a prerequisite for a range of State funding streams.

New York State has come to rely very heavily on the private developers to deliver its affordable housing production by using state and federal resources to leverage Low Income Housing Tax Credits. We recognize that these businesses must be conscious of the bottom line and we know that protracted local land use approvals are expensive. It is not surprising then that we find private developers avoiding communities that put up resistance to affordable housing proposals. Given that this is the largest pool of proposals that New York State has to draw from as they select recipients of LIHTC and state subsidy, it is hard to see how New York can be affirmatively locating affordable housing. We respectfully suggest that New York State's housing agencies need to articulate specific fair housing goals and that they act strategically to achieve these goals by indentifying projects that will create affordable housing options for low income households in markets where jobs and economic opportunities exist. This may involve the use of tools such as the Housing Trust Fund's Seed Money Program or the Predevelopment resources allowed under the HOME program.

The ConPlan states that "income targeting restrictions"..."make(s) project viability difficult in areas with high operating costs". We find this observation to be puzzling. Simply put, if we eliminate income targeting restrictions we will not be producing affordable housing!

The barrier here is not the income restrictions but the tools, devices and methods we are using to produce affordable housing in those places where affordable housing is most needed and hardest to develop. Over the past twenty years, New York State has focused most of its affordable housing efforts around one single tool; the federal Low Income Housing Tax Credit (LIHTC). An ever increasing portion of state and federal resources (including HOME) have been committed to leveraging LIHTC. We observe that the LIHTC has leveraged substantial private investment (sometimes at considerable cost) and it has produced thousands of units of affordable housing. However, we are concerned that much of the affordable housing created by LIHTC is available to a very narrow band of households with incomes near the top of the permissible income limits. Further, LIHTC is most successful in markets of a certain economic profile leaving many communities of need (e.g. rural communities) without access to the resources they need to address their affordable housing problems. Rent levels in LIHTC funded projects become unaffordable to many in need of safe, decent housing. In order to truly serve households of very low and extremely low incomes, it will be necessary to develop additional tools including those that provide operating and rent assistance to projects that serve these disadvantaged households. We would suggest that 125 units of tenant based rental assistance will not meet this need.

The Consolidated Plan does not identify reductions in State workforce as a barrier to affordable housing. It is becoming increasingly clear that New York State's housing agencies are suffering from dramatic staffing shortages that have grown significantly over the past decade. The management of programs and policies designed to address the State's housing crisis cannot be effectively carried out without a sufficient workforce.

## **Rural Issues and Needs**

The New York State 2011- 2015 Consolidated Plan identifies small projects as a rural issue and indicates the need for a small project initiative. We concur. New York offered a small project initiative in 2007 and 2008 and set-aside \$12 million for the effort. In relative short order the State Division of Housing and Community Renewal committed over \$13 million to the program and then abruptly shut down the program. Although DHCR agreed to re-issue a NOFA for small projects, no program has been forth coming. We understand that DHCR feels a need to clarify the goals and objectives of the program and had the broader community been consulted, DHCR may have found support for some reforms. None the less, it is time to reinstate the New York State Housing Trust Fund Small Project Initiative. This activity has become increasing important as private investment in rural communities has recently dried up. There is consensus on program need. The resources are available. There should be no reason not to take action and implement the program.

We are disappointed to see that there is no reference to Farm workers in the Consolidated Plan. There are as many as 60,000 farm workers in New York. While farm workers are essential to our State's rural economy, they are among the lowest paid and poorly housed among our citizens. At one time New York had explicit programs and policies directed at meeting the needs of farm workers but we don't see that those issues are being addressed at this time.

We also think that any discussion of rural affordable housing needs must reference the need to improve the aging housing stock through housing rehabilitation efforts. The single most important application of HOME and CDBG Small Cities funds has been in support of locally administered housing rehabilitation activities. Given the age and condition of housing stock in rural communities, rehab remains a critically important program. Programs providing rehabilitation funding for single family homes is a well developed activity and will likely continue to prove effective as long as funding is provided. Rehabilitation and adaptive reuse of small rental projects is also an activity supported in part through the small project initiative as discussed elsewhere. We understand the New York housing agencies have been struggling to find an approach to providing a "rental rehab" program to support the rehabilitation of smaller privately operated rental housing. We recognized that rental rehab is fraught with challenges and we support the Agencies' efforts to devise an effective program that meets this goal.

We are very concerned about the decline of New York's once highly productive partnership with USDA Rural Development. As a result of budget constraints and subsequent policy changes, contracts under the New York State Rural Rental Assistance program are being allowed to lapse. Rural Rental Assistance provides a project based RA program that supports some of rural New York's lowest income households. While many of these expiring contracts have been moved over to Section 8 Project Based assistance, we are concerned that as the number of impacted units increase, the Section 8 solution will not be viable and we will run the risk of displacing very low income households and putting valuable affordable housing projects at risk. The unwillingness or inability of New York State to offer new units of Rural Rental Assistance has deprived developers in New York of the leverage that made the Section 515 Leveraged Loan program viable and as a result production of RD Rural Rental Housing has come to a standstill.

We urge New York State and RD to find a new method of developing rental housing in New York's rural communities.

## **New York State's 2011 ACTION PLAN**

HOME and the CDBG Small Cities Program provide the vast majority of funds that go to meeting the affordable housing needs of rural New York and to the advancement of fair housing efforts in all of non-metro New York. We commend the Office of Community Renewal for their ongoing commitment to affordable housing as one of several program areas they are called up to support. We are particularly gratified to see this support of OCR through scoring preference for programs that "promote housing choice in areas outside of minority or low- and moderate-income concentrations" and we would be gratified to see this commitment throughout the State's housing programs. However, we continue to argue that these goals cannot be met without an active response to NIMBY as discussed above.

A clear statement of priorities, a system of rating and ranking reflecting housing policies and clear feedback are essential components of a fair competition for public resources. The Office of Community Renewal does an outstanding job of informing applicants of its priorities and laying out a scoring system that reflects those priorities. Communities develop proposals using the scoring information provided by OCR and when their proposals are not funded, it is important to those communities to understand how they can improve their future application submissions. The traditional format for this feedback is the exit conference. In the Community Development Block Grant, Small Cities Program the applicants are municipal entities outside of the funded Entitlement Communities. It is appropriate and extremely important that officials from applicant communities and their designees have the opportunity to take advantage of exit conferences. Given that New York State's major housing agencies are in the midst of a consolidation of effort with a goal of improving inter-program coordination, we think this presents an important opportunity for OCR to avail themselves of the resources the DHCR Regional Office structure to make CDBG Small Cities exit conferences more conveniently available to local officials. We encourage OCR to include designees of local municipal officials, such as representatives of sub-recipients or other preparers of Small Cities applications in the exit conference process, as many of the smaller and poorer communities do not have paid community development staff that can attend these sessions and fully understand the nuances and details of what is shared by OCR staff.

HOME Program "Methods of Distribution" (page 20 ff.)

The 2011 New York State Action Plan states that HOME funds are distributed on a competitive basis. In 2010, some \$4.4 million was awarded as contract extensions under what was called a "Performance Based Initiative". We believe that this strategy deserves additional consideration. While this practice clearly streamlines processes for the Division of Housing and Community Renewal and grantee agencies alike, we are concerned that the approach limits the State's ability to identify and direct resources to places of high need. Stellar program performance by a grantee agency does not necessarily indicate that the agency is operating in an area of highest need. By taking these funds out of the competitive funding round, this initiative deprives unfunded

communities of the opportunity to make the case for housing need and capacity to deliver HOME programs.

We recognize that New York State's plan to reserve 15% of the "Balance of State" HOME allocation for CHDO projects and eighty percent (80%) of the remaining funds for non PJs is a recitation of HUD guidance on the issue HOME funds distribution, however, we strongly object to the New York Division of Housing and Community Renewal using these percentages as targets rather than limits. We note that in the 2010 Unified Funding round, roughly 25% of New York's HOME funds were directed to other PJs; that is to HOME entitlement communities with HOME resources of their own. New York's municipal and metropolitan county PJs received over \$165.5 million in HOME funds in 2010 to meet the needs of their low income citizens. New York State received \$39 million to serve the balance of the State. We point out that the State's allocation is roughly proportionate to the non-metro, non-PJ population of our State and therefore the diversion of nearly \$10 million of "balance of state" HOME funds to other PJs is unfair and inappropriate. Rural communities in our State have fewer alternatives for available resources to meet their needs and we find the practice of diverting HOME funds to entitlement funded jurisdictions to be particularly objectionable.

We understand that New York State as a PJ is obligated to commit 15% of its HOME allocation to CHDOs and CHDO eligible activities. We have been told in the past that some NYS HOME funding to other PJs was necessary to achieve the required CHDO set-aside. After roughly twenty years of the HOME program and substantial investment in CHDO capacity development we believe that sufficient capacity does exist outside entitlement communities to allow DHCR to meet its CHDO set-aside requirements.

We do recognize that the use of New York State HOME program funds in Participating Jurisdictions, as the federal HOME program regulations allow, maybe be appropriate when applied for clearly strategic purposes. Such examples might include investing HOME funds in PJs in instances involving the affirmative siting of affordable housing. New York State might commit funds to CHDO projects that advance fair housing goals where the municipal PJ may be reluctant to provide support for a project. Other cases may involve a range of HOME eligible activities carried out by an organization within the rural portion of a metropolitan county when the county PJ can be shown to be unable or unwilling to provide sufficient resources to meet needs in that area.

Finally, we commend New York State and the DHCR for investing in non profit capacity through the Neighborhood and Rural Preservation Programs. The RPCs and NPCs have been essential to addressing housing needs in low income communities and they continue to play a key role in the delivery of HOME and CDBG funds. In recent years, core administrative funding for these organizations has been unpredictable at best. We urge the Governor and budget staff to strive to create a more stable, predictable approach to funding these organizations, many of whom are the very organizations that allow DHCR to meet and exceed its CHDO set-a-side requirements. We further encourage HOME and CDBG program managers to consider the maintenance of broad local capacity as they make awards from year to year. Continuity in program funding is important to the continued operation and programmatic success of these organizations. In recent years we have seen a trend towards fewer, larger awards that has had the

effect of concentrating resources in a limited number of communities, jeopardizing local capacity in other communities and depriving the low income residents of those communities of sorely needed resources.