

M E M O R A N D U M

Concerning the proposed Article 27 of Private Housing Finance Law
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Governor Cuomo is proposing to eliminate rural and neighborhood preservation companies by repealing Articles 16 and 17 of Private Housing Finance Law. He would replace those Articles with a new Article 27 creating a community preservation program. Rural Advocates are very concerned by this proposal. It has been our experience over past 30 years that Rural Preservation Companies have flourished while operating under Article 17 and that they have been highly successful in delivering housing and community renewal services to small communities statewide. As currently proposed, we believe that Article 27 would not serve rural communities as effectively as current statute.

Proposed Article 27:

- Recreates the Rural and Neighborhood Preservation Programs as Community Preservation Companies in a statute that is largely modeled after Article 16 of PVHⁱ
- Creates “Community Preservation Corporations” as unique entities rather than non-profit corporations entering in to a contract to perform certain activitiesⁱⁱ
- Reduces RPC board composition requirement from “a majority” (51%) to a third of members required to reside in the service areaⁱⁱⁱ.
- Provides no mechanism for maintaining the distribution of rural CPCs if current Article 17 participants are no longer funded under Article 27^{iv}
- Eliminates the matching funds requirement^v.
- Allows corporations to enter the program even though they have no prior experience in housing and/or in the service area^{vi}
- Does not provide specific contract payments requirements
- Proposes that the program will adopt performance based funding that will require assessment of performance in retrospect for payments^{vii} and leaves the establishment of performance requirements to the discretion of HTFC.
- Fails to establish a “due process” for non renewal or termination of contracts^{viii}
- Removes reference to funding the NYS Rural Housing Coalition in determining funds available^{ix}
- Weakens the provision of Technical Assistance^x
- Moves the date for HTFC’s report to the legislature from 12/31 to 9/30 and requires organizations to report on funds not “made pursuant to this contract”^{xi}.
- Transfers the funding entity from the New York State Division of Housing and Community Renewal, (a division of the Governor’s office) to the Housing Trust Fund Corporation, a public benefit corporation^{xii}.

ⁱ Although Articles 16 and 17 are similarly constructed, they differ significantly in language in some sections. In most of these sections the Article 27 bill uses the Article 16 language even though Article 17 came later, and provided drafters with the opportunity to make improvements to the original program design based on experiences to date.

ⁱⁱ Article 16 provides a definition for a “neighborhood preservation company” and treats NPCs as the subject of the NP statute. Article 17 makes no similar reference to rural preservation companies. The language used in Article seventeen refers only to “contracts with not-for-profit corporations for housing and preservation activities”. These differences in terminology imply vastly different relationships between the agency and the “housing and preservation” contractors”. Many of the rural participants in RPP are large, multi-funded organizations. To call them RPCs is a misnomer on its face and it fails to recognize that these are entities providing a range of services for any number of funding sources, one of which is HCR by virtue of a RPP contract. We should consider whether the proper relationship is between an agency and *its* “CPCs”, or between the housing agency and not for profits that are contracted to provide specified services within specified geographies.

ⁱⁱⁱ From its conception, both articles 16 and 17 have been viewed as “community based models”. On the rural side there are much bigger geographies but in all cases the community being served, however it was configured, is represented by a majority of the board of directors. From a rural perspective it is hard to understand how an effective community based organizations could not raise 51% of its board of directors from within its service area. It is acknowledged that this issue impacts NPCs differently.

^{iv} The current construction of Article 27 contains no limits on eligible geographies and would allow resources not dedicated to rural communities to migrate to urban and/or suburban places.

^v Matching funds are universally accepted as an element of not for profit contracts. The requirement of matching funds in the preservation programs has insured that organizations participating in the program had the wherewithal to generate funds from other sources that would support the specific activities of the contract. The statutory reference to matching funds has also provided HCR with its most important assessment tool in contract compliance for low performing organizations given that the agency felt that it could only remove groups from the program for failing to meet a statutory threshold. Match as one of those thresholds when applied to contract activity provides a fair indicator of overall performance. However, match is not a perfect indicator in itself, and should be viewed over time and in the context of other indicators

^{vi} Section 2231 subsection 2 defines a CPC as a corporation engaged in what subsection 5 of the same section describes as “housing preservation and community renewal activities”.

Subsection 3 defines an “eligible applicant” as any corporation in existence for one or more years. Article 17 (Section 1003(2) goes further toward insuring ultimate success by requiring that the commissioner will determine before entering into a contract that the company is a “bona fide organization.... performing significant housing preservation and community renewal activities for at least one full year” and has proved themselves competent to undertake such activities. By not requiring a housing track record in the specific service area, article 27 opens up the program to any not for profit and risks the program being used as political patronage system sometime in the future. The future of this program demands that it remain defensible. We want to support effective and productive housing organizations.

^{vii} Section 1232 5 says “payments shall be based on performance criteria established by the housing trust fund corporation”. Current program managers say that they don’t interpret this passage to suggest that we are adopting a “performance based” program which is an approach that is generally understood to adjust funding according to some assessment of prior performance. Our concern is that this is exactly what it says. “Payments shall be based on performance...” Subsequent program managers are likely to interpret this literally and we will have a very different program.

^{viii} Article 27 does not contain a defined appeal process for non renewal or termination of the contract. We strongly believe the appeal process as defined in article 17 including notification is necessary to protect the integrity of this community base program and to enforce acceptable contract performance standards.

^{ix} The merger language adopted during the last legislative session included the rural and neighborhood preservation in language describing the distribution of funds. We should retain that language. See Article 17, section 1004 5 (e)

^x Article 27 adopts technical assistance language from Article 16. The language provides HTFC with a wider range of potential technical assistance providers than Article 17 and it authorizes HTFC to fund a range of services that go well beyond those commonly thought of as TA. Article 27 would permit TA activities that would actually have the TA provider doing the not for profit’s work. For example, TA “may include: preparation and submission of proposals for entering into contracts with the housing trust fund corporation; In other words, HTFC could pay a consultant to write an organization’s refunding application. This, by the way, is directly contrary to the 2012 federal HOME program changes that now require a CHDO to possess its own capacity and not rely on hired consultants. We prefer the approach to TA taken in Article 17.

^{xi} This seems to put HTFC and the funded organizations in the position of having to provide annual reports much earlier than is currently required. In order for HTFC to have its annual report to legislature submitted by 9/30 they would need preservation companies to report almost immediately at the end of a program year. These dates are not practical. The

organizations should report by 9/30 and HTFC should report to the legislature on or before 12/31.

Language in Article 27 that was carried forward from 16 and 17 that requires HTFC to report to the legislature to include “the amounts of money received by the corporation from sources other than payments made pursuant to this article”. We doubt that this passage ever intended what it actually says. This language should be refined in order to require that companies report “other funds received” as they pertain to eligible activities. To leave this language unchanged will someday be interpreted to mean that multi-funded, multi-purpose organizations would have to report funds associated with completely unrelated activities.

^{xi}i The proposal to change the program’s contracting agency from the New York State Division of Housing and Community Renewal to the public benefit corporation known as the Housing Trust Fund Corporation appears to be inappropriate. The HTFC is a public benefit corporation that enjoys less government oversight while having the ability to raise funds. Neither of these characteristics are appropriate for a State wide non profit non capital program