THE CITY OF NEW YORK
INDEPENDENT BUDGET OFFICE
110 WILLIAM STREET, 14TH FLOOR
NEW YORK, NEW YORK 10038
(212) 442-0632 • FAX (212) 442-0350 •EMAIL: ibo@ibo.nyc.ny.us
http://www.ibo.nyc.ny.us

May 18, 2004

Mr. Joe Weisbord
Staff Director
Housing First!
222 North 7th Street
Brooklyn, NY 11211

Dear Mr. Weisbord:

In response to your request, please find attached a discussion of the use of Battery Park City Authority (BPCA) funds for affordable housing programs and for the proposed expansion of the Jacob K. Javits Convention Center.

The state has proposed an expansion of the Javits Center, to be financed by a combination of refunding of Convention Center Authority bonds and contributions from the city and the state of $350 million each. The city has proposed using excess Battery Park City Authority revenues to finance its share. The authority to use these funds dates back to the establishment in 1986 of a series of payments from certain Battery Park City revenue sources and referred to as "Joint Purpose Funds," to be used for projects as determined jointly by BPCA, the Mayor, and the City Comptroller. These revenues were not and are not revenues of the city.

Until this year, no Joint Purpose Funds had been realized, because all excess BPCA revenues were used in fulfillment of the 1989 agreement between the city and BPCA pledging $600 million in BPCA funds to be used by the city for affordable housing programs. With the payment of $138 million from BPCA to the city last fall, the two parties agreed that the 1989 agreement has been fulfilled. This has allowed BPCA to direct revenues to the Joint Purposes Funds for the first time.

In our view, little if any of the $600 million was used for housing programs, and was instead used for general budget purposes, as permitted under Section 3.d of the 1989 agreement.

The city anticipates that it will need approximately $30 million annually from the Joint Purpose Funds to back debt issued to finance its share of the costs of the convention center expansion. At this time, BPCA projects annual Joint Purpose Funds revenues of approximately $30 million in 2005 through 2007, declining to $16 million to $18 million annually thereafter. The higher amount in the next three years derives from the refunding of BPCA debt last October, which also made available $45 million deposited into a Special Fund, also jointly controlled by BPCA, the Mayor, and the City Comptroller.

I hope this information is helpful. Please let me know if we can provide further assistance on this or any other matter. The IBO staff contacts are Molly Wasow Park and Merrill Pond.

Sincerely yours,

C. Preston Niblack
Deputy Director

Attachment: “The City’s Use of Battery Park City Authority Funds”

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# The City's Use of Battery Park City Authority Funds

## BACKGROUND AND HISTORY

The Battery Park City Authority (BPCA) is a public benefit corporation of New York State created in 1968 to develop what ultimately became a 92 acre stretch of landfill in Lower Manhattan.

In 1969, New York City entered into a lease agreement with BPCA governing this development. The original plan called for using 79 acres for construction of 14,100 apartments, to be divided evenly among low income, middle income, and market rate units. The city retained ownership of the land, while BPCA controlled development plans subject to certain rights of approval by the city. The BPCA enabling act exempts BPCA from paying property taxes. However, under the 1969 lease BPCA was obligated to make "basic rent" payments to the city that included rent and tax equivalency payments.

In general terms, the BPCA basic rent payments were calculated by determining the land rent and normal property taxes (based on the assessed value determined by the city Department of Finance) and subtracting debt service, maintenance and repair of public open areas and civic facilities, reasonable "operating and administrative expenses," and amounts required by reserves.

By 1979, no development had occurred in Battery Park City, and BPCA was in danger of defaulting on its 1972 bonds that provided funds for the construction of the landfill and utilities. State advances were required to prevent default. In 1980, the city and the state Urban Development Corporation entered into an agreement (the "Settlement Agreement") under which the state acquired the city's ownership interest in Battery Park City. The Settlement Agreement removed any obligation to pay basic rent to the city but gave the city a right to reacquire Battery Park City if it provided funds sufficient to redeem outstanding BPCA bonds and reimburse the state for emergency advances made by it to BPCA. Since development of Battery Park City under the original plan had been unsuccessful, BPCA's master plan was modified to contain fewer restrictions and to remove minimum requirements for middle or low-income housing.

By 1986, the World Financial Center was under construction and BPCA had become financially stable. Since the city no longer had the right to ongoing revenue from BPCA, it began to contemplate exercising its rights to reacquire Battery Park City. At that point, in lieu of such reacquisition, BPCA and the city amended the Settlement Agreement to divide BPCA's revenue into two streams: first, funds paid as "payments in lieu of taxes" (PILOT) by tenants, and second, all other revenues, which are mainly land rent payments by tenants. BPCA revenues remaining after subtracting out BPCA's debt service, repair and maintenance expenses, and operating costs were termed "excess revenues," and BPCA was required to remit to the city from the excess revenues an amount proportional to the tenant PILOT payments. The remaining funds—known as "Joint Purpose Funds"—can only be spent by agreement among the Mayor, the City Comptroller and BPCA. To illustrate: if BPCA collected $100 million in PILOT payments from its tenants and $50 million in other revenue, and had debt service and operating expenses of $90 million, $40 million (66 percent of the remaining $60 million) would go directly to the city. The remaining $20 million would be "Joint Purpose Funds."

## BPCA PLEDGES FUNDING FOR HOUSING

As part of the city-state effort to create more affordable housing in New York City, BPCA entered into a series of agreements with the city to finance construction of affordable housing in other parts of the city. In 1985, the state, the city and BPCA entered into a Memorandum of Understanding, in which BPCA agreed to provide the backing for $400 million in net bonding authority for the production of affordable housing pursuant to the Housing New York Program. The bonding authority was granted to a new entity, the Housing New York Corporation (HNYC) which was a subsidiary of the New York City Housing Development Corporation (HDC).[1]

HNYC existed solely as a conduit for the bonds backed by BPCA revenue. BPCA agreed to transfer monies equal to the debt service payments for the bonds to HNYC. In 1987, HNYC issued $210 million in bonds under this agreement, of which $143 million was available for housing programs.[2] HNYC transferred the proceeds of the sale to the city, and the city used the $143 million to support the rehabilitation of 1,557 units of affordable housing in the Bronx and Manhattan.

There were no further new money issues under the $400 million net bonding authority provision.[3] Although BPCA had agreed to support up to $400 million of bond issuance, HNYC did not issue any additional bonds. HNYC's authority to issue additional debt expired in 1995.

In December of 1989, BPCA and the city amended the 1980 agreement between the city and the Urban Development Corporation, setting aside $600 million in BPCA funds for affordable housing development. This commitment was separate from the $400 million in bonding authority agreed upon in 1985 and was funded from monies that would have become Joint Purpose Funds or been given to the city as part of its PILOT-based pro-rata share of excess revenues. Unlike the $400 million, the $600 million was current revenue, as opposed to bonding authority.

The agreement called for the city to commit all of its future net revenues up to the $600 million to affordable housing, and included a "maintenance of effort" requirement that the payments would augment—not substitute for—existing city funding for housing programs. However, the agreement included an exception to the maintenance of effort requirement: if the city determined that it needed the funds to "maintain fiscal stability…or existing city services" the city was allowed to use the funds for those purposes, rather than to increase spending on housing programs.

Beginning with the PILOT payment of 1992, both BPCA and the city counted most or all of each year's payment toward the $600 million pledge (see table). Effectively, as long as the $600 million agreement was in effect, there were no Joint Purpose Funds to allocate.

**Affordable Housing Funds Make Up Majority of BPCA PILOT Payment**
*Dollars in millions*

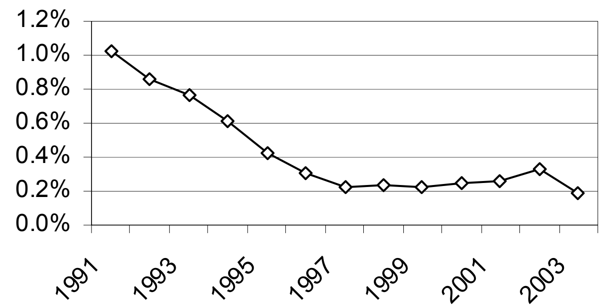
| City Fiscal Year | PILOT Payments Received | Affordable Housing Funds from BPCA |
|---|---|---|
| 1992 | $ 17.7 | $ 10.8 |
| 1993 | 10.8 | - |
| 1994 | 25.8 | 22.1 |
| 1995 | 24.6 | 38.6 |
| 1996 | 29.4 | 29.9 |
| 1997 | 34.1 | 34.1 |
| 1998 | 40.0 | 40.0 |
| 1999 | 47.7 | 43.4 |
| 2000 | 46.6 | 46.6 |
| 2001 | 75.5 | 76.7 |
| 2002 | 65.4 | - |
| 2003 | 54.4 | 119.7 |
| 2004 | 147.0* | 138.0 |
| **TOTAL** | **$619.0** | **$600.0** |

SOURCES: IBO, Battery Park City Authority, Office of Management and Budget.
NOTES: Because BPCA and the city have different fiscal years, payments are recorded at different times. The 2004 figure is an estimate of the total payment the city will receive.

BPCA has completed payments under the $600 million pledge. In October of 2003, the state authorized BPCA to refinance all its outstanding debt, including the remaining HNYC debt. The refunding generated $1.1 billion in total proceeds for BPCA. BPCA used $292.5 million of these proceeds to retire the HNYC bonds, thereby eliminating HNYC debt service payments. In addition, BPCA used $138 million of the bond proceeds to complete its obligations under the 1989 agreement, thereby fulfilling the $600 million pledge.

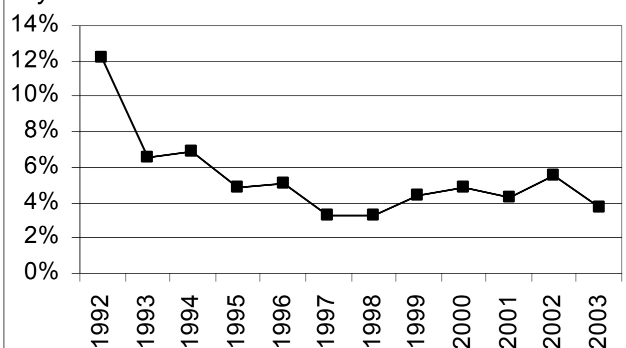
***How Much Went to Housing Programs?*** It appears that the city used the $600 million largely for general budget purposes, rather than to increase its spending on housing programs. Total capital and expense spending on housing did not increase during the period following the 1989 agreement. Between 1991, just before the second agreement took effect, and 2003, city funding for expense and capital budgets of the Department of Housing Preservation and Development (HPD) in fact fell by 70 percent and 60 percent, respectively. Since the late 1990s, the money paid by BPCA to the city for housing would have accounted for the majority of HPD's expense budget, if the entire payment had been dedicated to housing. In 2001, the BPCA payment was actually larger than the city-funded portion of HPD's expense budget. HPD's city-funded expenditures have also declined as a share of total city-funded expenditures, on both the expense and capital sides. (HPD programs are also funded through federal grants, notably federal Community Development Block Grants, HOME, and Section 8 funds. In addition, as the city has disposed of the city-owned *in rem* housing stock, HPD has needed less funding to carry out its responsibilities as a landlord.)

**HPD Expense Budget Spending as Share of Total City Spending**
*City Funds*




SOURCES: IBO; New York City *Comprehensive Annual Report; Message of the Mayor* (various years).

**HPD Capital Commitments as Share of Total Capital Commitments**
*City Funds*




SOURCE: IBO, Office of Management and Budget.

## USE OF BPCA FUNDS FOR CONVENTION CENTER EXPANSION

The city's and state's plan for financing the expansion of the Jacob K. Javits Convention Center includes $350 million from the BPCA. According to the redevelopment proposal, Joint Purpose Funds received from BPCA will be used to back debt issued to finance the expansion.

BPCA's contribution will come from the money that is now available as a result of the completion of the $600 million commitment. Funds will be drawn from the Joint Purpose Funds and from $45 million deposited into a "Special Fund" created at the time of the October 2003 debt refinancing, held by BPCA and jointly controlled by the authority, the Mayor, and the City Comptroller. In 2005, 2006, and 2007, BPCA expects approximately

$30 million annually in Joint Purpose Fund revenues, declining to $16 million to $18 million thereafter. The larger initial amounts include proceeds from the refunding.

In January of 2004, with the completion of the $600 million housing payments, the city recognized that its payment from BPCA would effectively be reduced because a portion of BPCA's excess revenue must now be classified as Joint Purpose Funds, rather than being paid to the city every year as housing revenue. The Joint Purposes Funds did not and do not constitute revenues of the city. As a result the city reduced its anticipated PILOT payment from BPCA by an average of approximately $30 million annually for the three years beginning in 2005. The city currently projects receiving $88.1 million in BPCA PILOT revenues in 2005, $81.7 million in 2006, and $57.9 million in subsequent years.

## CONCLUSION

Although the city and the authority agree that the commitment of $1 billion for affordable housing programs has been discharged, little of the total appears actually to have gone to housing programs. Out of the initial $400 million bonding authority, only $143 million was used to build or reconstruct a total of 1,557 units. The city appears to have used the majority of the $600 million pledged in the 1989 agreement for general budget relief rather than for housing programs.

The city and state plan to use $30 million in annual revenue from BPCA to securitize $350 million in debt for expansion of the Javits convention center. This stream of revenue is available under the terms of the 1986 amendment creating Joint Purpose Funds controlled by the Battery Park City Authority, the Mayor, and the City Comptroller. With fulfillment of the $600 million commitment of authority funds to housing, a portion of excess operating revenues will now flow into Joint Purpose Funds.

## END NOTES

[1] BPCA has no representation on the HNYC or HDC board, the majority of which is appointed by the Mayor.

[2] Roughly $26 million was used for funding reserves and bond issuance costs and another $41 million funded capitalized interest reserve funds.

[3] HNYC refunded the original bonds in 1993. The 1993 issuance was for $258.7 million, of which $30 million was for BPCA. It is not entirely clear why the remaining bonding authority was never used. It is possible that an unfavorable market view of the BPCA credit and high interest rates on the original issue led the city and BPCA to conclude that further issues would not be a good use of BPCA funds.