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**Testimony of The Legal Aid Society Before the New York City
Council Committee on Housing and Buildings**

**Oversight - “Housing Our Neighbors”: A First Look at the
Mayor’s Housing Plan**

July 1, 2022

I. INTRODUCTION

Thank you, Chairperson Sanchez and members of the Committee on Housing and Buildings for the opportunity to testify today on behalf of The Legal Aid Society (LAS or the Society).

The Legal Aid Society, the nation’s oldest and largest not-for-profit legal services organization provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel. LAS’s law reform representation for clients benefits more than 1.7 million low-income families and individuals in New York City and the landmark rulings in many of these cases have a State-wide and national impact. With the largest eviction defense practice in the country and longstanding experience representing homeless New Yorkers, LAS has unique expertise in housing matters. LAS has served as counsel in a series of cases establishing a legal right to shelter, a shelter allowance and housing vouchers for the homeless, from *Callahan v. Carey* to *Jiggetts v. Grinker* and *Tejada v. Roberts*. LAS helped pass New York City’s source-of-income discrimination law in 2008 and has represented numerous clients facing discrimination because of their use of a voucher and successfully advocated last year for the increase in City Family Homelessness and Eviction Prevention Supplement (“CityFHEPS”) voucher amounts.

II. HOMELESSNESS

Housing Our Neighbors

Housing Our Neighbors includes laudable goals for addressing many problems encountered by homeless New Yorkers. It contains several important reforms that will help reduce administrative burdens and connect people to stable housing more quickly. However, more action and investment is needed to actually reduce homelessness. Mayor Adams must dramatically expand the supply of permanent and supportive housing for homeless New Yorkers and extremely low-income households and invest in rental assistance – which requires far bolder investments than are included in this plan.

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Housing Our Neighbors' Promising Reforms

Housing Our Neighbors includes laudable goals for addressing many problems encountered by homeless New Yorkers.

- 1. Including People with Lived Experience:** The administration deserves credit for giving people with lived experience of homelessness a seat at the table during the development of the housing plan, and for incorporating many of their suggestions into the final blueprint. We hope the administration continues to offer meaningful opportunities for directly impacted people to contribute, including for homeless people with disabilities and those for whom English is not their preferred language.
- 2. Presenting a Unified Plan for Homelessness and Housing:** *Housing Our Neighbors* is also notable in that it presents a unified plan for homelessness and housing, including public housing. By recognizing that homelessness is a housing issue, the Adams administration is signaling better coordination across agencies and a commitment to target housing resources toward the goal of reducing homelessness. Similarly, incorporating NYCHA into the housing plan shows that the vital resource of public housing will not be treated as an afterthought but rather as an essential source of affordable housing.
- 3. Eliminating Administrative Burdens that Keep People Homeless:** Crucially, the blueprint suggests eliminating administrative burdens that keep people homeless longer. Although we await further details regarding how these changes will be implemented, it is an encouraging sign that the administration is committed to lessening administrative burdens that frustrate and deprive homeless New Yorkers of ready access to housing opportunities. Likewise, the announcement of a working group to address barriers to housing for undocumented New Yorkers is long overdue.
- 4. Acknowledging Shelter Census Figures Mask the Scale of Homelessness:** The administration also acknowledges that commonly cited shelter census figures mask the full scale of homelessness by excluding certain groups of people. We support legislation that would require more transparent, comprehensive reporting on the shelter census across various agencies. We further support opening up housing resources to all homeless New Yorkers, provided that the administration simultaneously invests more to expand the universe of available housing resources. The housing plan also proposes to invest in high-quality shelters, which should help improve many of the poor shelter conditions described in our *State of the Homeless 2022* report.¹
- 5. Committing to Streamlining Supportive Housing Placements and Accelerating the NYC 15/15 Pipeline:** We are also grateful that the administration has committed to streamlining supportive housing placements and accelerating the NYC 15/15 supportive housing pipeline by completing the 15,000 pledged units by 2028, two years ahead of

¹ *State of the Homeless 2022 New York at a Crossroads*, Coalition for the Homeless (March 2022), <https://www.coalitionforthehomeless.org/wp-content/uploads/2022/03/StateofThe-Homeless2022.pdf>.

schedule. However, given the scale of the need, we urge the City to make even greater investments to complete the program by 2025 and to ensure that supportive housing is adequately funded to provide robust services.

6. **Supporting a Shelter Allowance Increase:** We are very pleased to see the administration spotlighting the need for an increase in the public assistance shelter allowance. As the report points out, increases are long overdue. The shelter allowance for a single adult has been \$215 since 1988. The shelter allowances for households with children have not increased in nearly 20 years, providing for just \$283 for a family of two and \$400 for a family of three. Apartments are simply not available to rent for these amounts. We agree that increasing the shelter allowance to adequate levels will “provide New Yorkers with greater stability and reduce the risk of homelessness.”
7. **Committing to Address the Prison-to-Shelter Pipeline through Fair Chance Housing Protections:** Finally, we are pleased to see the administration’s commitment to addressing the prison-to-shelter pipeline, specifically through Fair Chance for Housing protections. Until New York City passes a bill fully banning discrimination based on arrest or criminal history for housing applicants, thousands of New Yorkers – especially Black and Latinx New Yorkers – will struggle to secure the stable housing they need.

Far Greater Investments Needed to Address Homelessness

Despite these commendable aspects of the housing plan, the Adams administration must make far bolder investments in order to actually end mass homelessness and housing instability.

1. ***Housing Our Neighbors* fails to Commit to Additional Housing Production Targeted to Homeless and Extremely Low-Income Households.** The plan clearly states that homelessness is a housing issue, but egregiously fails to commit to additional housing production targeted specifically to homeless and extremely low-income households. To tackle the housing crisis, the City must create at least 6,000 new apartments per year for homeless households and an additional 6,000 new apartments per year for households with extremely low incomes (less than 30 percent of the Area Median Income (AMI)). Mayor Adams must ramp up the production of housing for homeless and extremely low-income New Yorkers.
2. ***Housing Our Neighbors* lacks any specific metrics or production targets.** The housing plan does not propose increasing the housing production beyond current rates. This omission is particularly troubling given the inadequate capital budget for housing passed. New York City needs at least \$2.5 billion annually for the next five years to create 6,000 apartments for homeless households and 6,000 apartments for extremely low-income households every year to meaningfully reduce homelessness and housing insecurity. Similarly, the rest of the Fiscal Year 2023 adopted budget does not include the major investments in housing and homelessness necessary for the administration to follow through on many of the reforms proposed in *Housing Our Neighbors*.

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- 3. *Housing Our Neighbors* fails to address homelessness prevention efforts in detail.** *Housing Our Neighbors* is light on details regarding homelessness prevention efforts, such as how the City will handle the crisis playing out in housing court following the end of the eviction moratorium. The City must use every available resource to ensure that tenants have access to legal representation in housing court and make additional investments in upstream prevention, such as expanding access to CityFHEPS for more people at risk of homelessness. We hope the administration will detail a more in-depth homelessness prevention plan soon.
- 4. The Administration should support a shelter allowance at a level adequate to prevent homelessness.** As noted above, while we applaud the administration's support for a shelter allowance increase, the report falls short of committing to an adequate shelter allowance, merely indicating that the administration will support an increase. Pending state legislation, A.8900 (Rosenthal)/S.8632 (Kavanagh), would increase the shelter allowance based on the need of the tenants up to 100 percent of the HUD Fair Market Rent for the relevant social services district. Nothing short of this will truly help prevent homelessness. Increasing shelter allowances without ensuring that they are adequate will not prevent evictions. If anything, they will enrich landlords while continuing to leave tenants vulnerable to eviction. We hope we can count on the administration to support this crucial legislation.
- 5. The Administration's criminalization of unsheltered homelessness is contrary to the plan's stated goals of reducing homelessness.** Lastly, the Adams administration's continued criminalization of unsheltered homelessness, while not highlighted in *Housing Our Neighbors*, is contrary to the plan's stated goals of reducing homelessness. The aggressive encampment sweeps push homeless New Yorkers further from services and housing by dislocating people and breaking the trust that trained outreach teams work hard to build. People on the streets should instead be offered immediate placement in permanent housing, and in the interim they should be connected to safe, low-barrier shelters with single rooms. We call on Mayor Adams to recognize the dignity and humanity of those sleeping on the streets by ceasing these cruel and counterproductive sweeps.

III. AFFORDABLE HOUSING

Create and Preserve Affordable Housing

The Legal Aid Society strongly supports the creation of affordable housing. However, New York City's definition of affordable housing rarely meets the needs of New Yorkers, especially our clients. A Community Service Society analysis of the last administration's housing plan found that the plan's income targets did not meet the need of the most rent burdened New Yorkers,

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those with incomes under 50 percent of AML.² Indeed, the previous administration over produced units for moderate and middle-income New Yorkers while producing less than 15 percent of the units needed for very low and extremely low-income households.³ The previous administration created almost as many units for moderate income households as it did for very low-income households.⁴

The Housing Blueprint refers to the fact that over half of New York's renters pay more than 30 percent of their income towards their rent. However, it ignores the fact that rent burden goes up as income goes down. The recently released Selected Findings of the Housing and Vacancy Survey found that 85 percent of households with less than \$24,999 in income were severely rent burdened, paying more than 50 percent of their income toward their rent.⁵ Another 8 percent of households with less than \$24,999 in income were moderately rent burdened, paying 30 percent of their income in rent. For households with between \$25,000 and \$49,999 in income, 44 percent of households was severely rent burdened and another 42 percent was moderately rent burdened. Households above the median income, earning \$50,000 to \$99,999 experienced 8 percent severe rent burden and 34 percent moderately burdened. Only a small share of households earning \$100,000 or more paid more than 30 percent of their income toward their rent. While the Housing Blueprint acknowledges that the vacancy rate for rental housing under \$1500 is less than 1 percent, it does not commit to creating housing at this rental amount. To be clear, for a household with less than \$24,999 in income, the rent is affordable at \$625 or lower. For households earning between \$25,000 and \$49,999, rents are affordable if they are under \$1250. The Housing Blueprint fails to prioritize the creation and the preservation of affordable housing for those New Yorkers who need it most, the very low income and extremely low income. Without a focus on the lowest income New Yorkers, the Blueprint cannot address New York's housing crisis.

We support the legalization of Accessory Dwelling Units (ADU) as long as those units can be made safe for the tenants who live in them. Safety must be the paramount concern when legalizing these units. Additionally, legalizing these units provides homeowners with a significant increase in what their building is worth. Any plan to legalize ADU must protect the tenants who live in those units. Those tenant protections must include Good Cause evictions and limitations on rent increases. The Basement Apartment Conversion Pilot Program Term Sheet should be used for all of these conversions.⁶ Additionally, we support the conversion of hotels

² Sam Stein, *Assessing De Blasio's Housing Legacy: Why Hasn't the "Most Ambitious Affordable Housing Program" Produced a More Affordable City*, The Community Service Society (February 2021), https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Deblasio_Housing_V41.pdf.

³ *Id.*

⁴ *Id.*

⁵ Gaumer, E, *The 2021 New York City Housing and Vacancy Survey: Selected Initial Findings*, New York City Department of Housing Preservation and Development (May 2022) at 55, <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/2021-nychvs-selected-initial-findings.pdf>.

⁶ NYC HPD, Office of Development, Division of Property Disposition and Finance, *Basement Apartment Conversion Pilot Program (BACPP) Term Sheet* (May 2019), <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/bacpp-term-sheet.pdf>.

and other commercial buildings into affordable and supportive housing if the tenant protections contained in the Housing our Neighbors with Dignity Act are included in the project.

We believe that Senior Citizen's Rent Increase Exemption (SCRIE) and the Disability Rent Increase Exemption (DRIE) are underutilized and support the effort to get the word out and help senior and disabled households to apply for rent freezes. These programs must be streamlined to ensure that households can use this important program and are eager to work with the administration to reduce the burdens of participation with this program.

We strongly support the use of the U.S. Housing and Urban Development's ("HUD") Rental Assistance Demonstration (RAD) program for the Section 202 housing developments. There are two RAD programs, one for public housing and one for HUD Housing with expiring subsidies. While RAD I, the program for public housing, promotes privatization, RAD II prevents privatization. The RAD II program has prevented thousands of units of affordable housing in New York City from receiving market rents. Section 202 housing provides desperately needed affordable housing for New York seniors. Using RAD II to preserve this housing is incredibly important.

In the past, New York City has created term sheets, affordable housing programs, tax exemptions and tax abatements to encourage the creation and preservation of safe, decent and affordable housing. What has been lacking in these programs is oversight. New York City is very good at writing big checks to developers and then forgetting to check whether the developers comply with any of the laws governing these programs. This utter lack of oversight has harmed tenants who have struggled to pay unaffordable rents and lived in deplorable conditions. It is not enough to incentivize affordable housing while allowing developers to pocket the money while tenants suffer. The Blueprint acknowledges the need for oversight and new investment into this needed function. However, we have been here before. Proof will be in creating the new capabilities to supervise and additional resources for oversight. We stand ready to work with this administration to ensure that tenants are not stranded in unaffordable and unsafe apartments.

Promote Housing Stability for Renters

We support housing stability for renters. We support lowering the rent burden for tenants. It's not clear how the Housing Blueprint intends to accomplish this.

We would like more information about the rent reporting pilot conducted at NYCHA. If the pilot was a success, the City should be transparent about the parameters of the pilot and publish results. We have concerns that unless rent burdens are significantly lowered, a rent reporting program would set many of our clients up for failure.

IV. EMERGENCY HOUSING VOUCHERS

The City should devote resources to ensuring that the Emergency Housing Vouchers (EHV) are not forfeited for failure to utilize. Such a missed opportunity would be tragic. In May 2021, HUD awarded 70,000 vouchers to various Public Housing Authorities (PHA) across the country.⁷ Of these, 5,738 went to the New York City Housing Authority (NYCHA) and 2,050 to the NYC Department of Housing Preservation & Development (HPD) for issuance to homeless New Yorkers, people at risk of homelessness, people fleeing violence. These vouchers are issued upon referral from community-based organizations and legal services providers like the Legal Aid Society and an application process.

Unfortunately, 730 or 12% of the NYCHA vouchers have been utilized to rent an apartment and 130 or 6.34% of the HPD issued vouchers have been utilized to date.⁸ Both agencies are well behind the national utilization rate of 35%.⁹ However, they are barely mentioned in the Mayor's Housing Plan and it appears there is no urgency for grasping this low hanging fruit. These vouchers will be forfeited if they are not used. They have to be used before the end of 2022. These Section 8 vouchers are a valuable resource.

At The Legal Aid Society, where advocates are participating in an intensive training process in order to submit EHV applications, our efforts to complete and submit applications for our clients has been stymied by technical issues and delays. Advocates have been unable to access the various interfaces involved in the application process and it has taken weeks – and sometimes, months – to receive technical assistance. This delay inhibits our efforts to undertake this lengthy application process and creates further demands on top of existing casework. Tenants are increasingly held in limbo while remaining at risk of imminent eviction. Through the EHV program, the City has a rare opportunity to change the lives of hundreds of tenants and it must devote resources sufficient to support this transformational project. Additional technical personnel should be assigned to support the EHV program so that tenants and advocates can receive the assistance necessary to navigate this process without undue delay.

V. CITYFHEPS

We welcome the opportunity to explore how the CityFHEPS program can significantly reduce the City's homeless population and preserving housing for those in jeopardy of eviction. The recent increase in the CityFHEPS rent levels has significantly increased the apartments participants can access. However, this gain will be most effective if changes are adopted to allow the program to be a stronger tool for allowing families and single adults to live in homes with dignity and escape the shelter system. Stable homes provide space, comfort and peace that allows families to secure work and enjoy the stability that is crucial to prosperity. Instead, CityFHEPS has been plagued with administrative delays, miscues and miscommunication that cause program participants to lose apartments.

⁷ <https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-15pihn.pdf>

⁸ https://www.hud.gov/program_offices/public_indian_housing/ehv/dashboard

⁹ Id.

Although source of income discrimination is plainly illegal, even well-intentioned landlords will be discouraged from working with our clients if they must leave their apartments vacant for months without collecting rent after agreeing to lease to a CityFHEPS voucher holder. Further, as discussed below, eligibility limits prevent needy people from receiving assistance. The rent reasonableness standard and the utility allowance diminish the apartment pool. Discrimination against voucher holders makes it difficult to find apartments. Weak code enforcement keeps families in inhabitable and unsafe apartments, favors owners who fail to maintain habitability standards and undermines voucher programs with robust code enforcement. Attainable changes to the program's administration can meaningfully further its goals. They will also reduce the shelter population and the high attendant costs.

Unacceptable Delays in CityFHEPS Move-Ins

Delays in CityFHEPS are not isolated or unusual. Unfortunately, they are commonplace. Even after a landlord has agreed to rent an apartment, our clients regularly wait for up to six months in shelter while the City approves their paperwork.

The delays our clients face have been well-documented.¹⁰ Voucher holders must navigate a byzantine lease-up process in which the smallest error — a misspelled address, or an unusual broker's license — can cause weeks of additional delay. City-contracted shelter providers submit paperwork to DHS for approval, and DHS examines the deed, lease, and history of housing violations. If there are errors in the application, the City frequently rejects the application rather than seeking to fix the error itself. It may then take weeks for overworked shelter providers to correct the application and send it back. If there are additional errors that the City did not identify upon first review, the application can go back to the shelter provider again. If a client transfers shelters, the process frequently begins all over again. In practice, clients and landlords often must agree on new lease dates every month as move-in is delayed repeatedly.

The problems are a result, in part, of the relationship between City-contracted shelter providers who prepare most of the paperwork on the client's behalf, and the City Department of Homeless Services (DHS), which reviews and approves it. A CityFHEPS "package" often goes through several rounds of review, having been submitted by the shelter provider, denied, and resubmitted over the course of many months.

These delays have profound negative consequences. Clients endure months of crowded shelter conditions and homelessness while their paperwork is pending, and they are unable to pursue other housing opportunities in the meantime. While our clients are waiting for apartments, the negative effects of homelessness compound, including joblessness, mental health challenges,

¹⁰ David Brand, *Administrative Obstacles Jam Up Moving Process for NYC Shelter Residents*, City Limits (Jan. 31, 2022), <https://citylimits.org/2022/01/31/administrative-obstacles-jam-up-moving-process-for-nyc-shelter-residents/>; Chau Lam, *Spelling mistakes and clerical errors could keep many stranded in shelters under city housing program*, Gothamist (Feb. 18, 2022), <https://gothamist.com/news/spelling-mistakes-and-clerical-errors-could-keep-many-stranded-shelters-under-city-housing-program>.

familial instability, and poor living conditions. Landlords sometimes become so frustrated that they exit the process altogether, leaving prospective tenants without any options. These landlords may refuse to accept CityFHEPS in the future and discriminate against future CityFHEPS applicants, undermining the long-term viability of the program.

Our clients' experiences are disheartening. Like thousands of other voucher holders who face unacceptable delays and wait three or more months to move in even after a landlord agrees to rent to them, the following clients faced typical bureaucratic hurdles that lengthened their stay in shelter — even with the help of a Legal Aid lawyer or paralegal.

- R.K. submitted a CityFHEPS preclearance paperwork to DHS for an apartment for R.K. on the Upper East Side in March. When R.K. was violently attacked in her shelter and transferred to a different shelter for her safety, she was assigned to a different housing specialist employed by the new shelter. R.K. was unable to contact her original specialist or get any information from DHS on the status of her CityFHEPS package. The landlord was required to complete the preclearance paperwork for a second time, causing a delay of about four weeks in addition to the normal wait time.
- N.L. applied for an apartment for which the broker sought a broker's HRA fee. The broker is licensed in New York State, but lives part of the year in Texas, so his New York State license lists a Texas office address. After reviewing the broker's license, DHS denied the application because of the Texas address, even though N.L. was clearly licensed to broker apartments in New York. Only after Legal Aid contacted DHS counsel about the issue did DHS perform a supervisory review and ultimately approve the application, causing a delay of several weeks.
- A.M. applied for an apartment in a co-op building where she was to lease a unit from an individual owner who manages and rents co-op apartment units in a number of buildings in the Bronx. DHS denied the application because the entity on the building's deed — the co-op entity — didn't match the name of the owner of the individual apartment. The co-op board was nominally required to approve leases, but in practice never did. After a two-month delay and intervention by Legal Aid, DHS approved the lease.
- J.C. applied for an apartment in which the submitted package inadvertently omitted "LLC" from the landlord's name. Even though the landlord has other CityFHEPS clients and HRA has processed other applications for this landlord before, and the landlord entity's full name was readily available in public records, HRA rejected the application, requiring it to be resubmitted and resulting in extending the client's shelter stay by several weeks.

Barriers to Using CityFHEPS

The CityFHEPS program remains an important safety net for single adults and families and a ticket to independence. Unfortunately, the need for CityFHEPS is far greater than its availability.

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Numerous households that are in shelter or in danger of eviction desperately need a benefit such as CityFHEPS, but they do not qualify under current rules. Additionally, the rent reasonableness rule and the utility allowance unnecessarily prevent CityFHEPS voucher holders from accessing apartments that meet the established payment standard. They are also implemented in a manner that creates uncertainty even when a tenant has found a potential home.

Immigration Status. Many New Yorkers languish in shelter for extended periods simply because they don't meet immigration status requirements. The City of New York can extend CityFHEPS eligibility to all non-U.S. citizen New Yorkers, including those without immigration status despite restrictions in federal law that purport to limit eligibility to a limited group of so-called "qualified aliens." Current precedent supports the proposition that federal law does not preempt the City or State of New York from extending a benefit, such as CityFHEPS, to any non-U.S. citizen New Yorker. Courts have determined that Section 8 U.S.C. § 1621(d), which provides that non-U.S. citizens who are not "qualified aliens," are only eligible for state or local benefits where an "enactment of a State law after August 22, 1996 . . . affirmatively provides for such eligibility," is unconstitutional or unenforceable. *See Dandamudi v. Tisch*, 686 F.3d 55 (2d. Cir. 2012) (finding that statutes limiting certain licenses to citizens and permanent residents to be a violation of the Equal Protection clause of the U.S. Constitution). Additionally, any taxpayer challenge is unlikely to withstand the authority concluding that section 1621 creates no private right of action through which it can be enforced. Given the incredible need among New Yorkers in a range of immigration statuses, the City should embrace the expansion of CityFHEPS.

Rent Reasonableness. In June 2021, the City Council enacted Local Law 71, requiring HRA to set CityFHEPS maximum rents at the level of the "payment standard" referenced in Section 982.503 of HUD's Section 8 regulations, which in New York City is equal to 108 percent of the area Fair Market Rent (FMR). However, in December 2021, HRA adopted new rules for the CityFHEPS program, 68 RCNY 10-01, that imported two rules from the federal Section 8 program that would not otherwise apply to a City program and were not referenced in the City law. In its new rules, HRA provided that apartments that rented at the Section 8 payment standard would not be approved unless the rents were deemed "reasonable" in comparison with rents for other units in the immediate neighborhood. This procedure is mandated by HUD for Section 8 subsidies but it is not mandated by Local Law 71. The effect of the "rent reasonableness" rule is that shelter residents seeking apartments can never know in advance whether a unit they have found will be considered "reasonable", even if the rent is at or below the payment standard. These clients execute leases or rental applications, assemble documentation for HRA, and then wait weeks or months only to learn that the rent was not reasonable after all, and they have to start the search from scratch. All that time, they continue to reside in the shelter system, costing the City far more than it could ever save through the reasonableness policy. In addition, tenants in eviction cases who hope to use CityFHEPS to retain their current apartments cannot know in advance what rent amount they can agree to. These tenants must commit to a new lease at the payment standard, risking that HRA will find that amount unreasonable for their neighborhood, exposing them to eviction and shelter entry.

Utility Allowance. Similarly, HRA further narrows the range of apartments available to CityFHEPS households by subtracting utilities paid by the tenant from the published payment standard. For most apartments, in which tenants must pay their own electricity, HRA will only approve rents equal to the payment standard *minus a utility allowance* of roughly \$100; as a result, tenants are limited to apartments at below market rent. Because many landlords refuse to discount the payment standard rents by this additional amount, clients lose the opportunity to leave shelter, and the City must pay additional months of shelter costs.

Department of Social Services (DSS) Commissioner Gary Jenkins has justified this rule by pointing to federal HUD’s FMR, which includes the cost of utilities in its calculation of rents. See 24 CFR 982.4 (defining “FMR” as “the rent, including the cost of utilities... as established by HUD for units of varying sizes”). But in the Section 8 program, tenants pay 30% of their income for both rent *and* utilities, while Section 8 covers the rest, including utilities; in the CityFHEPS program, tenants pay 30% of their income on rent, *plus* utilities. It makes little sense to create a rule that saddles tenants with the negative aspects of HUD’s utility allowance scheme — i.e., discounting the voucher payment standard at which tenants can rent apartments by \$100 or more for utility costs — while not providing tenants a corresponding reduction in their rent share. The City should revise its rules to eliminate both the rent reasonableness and utility allowance provisions that have no basis in City law.

Source of Income Discrimination. Despite ambitious private enforcement actions and prohibitions in the City and State human rights laws, source of income discrimination, or, landlords’ refusal to rent to voucher holders, remains rampant.¹¹ The source of income discrimination units at the New York City Commission on Human Rights and DSS have lost numerous staff members and are unable to keep up with the pace of landlord discrimination.¹² Our clients continue to face repeated rejections over many months because of their vouchers, or never receive responses from the landlords they have contacted. The recently approved budget includes funding for the source of income unit,¹³ but it is unclear whether this funding will support new staff positions or simply continue existing positions, and it is certainly not enough to stem the tide as rents soar and competition for apartments grows.

Recommendations

¹¹ Matthew Haag, *She Wants Well-Qualified People: 88 Landlords Accused of Housing Bias*, The New York Times (March 15, 2021), <https://www.nytimes.com/2021/03/15/nyregion/real-estate-lawsuit-section-8-discrimination.html>; Mihir Zaveri, *Discrimination Weakens Tool for Reducing N.Y. Homelessness, Lawsuit Says*, The New York Times (May 25, 2022), <https://www.nytimes.com/2022/05/25/nyregion/ny-vouchers-homeless-discrimination.html>.

¹² David Brand, *NYC Was Set to Crack Down on Voucher Discrimination, But its Enforcement Teams Keep Shrinking*, City Limits (March 18, 2022), <https://citylimits.org/2022/03/18/nyc-was-set-to-crack-down-on-voucher-discrimination-but-its-enforcement-teams-keep-shrinking/>.

¹³ Jeanmarie Evelly and David Brand, *Here’s How NYC’S \$101 Billion Budget Addresses Homelessness*, City Limits, (June 14, 2022), <https://citylimits.org/2022/06/14/heres-how-nycs-101-billion-budget-addresses-homelessness/>.

In order to reduce CityFHEPS delays, the City should ensure that DHS:

- **Streamlines its review process.** This may include changes like:
 - requiring DHS reviewers to review an entire package for mistakes before sending it back to the shelter provider for corrections;
 - making it easy for shelter providers to communicate by telephone and email with DHS reviewers in order to discuss resolving issues with a package;
 - reducing the number of rounds of review for each package so that DHS must only review a package once;
 - reducing the amount of paperwork required;
 - correcting and approving packages with minor clerical errors, like an address that says “street” instead of “place”;
 - providing automatic email notifications with package updates.
- **Sets clear benchmarks for approving CityFHEPS packages.** DHS should set clear goals for move-out times for each application, and ensure that it meets those goals in facilitating moves. Shelter move-outs via CityFHEPS should never take longer than **XX** days from the time a lease is presented.
- **Re-trains shelter staff.** DHS should track how long the contracted shelter providers take to facilitate move-outs. Shelter providers that are the source of repeated delays must be intensively retrained.
- **Phases out contracts with shelter providers who are unable to meet move-out goals.** Frequently, delays in lease-up are due to shelter providers failing to facilitate move-outs. DHS should not agree to extend contracts with shelter providers who fail to efficiently move clients out of shelter.
- **Approves apartments that pass inspections.** If an apartment passes a CityFHEPS inspection, the tenant should presumptively be permitted to move in, regardless of whether DHS has approved all the paperwork. Unless an apartment has not passed an inspection, within 45 or 60 days a tenants’ package should be automatically approved and HRA should prepare checks to the landlord.

Commented [SW1]: What should XX be?

In order to assist more New Yorkers in need, the City should:

- **Reevaluate the three-month shelter requirement.** While a prudent needs assessment is appropriate, 90 days is far too long for residents to have to remain in shelter before they can be eligible to receive a voucher and this benchmark does not appear to serve any purpose.
- **Extend CityFHEPS vouchers** to those that do not receive public assistance.
- **Provide at least 5,000 vouchers** to those in danger of eviction to remain in their current homes, by targeting populations such as elderly rent regulated tenants who are nonetheless rent burdened.
- **Waive the work requirements** for people who receive public assistance.
- **Extend the duration of voucher payments** for 6 months to 1 year after household income exceeds eligibility limit to allow a seamless transition and prevent reentry into shelter.

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- **Provide vouchers to those without eligible immigration status** by either deeming them eligible for CityFHEPS or accessing alternative funding sources.
- **Prioritize source of income discrimination enforcement** by fully supporting the New York City Commission on Human Rights' efforts by funding systemic approaches to combatting these illegal practices, testing and rapid response.
- **Enforce habitability standards** to ensure that subsidized tenants live in safe apartments.
- **Eliminate the utility deduction** to allow tenants to rent apartments at FMR, which are the rates required by Local Law 71 and intended by the City Council.
- **Eliminate the rent reasonableness requirement** to ensure tenants are not unfairly prevented from renting apartments at or below FMR.
- **Fully fund the source of income discrimination unit at the New York City Commission on Human Rights** to ensure that voucher holders facing discrimination are able to obtain quick interventions from the NYCCHR that will allow them to secure apartments.

VI. NEW YORK CITY HOUSING AUTHORITY

We are encouraged to see that this Administration has finally included NYCHA in the City's Housing Plan – something that we have been calling on for years. We thank the Adams Administration for recognizing that issues relating to NYCHA, which impact the lives of so many New Yorkers, should be part of the City's housing plan focus, and recognizing that supporting NYCHA in its mission to provide safe, habitable housing is a key role for the City to play.

Conditions in NYCHA Public Housing

NYCHA public housing residents, together with all tenants of privately owned housing, have the right to be safe and secure in their homes. Sadly, for too long, the 600,000 New Yorkers who call NYCHA "home" have been forced to endure dire living conditions that present a threat to their health and safety and often render their homes uninhabitable.

At The Legal Aid Society, we strongly support several of the changes that NYCHA is embracing as a result of agreements made in the Monitorship Agreement between NYCHA, the US Attorney's Office and HUS. These include the Transformation Plan, Neighborhood Model for property management, NYCHA's Work Order Reform program and the creation of a NYCHA Stat Unit ("NSU").

We are optimistic that the organizational and operational changes that are being implemented as a result of these plans will have a positive impact on our client's daily lives within the development grounds and their apartments. As we know from the US. Attorney's investigation into NYCHA practices, the work order system is defective- NYCHA closes out work orders even though the work has not been completed. We hear time and time again anecdotes from our clients, for example: about a painter coming to do work in the apartment before the plastering has been done- triggering the closing of a work order or additional delays in getting work done;

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and claims by NYCHA that a resident is not home at the time of scheduled work leading to the closing of a work order.

At this time, the backlog of open work orders is extremely high- with NYCHA reporting over 600,000 open work orders. Residents are waiting on average over 300 days for simple repairs to be made. No New Yorker should have to wait that long for repairs.

We fully support the Adams Administration's commitment to supporting these stated organizational changes and want to make sure that NYCHA does indeed receive any support that it needs to make them.

New York City Public Housing Preservation Trust

In June, Governor Hochul signed an historic piece of legislation creating the New York City Public Housing Preservation Trust (Trust). We thank Mayor Adams for his critical support in getting the legislation passed into law.

The Trust provides a unique opportunity for NYCHA to access greater funding to make necessary repairs to NYCHA's housing stock.

We at Legal Aid believe that one of the most important parts of the legislation is the provisions around resident "opt-in." The law provides that NYCHA cannot transfer a leasehold interest in any housing development to the Trust without a vote in favor of such transfer at each particular development.

At this time, NYCHA is starting to develop what that voting process will look like. We strongly urge the Adams Administration to help ensure that the voting process is robust and inclusive. Additionally, the Administration should focus on providing support to residents so that they can be engaged to the maximum extent possible in determining the means by which their homes are restored and that the promise of safe, habitable and stable housing will continue.

RAD/PACT

NYCHA has committed to using its RAD/PACT platform to preserve 62,000 units of its public housing stock under the RAD/PACT process. In the Housing Plan, the Adams Administration has stated its intention to help amplify resident voices in the capital projects process.

We urge this Administration and NYCHA to replicate the resident "opt-in" voting requirement process that is part of the Trust legislation for all future RAD/PACT conversions. Each tenant of record within NYCHA should be able to make an informed decision as to how their housing is restored, not only those that are being offered preservation under the Trust.

VII. HOUSING DISCRIMINATION

Prohibiting Housing Discrimination on the Basis of Arrest or Criminal Record

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The Legal Aid Society is encouraged by the proposal in the Mayor's housing plan to prohibit housing discrimination on the basis of arrest or criminal record. The use of screening based on criminal record makes it more difficult for our clients leaving jail or prison to find housing and avoid long-term homelessness.

Discrimination on the basis of arrest or criminal record takes a disproportionate toll on New Yorkers of color. This is in part because the gross disparities in New York's criminal justice system: Of the 34,143 inmates under State custody on January 1, 2021, 50 percent were African-American and 24 percent were Latino,¹⁴ yet the State's general population is just 17.6 percent African-American and 19.3 percent Latino.¹⁵ Of the 4,389 average daily inmates in City custody, 56 percent were African-American and 33 percent were Latino,¹⁶ even though the city's population is only 24 percent African-American and 29 percent Latino. The result is that Black and Latino New Yorkers are much more likely to have arrest or criminal records, and be barred from housing because of landlord criminal background checks. Moreover, it is well-recognized that arrest records are not evidence of misconduct, and landlords' bars against prospective tenants who have not even been convicted of crimes is unacceptable.¹⁷ When landlords use discriminatory arrest and criminal background checks, they are overwhelmingly denying New Yorkers of color the benefits of secure housing.

Landlords' reliance on arrest and incarceration records is a major driver of homelessness. Of the 9,300 people released from State prisons to New York City in 2014, 23 percent of them went directly into the City shelter system; in 2017, 54 percent of the people released to New York City, or 4,122 individuals, entered the shelter system.¹⁸ A 2006 study of 7,000 individuals in the City's public shelter system found that nearly a quarter had been incarcerated in the previous two years. For many of them, the primary barrier to achieving stable housing was their criminal record. Moreover, people experiencing homelessness are at increased risk of recidivism and encounters with law enforcement: Those who have experienced homelessness make up more

¹⁴ State of New York Dept. of Correction and Comm. Supervision, *Under Custody Report: Profile of Inmate Population Under Custody on January 1, 2021* (Jan. 2021),

<https://doccs.ny.gov/system/files/documents/2022/04/under-custody-report-for-2021.pdf>

¹⁵ United States Census Bureau, *New York Population Estimates* (Sept. 10, 2020),

<https://www.census.gov/quickfacts/NY>

¹⁶ *NYC Department of Correction at a Glance, Information for first six months of 2021*, Department of Correction, https://www1.nyc.gov/assets/doc/downloads/press-release/DOC_At_Glance_first6_months_FY2021-030921.pdf

¹⁷ *See, e.g., Schwabe v. Bd of Bar Examiners*, 353 U.S. 232, 241 (1957); *United States v. Berry*, 553 F.3d 273, 282 (3d Cir. 2009); *United States v. Zapete-Garcia*, 447 F.3d 57, 60 (1st Cir. 2006).

¹⁸ Courtney Gross, *The New York prison-to-shelter pipeline*, Spectrum News NY1 (Feb. 27, 2018), <https://www.ny1.com/nyc/all-boroughs/politics/2018/02/27/ny1-investigation-more-inmates-released-upstate-prisons-going-into-nyc-shelter-system>; Jacquelyn Simone, *Today's Video: The New York Prison-to-Shelter Pipeline*, Coalition for the Homeless (Feb. 28, 2018), <https://www.coalitionforthehomeless.org/todays-video-new-york-prison-shelter-pipeline/>

than 15 percent of the national jail population, and are about 10 times more likely to be in jail.¹⁹ Law enforcement that criminalizes homelessness, including subway patrols and other police encounters, further fuels a cycle of homelessness and involvement with the criminal justice system. When landlords are permitted to discriminate on the basis of arrest or criminal records, they exacerbate the city's homelessness crisis at a time when we must make it easier for New Yorkers to find housing, not harder.

Legal Aid supported Intro 2047-2020, which would have prohibited housing discrimination in rentals and sales on the basis of arrest record or criminal history by reducing barriers to permanent housing for a large subset of people currently languishing in shelters and on the streets. **We would urge the Mayor to adopt last year's City Council legislation Intro 2047.** Unlike so-called "Ban the Box" bills, which allow employers to take criminal history into account, Intro 2047 would have prohibited any inquiry into criminal background at any time in the application process.

VIII. HEALTH AND SAFETY

Improving the Health and Safety of New Yorkers

The Mayor's Housing Blueprint is right to identify the expansion of healthy, safe and habitable housing as a necessary factor in combating the chronic health disparities that exist in New York City. Housing is a potent determinant of health and it is increasingly a public health focus.²⁰

The Legal Aid Society has the following comments and suggestions regarding particular aspects of Chapter Four:

Technology and Data Collection

HPD's systems should be updated to streamline the inspection process and provide more effective code enforcement. The Plan provides for an investment in technology to allow HPD to better serve the public. In addition to making adjustments to functions that primarily serve property owners, such as annual property registration and certifications of corrections, HPD should provide expanded and more efficient access to tenants, who rely on HPD's code enforcement division to address unsafe conditions in their homes.

HPD should develop a text- or email-based notification system that would inform tenants of the date of their housing inspection and notify them when the inspector is on the way. Presently, a tenant who reports an unsafe housing condition to 311 has no way of knowing when an HPD inspection will take place; many tenants only find out that an inspection was scheduled and

¹⁹ Greg A. Greenberg and Robert A. Rosenheck, *Jail Incarceration, Homelessness, and Mental Health: A National Study*, Psychiatric Services (Feb. 2008), <https://homelesshub.ca/sites/default/files/Greenberg.pdf>.

²⁰ James Krieger & Donna L. Higgins, *Housing and Health: Time Again for Public Health Action*, Am. J. Pub. Health 758 (May 2002).

attempted when they return home to a notice on their apartment door. Providing tenants with advance notice of an inspection will allow HPD's Housing Inspectors to operate more efficiently. It also increases the likelihood that hazardous conditions will be identified and cited in an expeditious manner.

We also suggest that HPD add greater nuance and detail to its violation coding system, as this would allow HPD to more effectively combat the housing conditions that lead to disparate health outcomes in lower-income neighborhoods and communities of color. HPD violation descriptions are often vague, leading tenants, landlords, and judges to speculate about a condition and how best to address it. Violations must also be updated to better reflect modern housing stock and rental norms. For example, a non-working stove or refrigerator may not have been a condition within a landlord's purview in the past, but it certainly is in New York City today, where major appliances are included with the vast majority of rental housing.

Improve and Expand Existing HPD Resources

HPD should better utilize existing systems to provide for more effective enforcement of the Housing Maintenance Code. HPD's Emergency Repairs Program ("ERP") provides essential assistance to tenants faced with egregious emergency conditions, such as utility shut offs due to landlord neglect or malfeasance. ERP should be adjusted to address conditions in a more comprehensive manner, rather than concentrating on the most obvious and imminently dangerous emergency conditions that have been cited as class "C" violations. For example, a recurrent mold condition may not appear immediately dangerous, but can have devastating impacts on health, including triggering asthmatic episodes.²¹ ERP should engage contractors to do mold remediation where the condition has been cited and work is either not performed or performed in a manner that does not prevent the condition from recurring. Similarly, ERP should engage contractors to perform integrated pest management in affected units with recurrent pest conditions, such as sealing holes and eliminating water sources and pest harborage.²² HPD should also coordinate with the DOMH's Healthy Neighborhoods Program, which combats asthma triggers such as mold and mice and cockroach infestations. Currently, this program only takes referrals from health care providers for patients who have been diagnosed with persistent asthma. At this point, much damage has already been done by the person's condition. HPD and DOMH should instead take a proactive approach and offer to refer households with asthma triggers and additional risk factors, such as young children or elderly occupants. This will increase the odds that problems are addressed before the occupants develop asthma due to the conditions.

²¹ U.S. Env't Protection Agency, *Mold and Health*, <https://www.epa.gov/mold/mold-and-health>.

²² Despite the Housing Maintenance Code's requirement that integrated pest management be used, and the law's explicit statement that the application of pesticides is not enough to address a pest-related violation, we consistently find that landlords respond to a violation by simply sending an exterminator to spray pesticides and put down glue traps. As a result, tenants are forced to live with dangerous conditions for an extended period of time.

In addition, the Alternative Enforcement Program (“AEP”), which monitors apartment buildings with many Code violations by conducting frequent inspections and making repairs, should be expanded. AEP can be an effective means of compelling repair work, as building owners must address many conditions in order to exit the program and avoid substantial charges and fines. HPD designates buildings for AEP only once per year, at the end of January. Given the serious nature of the many conditions that qualify a building for AEP and how quickly a building can fall into neglect, HPD should expand participation in this program and designate buildings at least twice per year.

HPD’s Litigation Department should develop its cases in coordination with tenants, who are often unaware that HPD is taking legal action related to their homes. The Litigation Department should also build staff capacity to file more 7A proceedings and to litigate these cases aggressively.

Finally, HPD should review its processes related to vacate orders and emergency relocation services. These services should involve coordinating with other City agencies to ensure that tenants displaced due to vacate orders have adequate temporary accommodations in or close to their community. Currently, tenants who have been displaced (often by a traumatic event such as a fire) may be offered a single accommodation option in a location over an hour away from their community and employment. As a result, many tenants are forced to reject the offer, throwing them into unstable housing or homelessness.

IX. CONCLUSION

Thank you for the opportunity to provide feedback on the Mayor’s Housing Plan. The Society looks forward to continuing to work with the Adams Administration as well as City Council to increase access to high-quality, safe, and affordable housing for all New Yorkers.

Respectfully Submitted:

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