



Testimony of  
Coalition for the Homeless  
and  
The Legal Aid Society

on

Rental Assistance Programs

presented before

New York City Human Resources Administration

Jacquelyn Simone  
Senior Policy Analyst  
Coalition for the Homeless

Beth Hofmeister  
Staff Attorney  
The Legal Aid Society

August 30, 2021

The Coalition for the Homeless and The Legal Aid Society welcome this opportunity to testify before the New York City Human Resources Administration (HRA) about the increase in the CityFHEPS maximum allowable rents, as well as other changes to the CityFHEPS program. The proposed rule makes a number of changes to the CityFHEPS program, including implementing Local Law 71 of 2021, legislation passed by the City Council that raises the CityFHEPS maximum allowable rents to the levels set in accordance with the Section 8 standard adopted by the New York City Housing Authority.

New York City remains in the worst homelessness crisis in a century, with some 51,000 people living in Department of Homeless Services (DHS) shelters each night, and hundreds of thousands more at risk of losing their homes due to loss of income during the COVID-19 pandemic. The Coalition and Legal Aid have repeatedly called for the City and State to address the root of the problem — the lack of affordable housing in New York City — through investments in new housing development, rental assistance, supportive housing, and public housing. The increase in maximum allowable rents under the proposed rule, as well as efforts to combat source-of-income discrimination and commitments to new housing development, are all critical parts of a citywide strategy to address homelessness in New York.

We commend HRA for its plan to raise the CityFHEPS maximum allowable rents months ahead of its statutory deadline. HRA's willingness to implement these changes promptly, instead of waiting until it is required to do so in December under Local Law 71, will result in many of our clients obtaining housing and moving out of shelters sooner than they otherwise would. We also applaud several other proposed changes, including the creation of a project-based CityFHEPS program, expanded CityFHEPS eligibility for unsheltered New Yorkers, and the clarification that families benefitting from SCRIE/DRIE may use CityFHEPS toward their rent.

However, we suggest HRA publish clarifications to the project-based CityFHEPS program and expand voucher access for homeless youth. In addition, we are deeply concerned that the CityFHEPS renewal eligibility criteria — the so-called “income cliff” at which households become ineligible for a CityFHEPS renewal and must pay their rent entirely out of pocket — will put our clients at risk of homelessness and undermine the program's ability to ensure long-term housing stability. Finally, with the increase in funding for CityFHEPS, it is more important than ever that the units and buildings in the program be up to code and free of violations so that households can live in safe, stable homes.

### **Homeless Youth and Others Should Have Improved Access to CityFHEPS**

Runaway and homeless youth living in Department of Youth and Community Development (DYCD) shelters should have improved access to CityFHEPS vouchers. While the proposed §10-01(f) and current regulations allow referrals from DYCD for CityFHEPS, HRA should not limit CityFHEPS access to “avert entry to or abbreviate a stay in an HRA or DHS shelter,” as the proposed rule provides. Rather, referrals from DYCD programs to CityFHEPS should be permitted even without imminent risk of entering an HRA or DHS shelter. Homeless youth currently do not have any meaningful City-supported access to permanent affordable housing, and limiting their access to such housing based on the system they enter undercuts the very support they need.

In addition, although §§10-01 and 10-03 define “CityFHEPS qualifying programs,” which allow for certain agencies to prevent or abbreviate a stay in a DHS or HRA shelter by making a referral for a voucher, there are no standards or procedures to regulate how clients will be referred from these qualifying programs. The lack of categorical eligibility for anyone who is homeless or is trying to avoid residing in a shelter implies that these resources will only be available on a limited basis. Indeed, prior to the City’s recent pilots for youth involved with the New York City Administration for Children’s Services (ACS) and DYCD, we had not seen such referrals in the years since the CityFHEPS program was created. Referrals should be routine and expansive based on people’s lived experience of homelessness or risk of homelessness.

### **The Proposed CityFHEPS Project-Based Vouchers Will Help Homeless New Yorkers Find Housing**

We applaud HRA’s proposal to create a project-based CityFHEPS program that would allow eligible households to secure housing in buildings operated by non-profit providers that have entered into contracts with HRA. There are numerous benefits to such a program. First, households using project-based rental assistance may avoid one of the major challenges to the CityFHEPS program, namely, source-of-income discrimination in the private housing market. By setting aside units dedicated to voucher holders, the City will ensure that CityFHEPS households have an alternative to the challenging housing search on the open market. Second, non-profit providers operating in close contact with HRA may be less likely to abuse the program or unlawfully end participation. Finally, the program will allow households to maintain closer contact with social services after leaving shelters, as HRA has provided in § 10-16(c).

We have several questions and concerns regarding the operation of the program, however, and we encourage HRA to clarify these points in the final rule. The first is that HRA must ensure long-term eligibility for tenants benefitting from project-based rental assistance, and should not discontinue rental assistance if a household’s income rises above 250 percent of the Federal Poverty Level (FPL). Second, tenant selection for Subchapter B units should not replicate the frequent discrimination in the existing tenant-based program. As currently written, § 10-17 provides that households are only initially eligible for CityFHEPS after having “applied for and been accepted into a Subchapter B unit.” We are concerned that, without further guidance from HRA, non-profits managing project-based CityFHEPS units may disfavor households with greater needs or more checkered rental histories. We encourage HRA to play a greater role in tenant selection or prioritize households that have the greatest challenges finding housing through tenant-based CityFHEPS.

Finally, we urge HRA to require that Subchapter B units described in § 10-16 pass a safety and habitability assessment prior to tenancy by a CityFHEPS voucher household in order to ensure that tenants in project-based CityFHEPS units live in safe homes free of violations.

### **Setting the Maximum Allowable Rents at Levels Set by the New York City Housing Authority (NYCHA) Will Improve Housing Access for Homeless New Yorkers**

We applaud HRA for two provisions in its proposed rule that maximize the benefits of the City Council’s change to the CityFHEPS allowable rents. As currently written, the proposed rule specifies at § 10-05(a) that the CityFHEPS maximum allowable rents will be set at “the standard adopted by the New York City Housing Authority” pursuant to section 982.503 of title 24 of the

code of federal regulations. Because of the high costs of the New York City housing market, NYCHA has in the recent past set its voucher payment standard at 110 percent of the published fair market rent for New York City. By clarifying that the CityFHEPS maximum allowable rents will be set pursuant to NYCHA's standards, HRA will set the voucher at levels commensurate with the city's housing market and in line with NYCHA Section 8 vouchers, thereby improving housing access for homeless New Yorkers.

In addition, HRA has moved to increase the maximum CityFHEPS rent level immediately, instead of waiting until it is required to do so in December. We commend HRA for moving expeditiously so more homeless New Yorkers can secure housing sooner than they otherwise would.

### **Households in Shelters Should be Immediately Evaluated for CityFHEPS**

The 90-day qualifying shelter stay required for a household to become eligible for CityFHEPS should be eliminated, or at a minimum reduced. This requirement contributes to the long stays in shelters at a high fiscal cost to the City and at enormous physical and mental expense to homeless New Yorkers. Once a household enters a shelter, they should be evaluated for CityFHEPS and promptly given a shopping letter so they can be rapidly rehoused back into the community.

### **Follow the FHEPS Rule, Which Permits a Tenant of Record to Have a Roommate Household with CityFHEPS**

CityFHEPS should have a similar rule to FHEPS<sup>1</sup> that permits households eligible for vouchers to move in with a tenant of record (TOR) whose income is at or under 200 percent of FPL. Under the FHEPS plan, the roommate household also must have income under 200 percent of FPL. The CityFHEPS household should remain eligible for the subsidy the second and subsequent years if their income is at or below 250 percent of FPL. The rent for the two households must be within the CityFHEPS maximum rent levels. The roommate household should have similar options to protect their tenancy from year to year as described in the FHEPS plan, including a roommate agreement to stay. Permitting roommate agreements in the community will help current tenants of record afford their housing, safeguard already available low-income housing, and prevent more households from becoming homeless. The FHEPS roommate rule has facilitated three-generation households to remain in the community, and this success could be replicated with a similar change to CityFHEPS.

### **Expanded CityFHEPS Eligibility for Unsheltered Homeless New Yorkers**

Proposed § 10-01(mm) expands the definition of "street homeless" to include individuals who have been receiving case management services for fewer than 90 days. We commend HRA for this change and support its inclusion in the final rule. This change will make unsheltered homeless New Yorkers eligible for CityFHEPS without waiting three months, as is required under the current rule. This is an important change that reduces barriers to housing for a vulnerable population.

---

<sup>1</sup> FHEPS stands for Family Homelessness and Eviction Prevention Supplement. FHEPS is a rent supplement for families with children who receive Cash Assistance and have been evicted or are facing eviction, who lost their housing due to domestic violence, or who have lost their housing because of health or safety issues.

### **Clarification that CityFHEPS Can be Applied to SCRIE/DRIE Units**

As currently written, HRA has clarified in § 10-15 that CityFHEPS can be applied toward rents that have been frozen as part of the Senior Citizen Rent Increase Exemption (SCRIE) and Disability Rent Increase Exemption (DRIE) programs. We commend HRA for this clarification, which we have advocated for in the past. This change will benefit numerous households living in units that are participating in the SCRIE and DRIE programs, thereby increasing their housing stability.

### **The CityFHEPS Renewal Eligibility and the “Income Cliff”**

The CityFHEPS program is intended to help individuals and families find stable, long-term housing. However, the CityFHEPS renewal eligibility criteria unfortunately undermine that goal by ending voucher eligibility when household income exceeds 250 percent of FPL. Under the criteria at § 10-08(a)(1), a CityFHEPS household whose income rises — by, for example, securing employment after moving out of the shelter system — may lose their voucher and immediately be required to cover their entire rent out of pocket. The renewal eligibility cutoff leaves many households at risk of homelessness again if their income rises just above the threshold, but not high enough for them to afford rent on their own without becoming rent burdened.

We encourage further strengthening of the City's rental assistance efforts to ensure that participants do not experience a sudden loss of their subsidy due to changes in circumstances, which may place them at risk of becoming homeless. At a minimum, the City should prioritize moving people receiving CityFHEPS to other housing subsidies as they approach the income cliff, and it should consider creating a City-financed subsidy structured more like Section 8 that is administered by the Department of Housing Preservation and Development or the Department of Finance to accommodate this group of tenants.

### **Conclusion**

Thank you for the opportunity to testify. We hope HRA and the City will consider amending the proposed rule to address the concerns we have raised. We welcome further opportunities to discuss these and other suggestions and are happy to answer any questions.

---

### **About The Legal Aid Society and Coalition for the Homeless**

The Legal Aid Society: The Legal Aid Society, the nation’s oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal, and juvenile rights matters, while also fighting for legal reform. This dedication to justice for all New Yorkers continues during the COVID-19 pandemic.

The Legal Aid Society has performed this role in City, State, and federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of more than 2,000 attorneys, social workers, paralegals, and support and administrative staff. Through a network of

borough, neighborhood, and courthouse offices in 26 locations in New York City, the Society provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel.

The Society's legal program operates three major practices — Civil, Criminal, and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program. With its annual caseload of more than 300,000 legal matters, The Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective that is unmatched in the legal profession.

The Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, the Society'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.

The Legal Aid Society is uniquely positioned to speak on issues of law and policy as they relate to homeless New Yorkers. The Legal Aid Society is counsel to the Coalition for the Homeless and for homeless women and men in the *Callahan* and *Eldredge* cases. The Legal Aid Society is also counsel in the *McCain/Boston* litigation in which a final judgment requires the provision of lawful shelter to homeless families. The Society, in collaboration with Patterson Belknap Webb & Tyler, LLC, filed *C.W. v. The City of New York*, a federal class action lawsuit on behalf of runaway and homeless youth in New York City. Legal Aid, along with institutional plaintiffs Coalition for the Homeless and Center for Independence of the Disabled-NY (CIDNY), settled *Butler v. City of New York* on behalf of all disabled New Yorkers experiencing homelessness, and Legal Aid is currently using the *Butler* settlement to prevent DHS from transferring disabled homeless New Yorkers to congregate shelters without making legally required reasonable accommodations. Also, during the pandemic, The Legal Aid Society along with Coalition for the Homeless continued to support homeless New Yorkers through litigation, including *E.G. v. City of New York* Federal class action litigation initiated to ensure WiFi access for students in DHS and HRA shelters, as well as *Fisher v. City of New York*, a lawsuit filed in New York State Supreme Court to ensure homeless single adults gain access to private hotel rooms instead of congregate shelters during the pandemic.

Coalition for the Homeless: Coalition for the Homeless, founded in 1981, is a not-for-profit advocacy and direct services organization that assists more than 3,500 homeless and at-risk New Yorkers each day. The Coalition advocates for proven, cost-effective solutions to address the crisis of modern homelessness, which is now in its fourth decade. The Coalition also protects the rights of homeless people through litigation involving the right to emergency shelter, the right to vote, the right to reasonable accommodations for those with disabilities, and life-saving housing and services for homeless people living with mental illnesses and HIV/AIDS.

The Coalition operates 11 direct-services programs that offer vital services to homeless, at-risk, and low-income New Yorkers. These programs also demonstrate effective, long-term, scalable

solutions and include: Permanent housing for formerly homeless families and individuals living with HIV/AIDS; job-training for homeless and low-income women; and permanent housing for formerly homeless families and individuals. Our summer sleep-away camp and after-school program help hundreds of homeless children each year. The Coalition's mobile soup kitchen, which usually distributes 800 to 1,000 nutritious hot meals each night to homeless and hungry New Yorkers on the streets of Manhattan and the Bronx, had to increase our meal production and distribution by as much as 40 percent and has distributed PPE and emergency supplies during the COVID-19 pandemic. Finally, our Crisis Services Department assists more than 1,000 homeless and at-risk households each month with eviction prevention, individual advocacy, referrals for shelter and emergency food programs, and assistance with public benefits as well as basic necessities such as diapers, formula, work uniforms, and money for medications and groceries. In response to the pandemic, we are operating a special Crisis Hotline (1-888-358-2384) for homeless individuals who need immediate help finding shelter or meeting other critical needs.

The Coalition was founded in concert with landmark right-to-shelter litigation filed on behalf of homeless men and women (*Callahan v. Carey* and *Eldredge v. Koch*) and remains a plaintiff in these now consolidated cases. In 1981, the City and State entered into a consent decree in *Callahan* through which they agreed: "The City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program established in New York State; or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter." The *Eldredge* case extended this legal requirement to homeless single women. The *Callahan* consent decree and the *Eldredge* case also guarantee basic standards for shelters for homeless men and women. Pursuant to the decree, the Coalition serves as court-appointed monitor of municipal shelters for homeless adults, and the City has also authorized the Coalition to monitor other facilities serving homeless families. In 2017, the Coalition, fellow institutional plaintiff Center for Independence of the Disabled – New York, and homeless New Yorkers with disabilities were represented by The Legal Aid Society and pro-bono counsel White & Case in the settlement of *Butler v. City of New York*, which is designed to ensure that the right to shelter includes accessible accommodations for those with disabilities, consistent with Federal, State, and local laws. During the pandemic, the Coalition has worked with The Legal Aid Society to support homeless New Yorkers, including through the *E.G. v. City of New York* Federal class action litigation initiated to ensure WiFi access for students in DHS and HRA shelters, as well as *Fisher v. City of New York*, a lawsuit filed in New York State Supreme Court to ensure homeless single adults gain access to private hotel rooms instead of congregate shelters during the pandemic.