



**BASEMENT
APARTMENTS
SAFE FOR
EVERYONE**

TESTIMONY to NYC DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

for implementing Local law 126 of 2024 (§105-07):
HPD Rules Relating to Right of Return for Basement or Cellar Residences

December 12, 2025

Thank you for the opportunity to comment on the HPD Rules Relating to Right of Return for Basement or Cellar Residences, which will be a critical part of a hard-won program to advance the safety of basement and cellar apartments in our city. I am Sylvia Morse, Director of Research and Policy at the Pratt Center for Community Development, submitting testimony on behalf of the Basement Apartments Safe for Everyone (BASE) coalition. The BASE Coalition has been fighting for the safe legalization of basement and cellar apartments for nearly two decades, and is eager to see the city stand up a program that makes these homes safe, resilient, and affordable for the residents of the low- and moderate-income communities of color where they are concentrated.

The purpose of the basement and cellar legalization program is to protect and improve tenant safety and stability, and the rules must be written to uphold this purpose. While relocation may be necessary to make these improvements under the Department of Buildings Temporary Residence Program for Eligible Basement or Cellar Residences, the HPD rules should reflect a recognition that relocation is a significant burden for tenants. The BASE Coalition knows, based on our member organizations' research and direct work with basement tenants, that many of basement apartments are low-income and face barriers to finding housing in the formal housing market. Many of them will be unable to cover the costs of moving, such as transportation, storage, and a security deposit, let alone increased rent. Absent financial support for relocation, and under strict timelines, tenants could be forced to relocate to other informal and potentially unsafe housing situations, or to forfeit their right to first return—the only additional protection this program offers them. While we recognize the importance of ensuring that work to upgrade the basement and cellar residences in the program is able to move forward in a timely manner, tenant housing safety and stability must be prioritized. Within and beyond this rule, HPD must do everything in its power to ensure that tenants in the program are safely housed.

We also note that the rule does not contemplate phases of the ten-year onramp, duration of relocation and whether the home must be fully vacated of all belongings, or existing rental agreements. While we appreciate making the rules as navigable as possible, and that not every relocation scenario can be anticipated, this one-size-fits-all approach creates confusion in

some aspects of the rules, such as applicability of existing leases and notice of return, which must be clarified.

To that end, the BASE Coalition outlines the following recommendations, requests for clarification, and concerns related to the HPD Rules Relating to Right of Return for Basement or Cellar Residences:

1. The rule should be revised to increase the period of owner notice to tenants for relocation under §65-03(b). Under the proposed rules, if work to legalize the basement or cellar residence requires tenants to relocate, owners are required to give tenants 30 days notice before they must relocate, and the costs associated with relocation are the responsibility of the tenant. Given New York City's low rental housing vacancy rate, particularly for homes affordable to low- and moderate-income people, it may be very difficult or infeasible in many cases for tenants to find new housing they can afford within 30 days. While we appreciate the requirement that owners first provide notice within 5 days of receiving the ATR that relocation may be required, it is not reasonable to expect tenants to prepare for relocation at that first notice, especially once a home is years into the program. Increasing the minimum period for the second notice would provide tenants more time to find appropriate housing and cover costs associated with moving, though this will still remain a challenge.

We urge HPD to address the burden of relocation on tenants by increasing the notice period to the extent possible while ensuring homeowner compliance with deadlines in Local Law 126. For eviction cases, for instance, the law provides up to 90 days notice. Even extending the notice period to 60 days would be a meaningful improvement, though still a burden, for tenants. Further, the rule should clarify the process for tenants to obtain an extension, as discussed in point number 2 below.

Beyond the rules, HPD must commit to expanding resources for tenants facing relocation from homes participating in the basement and cellar program. First, the City must invest in resources and partnerships with community-based organizations to support basement and cellar tenants with relocation and enforce their rights. Second, the city must explore other models for more robust tenant relocation support. NYCHA's Tenant Relocation Services, for instance, cover all reasonable expenses including moving, storage, and rent, and programs like the Los Angeles Tenant Habitability Program require the landlord to cover reasonable costs associated with the tenant's construction-related location.

2. The rule must clarify the process for tenants to request and receive an extension for time to vacate the apartment, as referenced under §65-04 Tenant Disqualification From Claiming Right of First Return. The rule states that a tenant who does not vacate the apartment within the 30 day notice period and "has not obtained written approval from the

owner of an extension of time to vacate the basement or cellar residence” will forfeit their right to first return, but nowhere does the rule provide guidance the process to request this extension nor the grounds for an owner to deny it. The rules should clarify the process for the extension, and should defer to a tenant's request for an extension and otherwise provide specific cause for denial.

3. The Owner’s Notice to Tenant of Ability to Return to Residence and Tenant’s Responsibility to Respond (§65-06) must be clarified and improved to address that a tenant may have to relocate multiple times from the basement or cellar residence while an owner is going through the program, as noted in §65-07. §65-06 (a) requires that, as part of the owner’s notice to the tenant of their ability to return, the owner provides a lease, “including the initial monthly rent amount.” While this requirement is a sensible part of notice after a residence has been brought into full compliance and has completed the program, it is less clear for tenants relocating and returning earlier in the program under an authorization for temporary residence (ATR). **The rules must be revised to address scenarios in which there is an existing rental agreement.** A tenant with an active lease who is not able to live in their apartment due to it being uninhabitable is enduring a constructive eviction. Given that there are no regulations guiding initial rents, maintaining existing agreements will be essential to tenant stability. The rule should more clearly contemplate relocation under existing rental agreements, and how relocation might differ during the ten-year program and when the unit is brought into full compliance.

4. Tenants should be given more time to express their intent to return to the residence under §65-06(c). Under the proposed rules, in order to exercise their right of first return, tenants must provide written notice of their intent to return to the basement or cellar residence within 30 days of receiving notice from the owner that they can return. Further, it states that return of a signed lease will be deemed sufficient notice of intent. It would be challenging for many tenants to commit to a new lease within 30 days, especially given that the start date may be as soon as 30 days after the date the lease is due, based on minimum notice requirements. Tenants may have had to change temporary housing multiple times, especially due to changes in construction timelines, and will likely have been juggling financial and logistical burdens. In addition, especially given lack of regulations regarding setting first rents, tenants and owners may need time to negotiate terms of the lease. Just as 30 days is insufficient for many tenants to prepare to relocate from their basement or cellar residence, it is insufficient time to sign a new lease to return. If a tenant has to relocate early on in the program, failure to comply with tight timelines due to lost communication or confusion could cause them to lose their right to return at all. Given these challenges, and that written communication can get lost, it would be reasonable to require a second notice from the owner and to increase the time tenants have to respond. We recommend that the deadline for tenants to respond be the “anticipated date that the tenant may return to the basement or cellar residence” provided in the owner notice.

5. We urge HPD to consider how it will address tenant turnover and the rights of tenants residing in eligible basement and cellar residents who move into the home after April 20, 2024, both within and beyond the rules. The right of first return is limited to tenants to whom a basement or cellar was rented as of April 20, 2024, which is the effective date of the New York State legislation authorizing the program. We recognize that this requirement does not originate with the rules, and that the rules must conform with Local Law 126 and the underlying State law. Given that these rules were proposed more than a year and a half after the effective date of the state law, and that under current law owners may enter the program until April 20, 2029, however, it is possible that an eligible basement or cellar residence has had or will have a change in tenancy since the effective date and that a newer tenant would not be protected by the right of first return. We urge HPD to consider how it will respond to such a situation, and how it will advise participating owners and tenants. **We also suggest that where possible, such as in the definition of a “tenant” under §65-01, the rule language be modified to remove explicit reference to the date of April 20, 2024, and instead refer to the definitions in the State law authorizing the basement and cellar program and Local Law 126,** so that if those laws are revised to address this issue the rules do not have to be modified as well.

Finally, while beyond the scope of the HPD Rules, we note that this rule is contingent on the Department of Buildings rule for the Establishment of Temporary Residence Program for Eligible Basement or Cellar Residences, which the BASE Coalition has submitted comment on urging that it not be finalized until significant revisions are addressed. Among our many comments regarding the rule creating too high a barrier to entry, which will ultimately prevent many homeowners from making meaningful safety improvements for tenants, we note that a vacate order should only be required in imminent threats to life or safety. This is a critical component of ensuring that tenants do not face the burden of relocation more than is absolutely necessary.

Thank you for the opportunity to testify on this matter on behalf of the BASE Coalition, and we look forward to continuing to work with HPD and DOB to ensure the program’s success.

Sincerely,

Sylvia Morse
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Basement Apartments Safe for Everyone (BASE) Coalition