



Testimony of
Coalition for the Homeless
and
The Legal Aid Society

on

Streamlining Rental Assistance Programs: CityFHEPS and Pathway Home

presented before

New York City Human Resources Administration

Giselle Routhier
Policy Director
Coalition for the Homeless

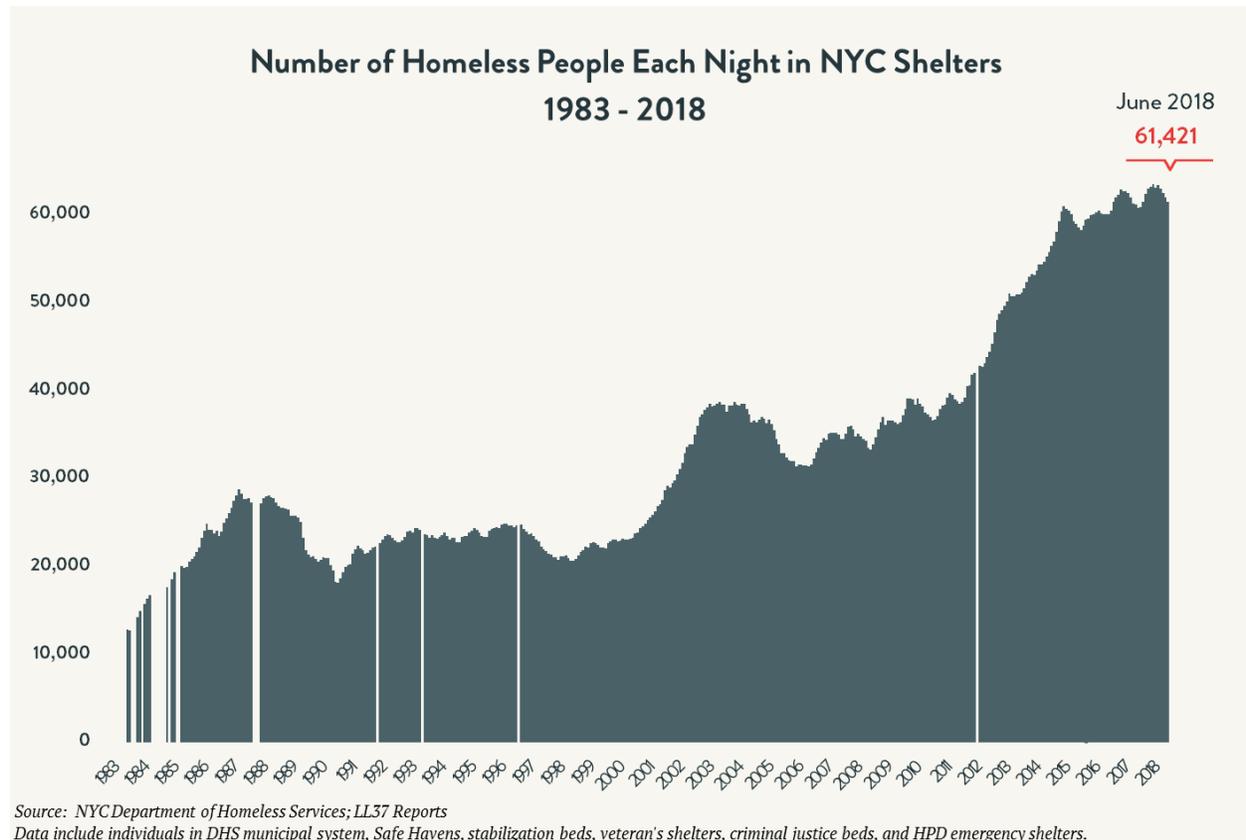
Beth Hofmeister
Staff Attorney
The Legal Aid Society

August 21, 2018

The Coalition for the Homeless and The Legal Aid Society welcome this opportunity to testify before the New York City Human Resources Administration (HRA) regarding the restructuring of rental assistance and transforming it into CityFHEPS and Pathway Home.

Record Homelessness in NYC

New York City remains in the midst of the worst homelessness crisis since the Great Depression. Each night, more than 61,400 New Yorkers sleep in City shelters, including over 22,000 children and nearly 17,000 single adults.



The Coalition and Legal Aid have repeatedly encouraged the City and State to address the root cause of homelessness – the lack of affordable housing – through proven-effective policies, including rental assistance, new housing development, supportive housing, and public housing (NYCHA). When Mayor de Blasio launched the initial City-funded rental vouchers (LINC) in the fall of 2014, it marked an important shift toward providing a greater range of housing options to New Yorkers in shelter, which were severely lacking at the time. However, as the LINC program grew and the City established additional rental assistance programs, shelter residents, staff, landlords, and advocates were often confused as to how they worked. A 2017 settlement in Legal Aid’s *Tejada* case expanded a similar State subsidy, which was renamed FHEPS, and increased the rent supplement levels, creating an additional layer of change.

We thank DSS for beginning the process of streamlining its vouchers. While the proposed CityFHEPS and Pathway Home rules may in some cases increase assistance and protections for

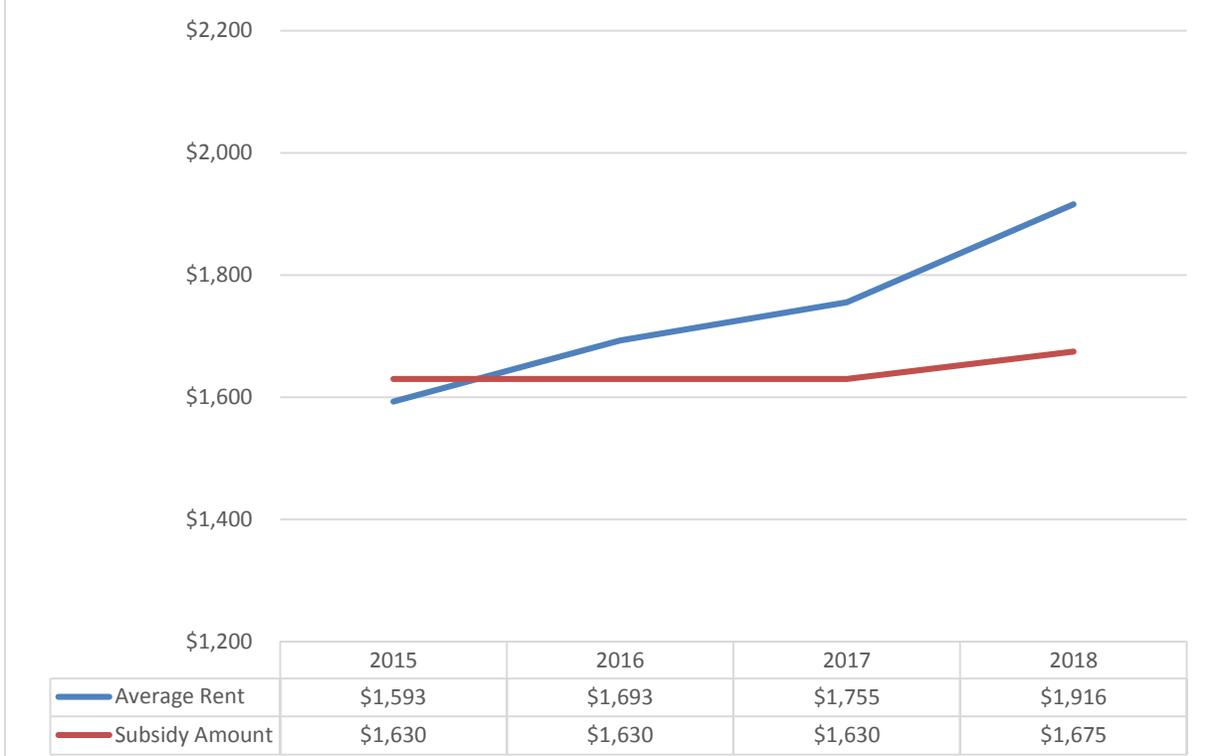
New Yorkers at risk of entering shelters or already homeless, they also have the potential to exclude certain vulnerable populations and pose new challenges for implementation. Furthermore, the rules are not fully clear on some important points.

Maximum Monthly Rents Should Match Fair Market Rent Levels

§10-08 and §11-04 detail the maximum monthly rents, which are below fair market levels. We believe these levels should be increased to Fair Market Rent (FMR) levels and indexed accordingly. Current market forces make it almost impossible for low-income families to reside in New York City, and the rents should be at levels that allow families to find and maintain apartments and avoid entry into the shelter system. As the chart and graph below demonstrate, when CityFEPS was first introduced in 2014-15, the maximum monthly rents were set above FMRs, but as the FMRs have increased since that time, their value is now approximately \$250 below the FMRs. The consolidated subsidy does not help close this gap and begins rent levels an average of \$240 under FMR. As shown in the graph, this gap will only grow in the coming years, making it increasingly difficult to obtain an apartment with a voucher.

Apartment Size: Household Size 1-8 People	Studio / Efficiency: 1	1-Bedroom: 1-2	2-Bedroom: 3-4	3-Bedroom: 5-6	4-Bedroom: 7-8
Original FHEPS/CityFEPS	\$1,213	\$1,268	\$1,515	\$1,956	\$2,197
2015 FMR	\$1,196	\$1,249	\$1,481	\$1,904	\$2,134
2016 FMR	\$1,293	\$1,357	\$1,571	\$2,021	\$2,224
2017 FMR	\$1,352	\$1,419	\$1,637	\$2,102	\$2,267
2018 FMR	\$1,514	\$1,558	\$1,789	\$2,280	\$2,437
2018 Proposed CityFHEPS	\$1,246	\$1,303	\$1,557	\$2,010	\$2,257
Real Rent Shortfall	(\$268)	(\$255)	(\$232)	(\$270)	(\$180)

Average Fair Market Rent vs. Average Maximum Monthly Rent with Subsidy



Data for this graph came from the above chart. The Average Maximum Monthly Rent with Subsidy was created by averaging the original CityFEPS and State FHEPS rates between 2015-2017 and the proposed State FHEPS rates and proposed CityFHEPS for 2018 for studio apartments (household of 1 person) to four-bedroom apartments (household of 7-8 people). The Average Fair Market Rent rates are the average of FMR for studio apartments (household of 1 person) to four-bedroom apartments (household of 7-8 people).

Homelessness Prevention Avenues Should Be Maintained

Since 2014, nearly 6,000 households have accessed rent subsidies in the community and avoided costly and traumatic shelter stays. The existing City rental assistance programs provide a valuable tool to prevent homelessness by allowing households from the community to participate, meaning that applicants do not need to become homeless and enter a shelter in order to be eligible for a voucher. Under the newly written rules, many individuals and families who are currently able to avoid entering shelters by accessing existing programs may not qualify for assistance under CityFHEPS or Pathway Home. The existing CityFEPS program is currently available for some households who do not qualify for State FHEPS because they do not qualify for cash assistance.¹ Without a guarantee that these families will also be served in the new subsidies, the adoption of CityFHEPS may increase the number of individuals and families who may be forced to enter shelters before qualifying for housing assistance.

¹ These families include people with a significant work history who are no longer able to work because of disability benefits such as SSDI. Once their benefits go over the public assistance cut-off by even \$1, they are categorically ineligible for FHEPS and, under the proposed rule, CityFHEPS or Pathway Home.

Legal Aid's client, Ms. Hernandez,² is 31 years old. She lives with her husband, 13-year-old daughter, and 4-year-old son. Ms. Hernandez has built a strong support network in the community, which includes her children's health care providers as well as her mother who lives nearby. The children are also enrolled in neighborhood schools within blocks of her apartment. She currently works as a home health aide, earning approximately \$1,600 per month. Her rent is close to \$1,500 per month, and she is unable to afford it on her salary alone. As a result, her landlord brought a non-payment proceeding against her in Housing Court.

Ms. Hernandez was previously able to afford the rent because she had an open public assistance case and received a FEPS rent subsidy. However, after she began working in June 2017, her public assistance case was closed because her income was too high for cash assistance and her rent subsidy ceased. After receiving eviction papers, Ms. Hernandez tried to come up with a solution to pay her ongoing rent and arrears. She visited two HomeBase sites – CAMBA and Catholic Charities. She also applied for a rental arrears assistance grant, but her application was denied because she couldn't show how she would be able to pay her rent into the future. After her application for a rental arrears assistance grant was denied, Ms. Hernandez retained The Legal Aid Society in April 2018. After four months of advocacy, Ms. Hernandez's application for a CityFEPS exception was approved, averting her loss of housing by allowing her to pay an affordable \$435 per month, while the remainder of the rent is covered by the subsidy.

Ms. Hernandez's story shows how the current CityFEPS program can effectively prevent homelessness. As a former FEPS recipient who started working, Ms. Hernandez is not eligible for the new State FHEPS subsidy, nor would she be eligible for CityFHEPS under the proposed rules. However, without rental assistance, Ms. Hernandez could not have been able to afford her family's market-rate apartment, and she and her family would have been forced into the shelter system. She has worked tirelessly to create stability for her children in the neighborhood they call home, and absent her rental subsidy, the lives of her family members would have been thrown into chaos.

With stagnating low wages and a skyrocketing real estate market, the current CityFEPS program provides a crucial homelessness prevention tool for individuals trapped in what is referred to as the "benefits cliff" – people whose wages are too high to entitle them to public assistance but not high enough to support the cost of living in New York City. Without a similar way to make exceptions under the consolidated CityFHEPS, Legal Aid clients like Ms. Hernandez and countless other current recipients of the CityFEPS exception supplement will be at imminent risk of homelessness. This issue should be addressed with a change to the proposed rules. Or, at the very least, HRA should maximize the period during which they will accept CityFEPS applications before this exception disappears.

In addition to the above concerns, it appears §10-013 (a) (7) of the proposed regulation requires a household to have a lease before being given CityFHEPS eligibility. This would effectively prevent the use of the benefit to families who do not currently have a lease but who could be

² Names have been changed to protect client privacy.

prevented from becoming homeless either by obtaining a lease renewal or locating a new apartment with the guarantee of rental assistance. This should be clarified and fixed.

Limited Eligibility Excludes Vulnerable Homeless Populations

The regulations as written would largely exclude vulnerable New Yorkers who are homeless, but not in contact with a DHS or HRA shelter. For example, §§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. However, there are no standards or procedures to regulate how clients will be referred from these qualifying programs, and the lack of categorical eligibility for anyone who is homeless implies these resources will only be available on a limited basis. Eligibility for CityFHEPS should be based on lived experience of homelessness, not specific to DSS system contacts.

One group of the qualifying programs are the Department of Youth and Community Development (DYCD) shelters, which serve runaway and homeless youth (RHY). Youth in these shelters currently have no access to housing assistance that will bring them out of temporary shelters other than supportive housing, which has restricted eligibility and is not appropriate for all youth experiencing homelessness.³ Youth shelter stays are time-limited by both State and City laws and regulations,⁴ which shortens the amount of time youth have to access permanent housing resources. Without an automatic referral for a youth in a DYCD-funded program, this population will be effectively prevented from accessing a critical supply of affordable housing resources. We ask that HRA reconsider this provision and allow for all homeless youth residing in DYCD shelters to access these rental vouchers automatically, by reason of their current homelessness.

Whether the new CityFHEPS will work with SCRIE and DRIE is not sufficiently elaborated. SCRIE and DRIE require a contribution of 33 percent of the participant’s income, but the new subsidy requires only a 30 percent contribution. HRA should ensure the populations benefitting from SCRIE and DRIE are able to do so and use vouchers simultaneously.

Another necessary clarification concerns §10-04, which specifies an eligibility requirement of “qualifying subsidized employment programs” without giving any examples of such programs.

We ask that HRA look into how the CityFHEPS rule prioritizes certain households and adjust the rule to make it as inclusive as possible for households at risk of homelessness or currently homeless.

³ The Coalition for Homeless Youth received data through a FOIL request showing that from July 2017 to January 2018, only 48 out of the 2,209 youth (approximately 2 percent) were discharged from DYCD Crisis and Transitional Independent Living programs to their “own apartment.” This is backed up by the City’s own research, which also found that having a “subsidized exit substantially reduced the likelihood of both future system use and being a high service user in all models – by about two-thirds and 85%, respectively.”

<https://www1.nyc.gov/assets/cidi/downloads/pdfs/housing-trajectories-of-transitionage-youth.pdf>

⁴ See *Local Law 87-2018*, which requires New York City to offer runaway and homeless youth up to 120 days for a crisis program and 24 months for a transitional independent living program as outlines in §§ 532-b, 532-d, and 420 of the State executive law.

Lease Renewals Should Be Required

We are extremely concerned that the new rule removes the requirement for landlords to provide a lease renewal. The landlord requirements in §10-14 of the proposed regulation do not include language from previous rent subsidies that guaranteed lease renewals to participants. Ensuring that voucher recipients have renewal leases to avoid cycling back into shelters is critical. Without this language, participants in unregulated apartments are at significant risk of not receiving a renewal lease after their first year in the housing unit, despite maintaining eligibility for the subsidy. Since approximately two-thirds of families moving out of shelters with a voucher move into unregulated apartments, this would undoubtedly lead to a greater percentage of individuals and families subsequently returning to the shelter system. We strongly encourage the City to restore this language. If the City refuses to reinstate this requirement, they could alternatively gradually pay out the signing bonus over multiple years, in order to deter landlords from evicting tenants after one year and claiming a new signing bonus for the next tenant. Additionally, we propose that DSS refuse to grant landlords an additional bonus if they have previously refused to renew a voucher recipient for the same apartment.

§10-08 (c) (3) allows households to receive additional annual renewals after their fifth year if, “[t]here is good cause for renewal as long as the household maintains eligibility.” Information about who will make these determinations and what criteria will be used should be specified in the revised rule.

Ambiguities in the New Rules Should Be Clarified

§§ 10-03(a) (7) and 10-04(d) of the proposed regulation refer to a “safety and habitability assessment.” As advocates, we often learn about terrible conditions under which our clients live while using vouchers. We urge the City to set an explicit and appropriately high standard for this assessment to ensure that clients exiting shelters are entering safe, habitable environments, free from the pressures of unscrupulous landlords. Similarly, §10-05 (2) does not list any paperwork that the City will require to allow for room rentals in rent-stabilized or rent-controlled apartments, such as proof in the lease that the sublet is legal, allowable, and safe.

§ 10-06 (d) specifies that some households will receive access to additional rent payments up front to facilitate moves, but there are no criteria or factors listed as to what information will be used to make these determinations. These should be clearly specified.

§10-12 describes the requirements of program participants but does not have language ensuring that participants are given information about how they can remain in compliance. For example, according to § 10-12 (h), households must apply for EITC, CTC, etc. to be in compliance with program rules; therefore, information about these benefits should be provided. Similarly, § 10-12 (i) requires participants to seek all appropriate services, but it is unclear how this information is to be communicated, who is to share possible resources with clients, and whether aftercare is included.

We are concerned that the appeal process for both CityFHEPS and Pathway Home described in the proposed regulations provides for aid to continue only if the appellant raises an issue relating to the calculation of the benefit or an “incorrect factual determination” (see § 10-13 (e) (1) (B) and § 11-06 (e) (1) (B)). Aid to continue should also be provided for appeals based on a

household's inability to comply with program requirements due to a disability that the agency has not accommodated. § 10-13 (e) (1) (B) and § 11-06 (e) (1) (B), which discuss the appeal process for CityFHEPS and Pathway Home, do not make any mention of this legal right.

Conclusion

Thank you for the opportunity to testify. We hope HRA and the City will consider adjusting the rental supplements to address the concerns we have raised. We welcome further opportunity 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.

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 1,100 lawyers, working with some 800 social workers, investigators, 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 rental assistance. Last year, the Society's Civil Practice provided free direct legal assistance in more than 48,500 cases and legal matters through neighborhood offices in all five boroughs, and 23 specialized units, of which the Homeless Rights Project is one. The Legal Aid Society is also counsel to the Coalition for the Homeless and for homeless women and men in the *Callahan* and *Eldredge* cases. The Society, along with institutional plaintiffs Coalition for the Homeless and

Center for Independence of the Disabled – NY, settled *Butler v. City of New York* on behalf of all disabled New Yorkers experiencing homelessness. Our Criminal Practice handles over 220,000 trial and post-conviction cases a year, some of which arise out of arrests predicated on our clients' homeless status. Legal Aid's Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented approximately 34,000 children. Our perspective comes from daily contact with New Yorkers and their families, and also from our frequent interactions with the courts, social service providers, and State and City agencies.

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 New Yorkers each day. The Coalition advocates for proven, cost-effective solutions to 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 illness 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 solutions and include: Supportive housing for families and individuals living with AIDS; job-training for homeless and formerly homeless 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 distributes over 900 nutritious hot meals each night to homeless and hungry New Yorkers on the streets of Manhattan and the Bronx. Finally, our Crisis Intervention 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.

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.