



Comments of the
Coalition for the Homeless
and
The Legal Aid Society
on
Proposed CityFHEPS Amendments
presented before
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The Coalition for the Homeless and The Legal Aid Society welcome this opportunity to comment on the New York City Human Resources Administration (HRA)'s proposed amendments regarding CityFHEPS eligibility.

For reference, the proposed rule can be found here: <https://rules.cityofnewyork.us/wp-content/uploads/2022/12/HRA-Proposed-Rule-and-Certifications-Dec-1-2022.pdf>

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 housing vouchers and subsidies. To the extent these proposed amendments expand eligibility to the CityFHEPS program and actually help more New Yorkers move into affordable housing, we applaud those efforts. However, the proposed rule, through both omission and ambiguity, leaves behind some of New York City's most under-resourced New Yorkers. We sincerely ask HRA to carefully consider our comments, particularly when it comes to the individuals and families most in need.

We urge the City to create parity between the CityFHEPS program and the Housing Choice Voucher (“HCV”) program (commonly known as the federal “Section 8” program). Ensuring these programs operate similarly simplifies the rental process, thus creating more certainty for subsidy recipients, landlords, and real estate agents. Parity also eliminates landlord preferences for specific programs over others and discourages discrimination between programs.

In fact, the legislative history of Local Law 71 of 2021 – the bill that increased the CityFHEPS payment standard to the Section 8 levels – makes clear that the City Council grounded its reasoning on a simple proposition: to place the CityFHEPS program on equal footing with the Section 8 program.¹

As explained below, HRA's proposed rule expands the range of apartments available to CityFHEPS participants, but burdens tenants, especially the poorest tenants, with higher rental contributions than required under Section 8. These rental burdens may prove unsustainable and result in families returning to shelter. We therefore urge HRA to adopt rules that place the CityFHEPS program in full parity with Section 8. Specifically, HRA should offer a reduction off the tenant rent portion (or a credit where the utility allowance exceeds the tenant portion) to ensure all renters have the resources to pay for utilities. This change would also ensure that CityFHEPS operates like Section 8 in that no household has a rental portion that exceeds 40 percent of their income, **including all utilities.**

Our specific comments follow:

1) Proposed § 10-04: First, we applaud the proposed changes to § 10-04, which expands CityFHEPS eligibility for single minimum-wage workers. This change recognizes that full-time workers earning the minimum wage simply cannot afford to pay rent in New York City without assistance, and therefore encourages full-time participation in the workforce for those who are

¹ Hearing Transcript 52 of the General Welfare Committee, May 26, 2021 at pg. 5-6. (Chairperson Levin: “. . . this bill will increase that voucher level to the Section 8 voucher level and it will make a meaningful impact in terms of the number of units that are available for voucher holders.”[Emphasis added])

able. Full-time work often comes with additional benefits such as health care and paid time off, thus safeguarding households against eviction and returns to shelter.

2) Proposed § 10-06(a): This proposed change would reduce the monthly contribution by CityFHEPS tenants who move into single-room occupancy units from 30 percent of their income to a maximum of \$50 per month.

Some of New York City’s most under-resourced individuals reside in Single-Room Occupancy (“SRO”) housing. We applaud HRA’s decision to cap rents at \$50 per month but encourage HRA to explicitly offer SRO residents (and all residents) *a credit toward their utilities each month*. SRO tenants subsisting on public assistance alone will require a utility credit in order to keep the lights on. Just as the Section 8 program offers a Utility Assistance Payment (“UAP,” i.e., a cash credit for utility payments),² CityFHEPS should offer a UAP to help cover the rising cost of utilities.

3) Proposed § 10-06(b)(1): This proposed amendment creates an option for CityFHEPS voucher-holders who choose to secure an apartment that rents above the CityFHEPS maximum to pay up to 40 percent of their income.

While we believe this rule has the desirable intention of expanding the number of units accessible to those with income other than public assistance, the rule dangerously sets some families up for failure. The Section 8 program allows tenants to rent an apartment for up to the full payment standard while generally capping the family contribution at 30 percent of income. Families with income outside of public assistance may also rent apartments above the payment standard as long as their payment of **both rent and utilities** will not exceed 40 percent of their income.

The wording of the proposed rule appears to require tenants to pay, on top of their 30 percent rent share, any amount that exceeds the payment standard *minus* the utility allowance, putting CityFHEPS tenants at a significant disadvantage compared with Section 8 tenants. Worse, the proposed rule ignores the utility question altogether, leaving open the possibility that HRA could approve rentals where tenants pay 40 percent of their income toward rent without receiving any discount or credit off their portion of rent for utilities. The failure to provide for utilities could leave a family on a fixed income paying 50 percent or more of their income toward rent and utilities combined.

Further, unlike Section 8, HRA’s rule does not provide any reduction off the tenant share for utilities, meaning that tenants face a double penalty. For rentals that do not include all utilities, the CityFHEPS program reduces the maximum rent HRA would approve for an apartment, but then the household **does not** receive any discount off their rent portion to help pay for utilities.

Even worse, families with no income outside of public assistance receive zero credit for utilities, thus setting them up for failure. Landlords and brokers often question how very low-income families will pay for life’s basic necessities. HRA’s rule leaves these skeptics with no answer for utilities. **For families whose rental portion is less than their utility allowance and for those**

²<https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/section-8-briefing-book-abridged.pdf> at pg. 33

whose sole source of income is public assistance, we ask that HRA provide a Utility Assistance Payment (“UAP”)³ to ensure these families have heat, hot water, gas, and electric in their new homes.

4) Expanding CityFHEPS to homeless and unsheltered youth: We request the following changes to the Proposed Rule in order to expand CityFHEPS eligibility to unsheltered and homeless youth, including those receiving services through the Department of Youth and Community Development (“DYCD”):

- **Regarding §10-01:** Add the following definition of “City-administered facilities” in order to expand CityFHEPS eligibility to unsheltered and homeless youth: “City-administered facilities means hotels, shelters, stabilization beds, safe havens, veterans’ shelters, faith-based centers, short-term reentry housing, overnight drop-in centers, and other accommodations or associated services, managed by or provided under contract or similar agreement with any city agency, provided to individuals or families who need temporary emergency housing or assistance finding or maintaining stable housing.” (As defined in Local Law 79 of 2022.)
- **Regarding §10-01(oo):** Revise the definition of “Street homeless”⁴ to include providers that interact with unsheltered and homeless youth in New York City. Many unsheltered youth interact with services other than DHS, including: DYCD-funded outreach providers, OMH Safe Options Support (SOS) outreach providers, federally funded outreach providers, Port Authority, MTA, and others. Unsheltered young people and adults should not be deemed ineligible for CityFHEPS because they sought support from non-DHS outreach staff.
- **Regarding §10-04(a):**⁵ Ensure all individuals receiving services at a “City-administered facility”— including all homeless youth who receive services from a DYCD-contracted Runaway and Homeless Youth services provider—are given equal access to CityFHEPS automatically, based on the fact that they are currently homeless.

Additionally, the proposed rule omits several vital reforms that HRA should make to improve the CityFHEPS program:

5) Expand CityFHEPS to all non-citizens, regardless of immigration status: Local law gives New York City authority to extend CityFHEPS to all New Yorkers, regardless of immigration status, but currently we believe that only non-citizens otherwise eligible for cash assistance are receiving CityFHEPS. **No household should be considered ineligible for CityFHEPS because of their immigration status.** Non-citizen families are often in the greatest need of assistance. Even where some household members are eligible for CityFHEPS, the problem is not solved because the subsidy is too small to ensure the affordability of permanent housing. The penalty borne by such mixed-status families should be eliminated.

³ <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/section-8-briefing-book-abridged.pdf> at pg. 33

⁴ Note: The Proposed Rule uses the term “street homeless.” Given the antiquated nature of the term and the stigma associated with it, we respectfully request HRA adopt the term “unsheltered” to refer to this population.

6) Expand CityFHEPS eligibility to rent-burdened households headed by elderly and disabled New Yorkers living in the community: As per the Community Service Society’s analysis of the 2017 Housing Vacancy Survey (“HVS”), there are 9,463 rent-regulated apartments with low-income tenants who are severely rent-burdened and have a head of household over the age of 65. These households rely on public assistance but **do not** currently qualify for CityFHEPS. Demonstrating a continuation of this trend, the 2021 HVS further indicates that more than 40 percent of households with disabled or elderly family members are severely rent-burdened.⁶ While all such households should qualify for vouchers, creating even just 5,000 vouchers for rent-regulated seniors and people with disabilities already living in the community would reduce homelessness, preserve affordable housing, and maintain community stability.

7) Eliminate the 90-day rule: In addition, we ask that HRA eliminate the 90-day waiting period in shelter to qualify for CityFHEPS. In light of rising rents, the scarcity of affordable units, and rampant source of income discrimination, it can take families over a year to use a CityFHEPS voucher. Forcing New Yorkers to reside in shelters for 90 days before even being found eligible for CityFHEPS unnecessarily prolongs shelter stays. We ask that shelter residents receive a CityFHEPS shopping letter as soon as they are found eligible for shelter.

8) Adopt the Exception Payment Standard: For both CityFHEPS rooms and apartments, HRA should adopt the [“Exception Payment Standard” \(“EPS”\)](#), or the maximum amount of subsidy HRA will pay for an apartment that matches the local market. The EPS allows those with rental subsidies to enter markets from which they have been historically excluded. Not only does the EPS open up additional housing options to those with rental subsidies, but it allows families to reside in high-opportunity areas close to desirable amenities such as hospitals, public transportation, high-quality schools/childcare, and parks and other greenspaces. Currently, the HPD Section 8 program and all Emergency Housing Vouchers (“EHV”) use the EPS.⁷

In addition, HRA should publish their CityFHEPS payment standards each year in advance of January 1st. To ensure parity with Section 8, at no time should the Commissioner lower the payment standard below the EPS levels set by HPD.

9) Eliminate delays in CityFHEPS move-ins: Tenants with rental assistance vouchers face rampant source of income discrimination, often in part motivated by the extreme delays associated with CityFHEPS paperwork, inspections, and check issuance. These delays are both well-documented and commonplace.⁸

Even after a landlord agrees to rent an apartment, New Yorkers regularly wait for up to six months in shelters while the City approves their applications. Voucher holders navigate a

⁶ [2021-nychvs-selected-initial-findings.pdf](#) at pg. 56

⁷ https://www1.nyc.gov/assets/nyccoc/downloads/pdf/EHV-payment-standards_English.pdf

⁸ 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>.

byzantine lease-up process in which the smallest error – a misspelled address or a typo in transcribing a broker’s license number – causes weeks or months of delays, often leading to the loss of a housing opportunity.⁹ Meanwhile, the collateral effects of homelessness – joblessness, mental health challenges, familial instability, and poor living conditions – compound.

Unless HRA adopts affirmative regulations to change the lease-up process, CityFHEPS will not serve its purpose of allowing New Yorkers to escape the shelter system and live in homes with dignity. The following changes will significantly reduce CityFHEPS delays:

a) Streamlining review process. This may include:

- Requiring Department of Social Services (“DSS”) 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 DSS reviewers in order to discuss resolving issues with a package;
- Reducing the amount of paperwork required for lease-up;
- Correcting and approving packages with minor clerical errors, like an address that says “street” instead of “place”; and
- Providing automatic email notifications with package updates.

b) Setting clear benchmarks for approving CityFHEPS packages: DSS should set clear goals for processing applications and ensure that it meets those goals in facilitating moves.

c) Re-training shelter staff: DSS should track how long the contracted shelter providers take to facilitate move-outs. DSS must intensively re-train the shelter providers that have the most repeated delays in the lease-up process.

In sum, our recommendations are as follows:

- HRA should ensure that CityFHEPS tenants receive a credit off their portion of the rent to help them pay for the costs of utilities, consistent with Section 8 rules. Households with additional income may rent an apartment at or above the payment standard, but should never pay more than 40 percent of income toward rent and utilities combined. Tenants whose rental portion is calculated at less than the utility allowance and those whose sole source of income is public assistance should receive a Utility Assistance Payment.
- HRA should expand CityFHEPS eligibility to all New Yorkers regardless of immigration status, and discontinue penalties to mixed-status households by offering a full subsidy to these families.

⁹ Instead of fixing errors, the City frequently rejects applications, taking weeks for overworked shelter staff to revise paperwork. If there are additional errors that the City did not identify upon first review, an application goes back to the shelter provider again. If a resident is transferred to a different shelter, the process typically begins all over again. In practice, residents and landlords often must agree on new lease dates every month as move-ins are delayed repeatedly.

- HRA should expand CityFHEPS eligibility and provide, at minimum, 5,000 vouchers to rent-burdened elderly and disabled households who reside in rent-regulated apartments in the community.
- HRA should expand CityFHEPS eligibility to unsheltered and homeless youth regardless of whether or not they received support from a DHS service provider or DHS staff.
- HRA should eliminate the 90-day wait time so that otherwise eligible shelter residents can start their search for stable housing immediately.
- HRA should publish all payment standards in advance of January 1st and never approve payment standards below those set by HPD. We ask HRA to specifically adopt the Exception Payment Standard used by HPD and the Emergency Housing Voucher program; and
- HRA must take measures to expedite and streamline the process for approving and processing CityFHEPS packages.

About The Legal Aid Society and Coalition for the Homeless

The Legal Aid Society: The Legal Aid Society (“LAS”), 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, LAS provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel.

LAS’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 LAS’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, 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.

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. LAS, in collaboration with Patterson Belknap Webb & Tyler, LLC, filed *C.W. v. 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. 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 fifth 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 single 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.