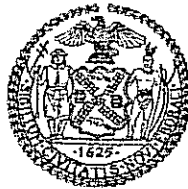


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**THE COUNCIL**  
**BRIEFING PAPER OF THE INFRASTRUCTURE AND GOVERNMENTAL**  
**AFFAIRS DIVISIONS**  
**ROBERT NEWMAN, LEGISLATIVE DIRECTOR**

**COMMITTEE ON PUBLIC HOUSING**  
**Hon. Rosie Mendez, Chair**

**COMMITTEE ON GENERAL WELFARE**  
**Hon. Annabel Palma, Chair**

September 27, 2011

**Oversight – NYCHA’s Implementation of the Improving the Customer Experience Program for its Section 8 Rental Assistance Program.**

**I. Introduction**

On September 27, 2011, the Committee on Public Housing, chaired by Council Member Rosie Mendez and the Committee on General Welfare, chaired by Council Member Annabel Palma, will hold a joint hearing on the New York City Housing Authority’s (NYCHA) Implementation of the NYCHA Improving the Customer Experience (NICE) Program for its Section 8 Rental Assistance Program.

Today's hearing will give NYCHA the opportunity to discuss the status of NICE and respond to complaints that have arisen regarding the management of its Section 8 Program. In addition to NYCHA, the Committees expect to hear testimony from representatives of legal service providers, including the Legal Aid Society and the New York Legal Assistance Group, and from representatives of property owners such as the Rent Stabilization Association, as well as other interested parties.

## **II. Section 8 Program Background**

The Housing Choice Voucher Program, also known as the Section 8 voucher program, is the largest rental subsidy program in the country.<sup>1</sup> The program, created by the Housing and Community Development Act of 1974, is funded by the United States Department of Housing and Urban Development (HUD) and administered by local housing authorities.<sup>2</sup> The Section 8 Program includes two components: the first is project-based assistance for existing, newly constructed or rehabilitated housing and tenant-based subsidies and the second is a rent subsidy that provides Section 8 participants with a supplement to their income which allows them to occupy privately owned affordable housing. The rent subsidy provided to Section 8 participants allows them to pay landlords 30% of their household income towards the amount of rent contracted for with the landlord; the administering agency pays the remainder of the contract rent. Eligibility for assistance under the program is limited to United States

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<sup>1</sup> See, United States Department of Housing and Urban Development, Office of Policy Development and Research, *Study on Section 8 Voucher Success Rates, Volume I: Quantitative Study of Success Rates in Metropolitan Areas*, Chapter 1, (November 2001), available at [http://www.huduser.org/Publications/pdf/sec8success\\_1.pdf](http://www.huduser.org/Publications/pdf/sec8success_1.pdf)

<sup>2</sup> Federal statutory and regulatory law provides the framework for the administration of the Section 8 Program. 42 U.S.C.A. §1437f(a) authorizes housing assistance payments "for the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing."

citizens and some categories of non-citizens and is determined based on total annual gross income and family size.<sup>3</sup>

Funding for the Section 8 Program is based upon annual federal appropriations; however, HUD determines the voucher cap and allocation for each local housing authority based on a formula which includes the administering authority's utilization rates during the prior fiscal year.<sup>4</sup> In New York City, the Section 8 Program is administered locally by both the New York City Housing Authority (NYCHA) and the Department of Housing Preservation and Development (HPD).<sup>5</sup> HPD targets its vouchers to very specific populations of New Yorkers, including homeless households and households affected by HPD renovations. In addition, HPD provides Enhanced Vouchers, also known as Sticky Vouchers, to provide federal assistance to residents of rent-regulated apartments in buildings where the owners choose to opt out of project-based Section 8 contracts.

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<sup>3</sup> New York City Department of Housing Preservation and Development (HPD) voucher payment standards as of October 2009 were \$931 for a single room occupancy unit, \$1,242 for a studio, \$1,344 for a one-bedroom, \$1,495 for a two-bedroom, \$1,839 for a three-bedroom, \$2,068 for a four-bedroom, \$2,3781 for a five-bedroom, and \$2,688 for a six-bedroom. According to the HPD website, "[t]he payment standards are determined by HUD, which establishes standards at or close to the average of all rents in the particular area, and by HPD, which establishes payment standards between 90 – 100% of the HUD program." See Residential Tenants Section 8 Information, HPD, available at: <http://www.nyc.gov/html/hpd/html/section8/section8-tenants.shtml> New York City Housing Authority (NYCHA) voucher payment standards for new rentals and transfers effective as of October 2011 were \$1,301 for a studio, \$1,408 for a one-bedroom, \$1,566 for a two-bedroom, \$1,927 for a three-bedroom, \$2,167 for a four-bedroom, \$2,493 for a five-bedroom, \$2,817 for a six-bedroom, \$3,143 for a seven-bedroom, and \$3,467 for an eight-bedroom. See Section 8 Assistance, Voucher Payment Standards, NYCHA, available at: [http://www.nyc.gov/html/nycha/html/section8/voucher\\_payment.shtml](http://www.nyc.gov/html/nycha/html/section8/voucher_payment.shtml). If the rent exceeds these standards, the tenant can pay up to but no more than 40 percent of household income.

<sup>4</sup> See HUD, *Housing Choice Voucher Guidebook*, Chapter 24, available at: [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_11768.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11768.pdf)

<sup>5</sup> In addition, the New York State Homes and Community Renewal administers a state-wide Section 8 program, which includes New York City. See Residential Tenants Section 8 Information, HPD, *supra* note 3.

According to NYCHA, it administers the largest Section 8 Program in the country and currently provides rental subsidies to 95,807 families in privately owned housing.<sup>6</sup> Due to a drop in funding from the federal government, NYCHA stopped accepting Section 8 non-emergency housing assistance applications as of December 1994.<sup>7</sup> Emergency applications included individuals who were victims of domestic violence, intimidated witnesses referred by the District Attorney's Office, and applicants referred by the Administration of Children's Services under the Independent Living or Family Reunification Programs.<sup>8</sup> In early 2007, however, Mayor Bloomberg and then-NYCHA Chairman Tino Hernandez announced the availability of 22,000 new Section 8 vouchers made possible by an increase in federal funding, and temporarily reopened the Section 8 waiting list to non-emergency applicants for the first time in more than 12 years,<sup>9</sup> but only for a 90-day period, from February 12, 2007 to May 14, 2007.<sup>10</sup> After that time, NYCHA resumed its practice of only accepting applications from emergency applicants.<sup>11</sup>

NYCHA Section 8 participants have 180 days from the time they receive vouchers to locate an apartment.<sup>12</sup> In some instances, NYCHA will grant an extension of time if the participant requires one. In both programs, once a tenant has found an

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<sup>6</sup> See NYCHA's Fact Sheet, available at <http://www.nyc.gov/html/nycha/html/about/factsheet.shtml>. Pursuant to the Section 8 Voluntary Transition Plan, NYCHA also provides Section 8 vouchers to some tenants who reside in one of their twenty-one originally built by the City and State of New York.

<sup>7</sup> See Press Release, Mayor Bloomberg and NYCHA Chairman Hernandez Announce the Reopening of the Section 8 Voucher List for First Time in Twelve Years, available at, [http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor\\_press\\_release&catID=1194&doc\\_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2007a%2Fpr028-07.html&cc=unused1978&rc=1194&ndi=1](http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2007a%2Fpr028-07.html&cc=unused1978&rc=1194&ndi=1)

<sup>8</sup> *Supra* 6

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See Section 8 Assistance, Frequently Asked Questions, Applicant's Questions, NYCHA, available at: [http://www.nyc.gov/html/nycha/html/section8/lh\\_app\\_faqs.shtml#q1](http://www.nyc.gov/html/nycha/html/section8/lh_app_faqs.shtml#q1)

<sup>12</sup> *Id.*

apartment, the apartment must pass an initial inspection and the landlord must sign a lease with both the housing authority in charge of administering the program (NYCHA or HPD) and the tenant agreeing to provide decent, safe, and sanitary housing at a reasonable rent.

NYCHA and HPD recertify clients' income, family composition and citizenship annually.<sup>13</sup> The recertification process begins when NYCHA mails the "Affidavit of Income" form to residents. According to NYCHA's website, the Affidavit of Income is mailed to residents at least five months in advance of the lease's end date. Section 8 participants are required to complete the Affidavit and return it to NYCHA by the date listed on the form.<sup>14</sup> If the Affidavit is not completed on time then NYCHA will terminate the subsidy.<sup>15</sup> However, in order for NYCHA to terminate a Section 8 subsidy it must abide by a set of comprehensive notice procedures established by a federal consent decree it entered into in the case of *Williams v. New York City Housing Authority* (the "Williams Consent Decree").<sup>16</sup> The Williams Decree established that no fewer than three notices must be sent by regular and certified mail to the Section 8 participant before the subsidy may be terminated.<sup>17</sup> The first notice is a warning which must state the basis for the preliminary decision to terminate the subsidy. If the conditions which led to the preliminary decision are not rectified then NYCHA must send a second notice, which it calls a "T-1 Notice". The T-1 notice provides the specific grounds for termination and

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<sup>13</sup> See Section 8 Assistance, Frequently Asked Questions, Section 8 Tenant Questions, NYCHA, available at: [http://www.nyc.gov/html/nycha/html/section8/lh\\_ten\\_faqs.shtml#q1](http://www.nyc.gov/html/nycha/html/section8/lh_ten_faqs.shtml#q1). See also Residential Tenants Section 8 Information, HPD, *supra* note 3; Section 8 Assistance, Frequently Asked Questions, Applicant's Questions, *supra* note 3.

<sup>14</sup> See Section 8 Assistance, Frequently Asked Questions, available at [http://www.nyc.gov/html/nycha/html/section8/lh\\_ten\\_faqs.shtml#q1](http://www.nyc.gov/html/nycha/html/section8/lh_ten_faqs.shtml#q1).

<sup>15</sup> *Id.*

<sup>16</sup> See *Williams v. New York City Hous. Auth.* 975 F. Supp. 317, 319 (S.D.N.Y. 1997). The Williams Decree does not apply to HPD in its handling of Section 8 vouchers.

<sup>17</sup> *Matter of Lopez v. New York City Hous. Auth.* (2011 NY Slip Op 50390(U)).

must inform the participant that he or she is entitled to request a hearing. If the T-1 does not elicit a response from the participant then a final form, a "T-3 Notice" is sent which once again informs the tenant of the grounds for termination and informs him or her of the right to request a hearing. If there is still no response the Section 8 subsidy is terminated on the 45<sup>th</sup> calendar day following the date of mailing of the T-3 notice.

### **III. NYCHA's Management of the Section 8 Program**

The Leased Housing Department (LHD) manages NYCHA's Section 8 Program and is responsible for handling the enrollment of Section 8 applicants, the recertification of subsidy recipients, and the management of leased housing. In 2007 NYCHA launched a multi-year initiative called NYCHA Improving the Customer Experience Program, or NICE. According to NYCHA, NICE is "part technology implementation and part process and organizational change" and was designed to "directly improve agency services for a myriad of New Yorkers including those applying for public housing and Section 8 housing; public housing residents requesting maintenance; and all Section 8 tenants and landlords."<sup>18</sup>

Phase one of NICE's implementation resulted in the restructuring of NYCHA's customer service away from a borough-based customer service system to a regional system whereby personnel and administrative functions of the Section 8 Program were transferred to three customer services centers, in the Bronx (responsible for handling Manhattan and the Bronx), Brooklyn (responsible for Brooklyn and Staten Island) and

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<sup>18</sup> See NYC Customer Service Newsletter, Volume 1, Issue 1 (October 2008), NYCHA: Improving the Customer Experience, *available at*, [http://www.nyc.gov/html/ops/downloads/pdf/nyc\\_customer\\_service\\_newsletter\\_volume\\_1\\_issue\\_1.pdf](http://www.nyc.gov/html/ops/downloads/pdf/nyc_customer_service_newsletter_volume_1_issue_1.pdf).

Queens.<sup>19</sup> These three newly created centers were designed to provide Section 8 Program participants with “briefings, eligibility interviews or hearing appointments.” At the same time NYCHA also established a phone number for residents and property owners to call to “obtain application status updates, modify contact information, request special Section 8 inspections, and receive inspection results.”<sup>20</sup> Effective August 1, 2011, NYCHA implemented an additional new Leased Housing Customer Service Unit within its Leased Housing Department to specifically assist Section 8 customers with concerns.

The second phase of NICE which began in 2010 and continues today was the implementation of a new \$36 million computer system called Siebel<sup>21</sup> intended to “automate business process within the LHD” and enhance customer access/contact support at the three Regional Customer Service Centers.<sup>22</sup> Such automation includes the computerization of many Section 8 Program processes and procedures, such as the sending of notices and paperwork to participants, and the storing of information relating to Section 8 Program participants.<sup>23</sup>

#### **IV. Complaints relating to NYCHA’s Section 8 Program Management**

In late February 2011, *The New York Times* reported that serious technological problems had begun to emerge with NICE.<sup>24</sup> *The Times* reported that such issues revolved around the gathering of information from Section 8 Program participants which

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<sup>19</sup> See NYC Customer Service Newsletter, Volume 2, Issue 2 (January 2010), NYCHA: Improving the Customer Experience, available at, [http://www.nyc.gov/html/ops/downloads/pdf/nyc\\_customer\\_service\\_newsletter\\_volume\\_2\\_issue\\_2.pdf](http://www.nyc.gov/html/ops/downloads/pdf/nyc_customer_service_newsletter_volume_2_issue_2.pdf).

<sup>20</sup> *Id.*

<sup>21</sup> David Chen, *Housing Agency’s Computer Woes Put Aid Recipients in Limbo*, *The New York Times*, Feb. 27, 2011 available at <http://www.nytimes.com/2011/02/28/nyregion/28housing.html>.

<sup>22</sup> See NYCHA Annual Plan 2011 for Fiscal Year 2011 pg. 7, available at [http://www.nyc.gov/html/nycha/downloads/pdf/FY2011\\_AnnualPlan.pdf](http://www.nyc.gov/html/nycha/downloads/pdf/FY2011_AnnualPlan.pdf).

<sup>23</sup> *Id.* at 113

<sup>24</sup> *Supra* 21

in some cases had caused the Authority to be late in sending rent checks to property owners.<sup>25</sup>

Additionally, the Committee on Public Housing has received anecdotal complaints from Legal Service Providers, such as the Legal Aid Society, South Brooklyn Legal Services, and Legal Services NYC-Bronx regarding difficulties their clients have faced with applying for and remaining in the Section 8 Program. Each of these providers has indicated to the Committee that the issues faced by their clients have been drastically worse since NYCHA's implementation of the NICE Program began, and have specifically worsened since the implementation of the new computer system in 2010. Complaints relate to a number of NYCHA's procedures, the most prevalent of which are discussed below. The Committee on Public Housing has received additional complaints from landlords and industry representatives, such as the Rent Stabilization Association, regarding the termination of subsidies paid to landlords by NYCHA.

As noted above, participants in the Section 8 Program are required to recertify their income, family composition and citizenship on a yearly basis. To do so, tenants are required to fill out a set of paperwork that NYCHA is supposed to mail to them at least five months before the end of their lease terms. Reports of participants not receiving the recertification packets have surfaced. Some participants have also reported difficulty in following up with NYCHA to request such a packet when it does not arrive in a timely manner. Additionally, based on reports of subsidy recipients, the processing of such documents by the new computer system has been identified as an issue which has resulted in participants being told on numerous occasions that documents were not received.

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<sup>25</sup> *Id.*

In addition to paperwork issues relating to recertification, concerns relating to the due process rights of Section 8 participants have arisen. Under the Williams Decree when NYCHA terminates a Section 8 tenant three forms of notice must be provided. The second and third forms, the T-1 and T-3 Notices, must indicate that participants are entitled to an administrative hearing regarding the decision to terminate their subsidy. Legal Service providers have indicated to the Committee on Public Housing that the request for such hearings by participants has at times not halted the delivery of further notifications from NYCHA prior to the hearing being held. This appears to be a discrepancy with the computer system and the administrative hearing process.

#### V. Concerns

The Committees on Public Housing and General Welfare are very concerned that the improper management of NYCHA's Section 8 Program could result in the eventual eviction of tenants by private landlords for non-payment of rent. If a Section 8 participant's subsidy is terminated and he or she cannot pay the contract rate for the apartment, then the landlord may bring an action in Housing Court for non-payment, which could eventually result in the eviction of the tenant. Should there be an eviction, it is possible that the Department of Homeless Services (DHS) will be called upon to provide services to the former Section 8 participant.

DHS aims to prevent homelessness in New York City, works to reduce street homelessness, and assists clients living in shelter to transition into permanent housing.<sup>26</sup> Unfortunately, due to lack of funding, both of the affordable housing initiatives previously coordinated by DHS, the issuance of priority vouchers and the Advantage program, have been discontinued leaving no available resources or plans to help

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<sup>26</sup> See [http://www.nyc.gov/html/dhs/html/about/about\\_dhs.shtml](http://www.nyc.gov/html/dhs/html/about/about_dhs.shtml) (last visited Sept. 19, 2011).

transition people out of shelter and into affordable housing. Concurrently, the City has seen increases in both the number of people seeking shelter and the length of time people are residing in shelter.<sup>27</sup> According to DHS' Emergency Services for Homeless Families Monthly Report, both July 2011 and August 2011 saw increases in homeless families seeking shelter.<sup>28</sup> At the end of August 2011 there were 9,406 families living in emergency shelter, an increase of 82 families since the previous month.<sup>29</sup> Additionally, the average length of stay has continued to increase in the past year and by the end of August 2011 the system wide average stay was 325.66 days,<sup>30</sup> an increase of 76 days from the previous year.<sup>31</sup>

The end of Advantage is likely to result in an influx to the shelter system. According to a *Wall Street Journal* report, there are a total of 37,000 people receiving subsidies through Advantage.<sup>32</sup> According to the DHS Daily Report, the total shelter census for September 14, 2011 was 38,407 individuals.<sup>33</sup> If the loss of Advantage results in an additional 37,000 people seeking shelter there could be over 75,000 homeless New Yorkers in the shelter system in the near future, double the current population. With record numbers of people already in shelters, an influx of people of this dimension will have serious adverse effects to the shelter system and could result in the need to build additional shelters. The DHS shelter system is therefore not a plausible option for people who were eligible for NYCHA housing but have been determined by NYCHA to be

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<sup>27</sup> See *infra* notes 29, 30, 31.

<sup>28</sup> On file with General Welfare Committee.

<sup>29</sup> On file with General Welfare Committee.

<sup>30</sup> On file with General Welfare Committee.

<sup>31</sup> See <http://www.nyc.gov/html/dhs/downloads/pdf/familyfy11.pdf>.

<sup>32</sup> See Michael Howard Saul, *City Wins on Subsidies: Judge Rules That New York Can Discontinue Program for Formerly Homeless*, *The Wall Street Journal*, Sept. 14, 2011.

<sup>33</sup> See <http://www.nyc.gov/html/dhs/downloads/pdf/dailyreport.pdf>.

ineligible due to a computer malfunction. The shelter system could not absorb an additional population at this time without needing supplemental resources.

Therefore, the Committees on Public Housing and General Welfare today call upon NYCHA to provide information relating to how the Authority plans on addressing the concerns voiced by Section 8 Program participants and how it intends to make sure subsidy recipients are not unjustly terminated from the Section 8 Program as a result of mismanagement. The Committees would like to better understand how the problems with the NICE system might impact the DHS shelter system and if there will be an increase in people seeking homeless services in New York City as a result of a NYCHA computer error. In addition to administration officials representing NYCHA and DHS, the Committees look forward to hearing from legal service providers, Section 8 Program participants, and industry stakeholders.

**TESTIMONY BY THE LEGAL AID SOCIETY, BEFORE THE CITY  
COUNCIL COMMITTEE ON PUBLIC HOUSING ON THE NEW YORK  
CITY HOUSING AUTHORITY'S SECTION 8 RECERTIFICATION  
PROCEDURES**

SEPTEMBER 27, 2011

**INTEREST AND EXPERTISE OF THE LEGAL AID SOCIETY**

The Legal Aid Society is the oldest and largest provider of legal assistance to the poor in the United States. The Society's Civil Practice operates 14 neighborhood offices and city-wide units serving residents of all five boroughs of New York City, providing comprehensive legal assistance in housing, public assistance and other civil areas of primary concern to low income families and individuals. The Society is counsel in numerous class-action cases concerning the rights of Section 8 recipients.

We appreciate the opportunity to testify before the City Council's Public Housing Committee. We praise the leadership of Chair Rosie Mendez and her commitment to Section 8 program participants.

We come before this Committee a little at a loss. We have testified before the City Council on the Housing Authority's Section 8 program many times. For years, we have provided recommendations on how to improve the program. While we still support those recommendations, our testimony today will focus on returning the program to the level it functioned at two years ago. Over the last two years, the Housing Authority has terminated thousands of tenants without notice, without an opportunity to be heard, and without cause. Later in the testimony, we will describe how the Housing Authority changed the program and the real devastating consequences to our clients caused by these changes. However, first I would

like to describe our attempts to work with the Housing Authority to find solutions to these problems and what we have learned from those attempts.

Since we learned about depth and breadth of the Housing Authority's failings, we have been regularly meeting with the Housing Authority to discuss the problems with the program. We have been able to resolve the problems of many of our individual clients, restoring them to the program after they had been illegally terminated. In restoring our clients to the program, we have been able to prevent many families from becoming homeless. However, the Housing Authority has repeatedly refused to resolve problems on a system-wide scale. As you know, because of funding constraints, the legal services community is able to assist a small percentage of those who need our help. Additionally, there are innumerable tenants who do not know that they can receive our help and they are falling through the cracks. The Housing Authority's failure to address these problems other than on a case by case basis has greatly harmed thousands of low-income families. The Housing Authority is in denial as to the scope of this self-created crisis. The Authority must acknowledge the problem and then fix it, immediately, not in some distant time. After months of attempting to work with the Authority, The Legal Aid Society and Legal Services NYC today will file two federal cases on behalf of approximately thirty clients against the Housing Authority for its repeated failure to comply with the constitutional requirements of the Due Process Clause, federal law and regulation, State law and the Housing Authority's own administrative plan.

### **NYCHA's New Customer Service System**

Over the last two years, the Housing Authority has made substantial changes in the way it interacts with Section 8 participants. These changes have resulted in Section 8 participants

experiencing numerous barriers to the timely, proper processing of their recertification packages and interim recertification requests.

In the past, Section 8 participants worked with a housing assistant who was responsible for processing their annual recertification, annual Housing Quality Standards inspections, and interim recertification requests. The housing assistants were based at the Housing Authority's local borough offices and worked with tenants who resided in the borough. If a Section 8 participant had questions or concerns regarding the annual recertification process they could reach out to their housing assistant by coming into the local office or calling the housing assistant directly.

NYCHA has replaced housing assistants with a centralized phone system. Now when a Section 8 participant has a question or concern regarding their subsidy they must call a "customer service line" to speak with someone who has no direct knowledge of their Section 8 subsidy. Particularly troubling is the lack of continuity of service. For example, if a Section 8 participant is informed by the "customer service representative" that they need to submit a specific form to complete the recertification process, the Section 8 participant cannot send the form directly to the "customer service representative" and call the "customer service representative" to confirm receipt of the form.

In addition to replacing housing assistants with a "customer service line" the Housing Authority has automated the recertification and interim recertification process. Many files and important documents were lost, misplaced or not properly scanned when the Housing Authority automated its files. A large number of recertification packages were not scanned and many Section 8 participants have not received their recertification papers at all. Unfortunately, the computer is programmed to automatically issue termination notices and terminate Section 8

subsidies. The automated termination process continues even when a Section 8 participant was not issued a recertification package or when a Section 8 participant has submitted a recertification package that was not scanned into the computer. To add insult to injury, when a Section 8 participant requests an administrative hearing to challenge the termination of their Section 8 subsidy, their hearings are not scheduled. A Section 8 participant who loses their rental subsidy is at extreme risk for eviction.

### **Annual Recertification**

Section 8 program participants are required to annually recertify their income so the Housing Authority can determine the participant's continued eligibility for Section 8 and set the "tenant's portion" of the monthly rent. The Housing Authority's repeated failure to properly process Section 8 annual packages submitted by participants has created significant difficulties for vulnerable tenants at risk of eviction if their share of the monthly is not adjusted or their Section 8 subsidy is terminated.

The facts of two Legal Aid Society clients illustrate this failure. Ms. Keflom and her family began participating in the Section 8 program in 2010. Ms. Keflom was supposed to recertify for her Section 8 subsidy in late 2010 or early 2011. In March 2011, Ms. Keflom's landlord commenced a nonpayment proceeding against her. It was then that Ms. Keflom discovered the Housing Authority had stopped sending the Section 8 subsidy to her landlord. Ms. Keflom went to the Housing Authority's offices to investigate, and was told her Section 8 subsidy was terminated due to her failure to submit an annual recertification package. Ms. Keflom never received a recertification package prior to being sued for nonpayment of rent. However, Ms. Keflom received a recertification package in May 2011. Ms. Keflom immediately completed and returned the recertification package to the Housing Authority. To date, there has

been no response from the Housing Authority, and Ms. Keflom and her children remain at risk of eviction.

Abel Campos' annual recertification process routinely commences in August when he receives a mailed recertification package from the Housing Authority. Mr. Campos submitted his annual recertification package in May 2011. In August 2011, he received a voucher change notification.<sup>1</sup> Mr. Campos contacted the Housing Authority and was told to wait until his recertification was processed. A few weeks later Mr. Campos contacted the Housing Authority and was informed his subsidy was suspended. During a meeting at the Housing Authority's Bronx office, Mr. Campos was informed his subsidy was inactive. Mr. Campos was advised to request a hearing. Mr. Campos mailed a request for a hearing to the Housing Authority on September 7, 2011.

The Legal Aid Society contacted the Housing Authority on Mr. Campos' behalf and was informed the subsidy was inactive because Mr. Campos failed to complete the annual recertification. A few seconds later, the Housing Authority's representative, apparently reviewing Mr. Campos' file, realized Mr. Campos had in fact completed the annual recertification and the recertification was approved. The Housing Authority also informed the Legal Aid Society that while there was no record of a hearing request in the system, Mr. Campos' file contained a notation for the Housing Authority to contact him.

Ms. Keflom and Mr. Campos' experiences with the Housing Authority's automated annual recertification process illustrate how deeply flawed the process has become, and how difficult it is for tenants and even their advocates to navigate the process.

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<sup>1</sup> This is the form informing the participant of what the new subsidy amount and tenant share will be for the new lease period. It is typically received after the recertification is completed.

## **Interim Recertification**

The Housing Authority is also responsible for processing interim recertification requests made by Section 8 participants when their income has changed prior to their annual recertification. When a Section 8 participant experiences a loss of income as the result of losing a job, a decrease in work hours, or a change in household composition, the tenant's portion of the monthly rent can become unsustainable placing tenants and their families at risk of eviction.

Section 8 participants who have experienced a loss of income are experiencing significant delays in having their tenant's portion adjusted downward to reflect the loss of income. After waiting months for their interim recertification requests to be processed, Section 8 participants are faced with many additional difficulties with their interim recertification requests.

The Housing Authority frequently inaccurately calculates the "tenant's portion" of the monthly rent and improperly determines the effective dates of the change to the "tenant's portion". The Housing Authority often unlawfully applies the tenant's share change prospectively, instead of retroactive to the effective date of the income reduction, leaving the tenant permanently liable for the unaffordable share which accrued during the recalculation period.

Section 8 participants are not provided with notice of the change to the "tenant's portion". Nor are Section 8 participants advised of the calculation methods used by the Housing Authority to determine the "tenant's portion". More troubling still is the Housing Authority's failure to advise Section 8 participants of their right to challenge NYCHA's determination of the "tenant's portion" at an administrative hearing.

The Legal Aid Society is currently advocating on behalf of many clients who are at risk of eviction as a result of the Housing Authority's failure to timely and properly process interim

recertification requests.

For example, Ms. Bienvenida Bencosme lives with her two children in an affordable rent stabilized apartment in the Bronx. Ms. Bencosme is a Section 8 program participant. Her Section 8 subsidy is administered by NYCHA. Ms. Bencosme experienced a significant loss of income in August 2010 when she suffered an injury which left her disabled and unable to work. Ms. Bencosme and her family subsequently began receiving public assistance benefits. In September 2010 Ms. Bencosme went to the Housing Authority's Bronx Leased Housing Borough Office and requested an interim Section 8 certification and adjustment in her family share due to the loss of income. At that time, Ms. Bencosme supplied NYCHA with proof of her loss of income. In February 2011, after several months had passed with no response from the Housing Authority, Ms. Bencosme contacted the leased housing office to inquire about the status of her interim recertification request. Ms. Bencosme was informed that no action had been taken on her interim recertification request. Concerned that the Authority's failure to complete the interim recertification was placing her and her children at risk of eviction, Ms. Bencosme requested an informal conference. After requesting the informal conference Ms. Bencosme received a receipt from NYCHA stating NYCHA did not have the means to complete the interim recertification at that time:

“Tenant came in to follow up on income adjustment requested in September 2010. Currently our database is under construction, tenant will receive notice by mail, once the adjustment to her income and rent portion has been completed. Tenant also requested an informal conference to discuss this matter.”

On July 12, 2011, Ms. Bencosme had an informal conference regarding the adjustment of her family share. The Housing Authority's representative asked Ms. Bencosme to submit additional information. The request for additional information was completely unnecessary and

served only to delay the processing of the interim recertification request. Ms. Bencosme had already provided documentation to the Authority establishing that her family's sole source of income was public assistance. The Authority also informed Ms. Bencosme she needed to provide a letter from her former employer with her last work date and apply for unemployment insurance benefits. However, she had already been rejected for unemployment and her family's receipt of public assistance was predicated on her inability to receive unemployment insurance benefits. Unable to provide the documentation requested by the Housing Authority, Ms. Bencosme submitted her final paycheck and a signed affidavit stating her last date of employment. Although Ms. Bencosme currently receives a shelter allowance from public assistance of just \$400 per month, the maximum shelter allowance for a family of three, NYCHA has refused to adjust her family share. Ms. Bencosme's family share remains improperly set at \$763.00 per month. Since Ms. Bencosme cannot afford to pay her family share of the rent, her landlord has commenced a non-payment proceeding and is seeking to evict Ms. Bencosme and her children. As a result of the Housing Authority's failure to process Ms. Bencosme's interim recertification she remains liable for a rent in excess of the amount allowed under federal law and she and her children are in danger of imminent eviction.

Another Legal Aid Society client, Christian Faloye resides in the Bronx with his four children in an affordable rent stabilized apartment. The family has lived in their home for nearly ten years. The family's source of income is Mr. Faloye's disability benefits. In March 2009, Mr. Faloye completed an annual recertification. The family's monthly income was \$3,107.92, and the family's share of the month rent was set at \$969.00 per month. Mr. Faloye and his wife separated. On March 31, 2011, Mr. Faloye's ex-wife permanently vacated the apartment, lowering the household income to \$837.00 per month. Mr. Faloye promptly reported the change

in household composition and income and provided proof of these changes. Mr. Faloye requested an interim recalculation of the tenant portion or, in the alternative, an informal conference regarding the adjustment of the tenant's portion. On April 27, 2011, an informal conference was held. At the informal conference the housing assistant acknowledged the tenant's portion had been set incorrectly. However, as of this date, the Housing Authority still has not adjusted Mr. Faloye's share. Mr. Faloye's family share is currently \$969.00 per month, which is significantly more than his monthly income

Mr. Faloye's landlord has commenced a non-payment proceeding against him. The Housing Authority's failure to timely and properly adjust Mr. Faloye's share of the rent has resulted in Mr. Faloye being liable for rent in excess of the amount allowed under federal law, and he and his children are in imminent risk of eviction.

As Ms. Bencosme and Mr. Faloye's stories vividly demonstrate, the Housing Authority's actions, or rather, lack of actions, have serious consequences for those families who rely on Section 8 subsidies. The Housing Authority's failure to properly process interim recertification requests has resulted in Section 8 participants being held responsible for an improper and unaffordable "tenant's portion" they are not able to sustain on a monthly basis. As a result, these families have faced unnecessary Housing Court proceedings, unsatisfied monetary judgments, and the ongoing threat of eviction from their homes.

## **CONCLUSION**

We call upon the Housing Authority to stop terminating Section 8 recipients until the Housing Authority can ensure that it has not terminated the family in error and restore families it has terminated until it can ensure that it has not made errors in the termination procedures. In

addition, NYCHA must change its procedures concerning interim recertifications to ensure that Section 8 recipients are not being overcharged in rent. Thank you again for the opportunity to testify before the City Council Committee on Public Housing.

Respectfully Submitted:

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JOINT HEARING OF THE COMMITTEE ON PUBLIC WELFARE  
AND THE COMMITTEE ON GENERAL WELFARE

NYCHA's Section 8 Rental Assistance Program

September 27, 2011

My name is Mitchell Posilkin, General Counsel of the Rent Stabilization Association. I am here to testify on behalf of the 25,000 members of RSA, many of whom have Section 8 tenants, who own residential properties throughout the City. It is these very owners who provide the affordable housing which is so critical to the lives of so many New Yorkers. It is these very owners who we ought to be encouraging, instead of discouraging, to remain in the affordable housing sector.

For over a decade, RSA has been working with an ever-changing array of NYCHA and HPD officials to improve the performance of their respective Section 8 programs. Over the years, in response to our concerns, both NYCHA and HPD dedicated personnel and other resources to address the seemingly endless number of issues raised by our members regarding virtually every aspect of the Section 8 program.

During that time we did witness improvements in program administration, the complaints by property owners became less common and, for better or worse, a sort of equilibrium existed whereby owners could navigate through the intricacies of a program that is, by its very nature, remarkably complicated and daunting. Ultimately, as the day-to-day issues seemed to resolve themselves, our primary concern was whether the two programs should be consolidated—at a time when fiscal realities required a re-examination of the way the City did business, why were two different agencies, with different rules, procedures and personnel, administering the same benefits? Why were owners with tenants in both programs forced to navigate two separate bureaucracies? Once the benefits were conferred, why couldn't one agency, or perhaps an outside entity, administer the ongoing Section 8 payments and other administrative procedures?

Unfortunately, we are back where we started so many years ago. Our interest in consolidation has been superseded by the issue of faulty program administration. Recently, NYCHA undertook to radically re-structure their Section 8 program, changing their organizational structure, changing and centralizing office locations, and instituting a new technology-driven system. While laudable on the surface, the unfortunate reality is that those efforts have made the system worse, not better. Seemingly every aspect of the program is less well administered

than it was before. They have succeeded in creating innumerable barriers between the bureaucracy and the taxpayers they serve. For all intents and purposes, meaningful communication with property owners has become more difficult if not non-existent. Owners cannot speak to the agency staff who can address their issues and find themselves in a bureaucratic twilight zone. As a result, we are in a place rarely seen in the landlord-tenant world: advocates for both owners and tenants on the same side of an issue. As we all know, it takes a lot for that to happen but that is where we are today.

When Mayor Bloomberg vetoed the Section 8 anti-discrimination legislation, which was later overridden by the Council, he stated that administrative concerns, such as the amount of time that units were required to stay vacant until the Section 8 bureaucracy could make the necessary inspections and process the necessary paperwork, were “costs for which [owners] are not compensated.”

Unfortunately, property owners now confront an untenable situation which is even more egregious than what the Mayor described at that time. In the words of the Mayor, the Council made “a voluntary program involuntary.” Owners who are in the program cannot get out and owners who receive applications from Section 8 tenants are obligated not only to accept that tenant but also to participate in the program. They are now trapped, regardless of whether government agencies do what they are supposed to do. The irony is that at the same time affordable housing is the linchpin of so many government policies, the Section 8 program victimizes the very people who own and manage that housing.

When Section 8 works well, it is an effective mechanism both for tenants and owners. Tenants are provided with quality affordable housing and owners are paid reasonable rents from a reliable source. However, today the Section 8 program does not work well. Paperwork is not processed timely. Information is lost. Owners cannot speak with the people who know their situations best. There is a backlog of lease renewal and mci increases. Too many owners do not receive the rental income to which they are entitled. Something is wrong and needs to be addressed. Owners, as well as tenants, are entitled to genuine answers.

Thank you for the opportunity to testify today.