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TESTIMONY OF THE LEGAL AID SOCIETY

Joint Legislative Public Hearing on 2021-2022 Executive Budget Proposal:
Human Services

February 9, 2021

Thank you Majority Leader Stewart-Cousins, Chair Persaud, Speaker Carl Heastie, Chair Rosenthal, Chair Hevesi, the New York State Senate Finance Committee and the New York State Assembly Ways and Means Committee for holding this very important hearing. We welcome the opportunity to submit testimony before the Committees on behalf of The Legal Aid Society concerning fiscal priorities for the coming year in the area of human services. We are eager to work with the Committees to ensure that New Yorkers across New York State have access to the support they need both to weather the dual economic and public health crises we face due to the COVID-19 pandemic and to address the long-standing racial inequities put into high relief by the current crisis.

The Legal Aid Society

The Legal Aid Society (Legal Aid), the nation's oldest and largest not-for-profit legal services organization. Legal Aid provides comprehensive legal services in all five boroughs of New York City for people who cannot afford to pay for private counsel. Since 1876, Legal Aid

has advocated for low-income families and individuals and has fought for legal reform in City, State, and Federal Courts across a variety of civil, criminal and juvenile rights matters. Legal Aid takes on 300,000 cases annually, including thousands of cases in which we fight for the rights of tenants in regulated and unregulated apartments across the city. Legal Aid also takes on law reform and appellate cases, the results of which benefit more than 1.7 million low-income New Yorkers; the landmark rulings in many of these cases have a state-wide and national impact.

New York City was the epicenter of the world's COVID-19 pandemic. As of February 7, 2021, there have been at least 637,486 cases in New York City since the beginning of the pandemic.¹ As of February, Brooklyn, Queens and the Bronx are third, fourth and sixth counties with the highest death rate in the United States.² New York City lost 27,768 people to COVID as of February 7, 2021.³ The disproportionate impact of COVID-19 on our client communities is well-documented. COVID-19 has exposed the long-standing racial and social inequities that have led to vulnerable populations bearing the brunt of this crisis. Throughout the crisis, Black and Latinx New Yorkers have died of COVID-19 at twice the rate of white people and have a hospitalization rate that is four times that of white people.⁴ The CDC and others have attributed those rates to lack of access to health care and exposure to the virus related to occupation, including frontline, essential, and critical infrastructure workers. “[A]s more data becomes available, one thing is clear: COVID-19 has only magnified the systemic inequalities that persist

¹ See <https://www.nytimes.com/interactive/2020/us/covid-cases-deaths-tracker.html>

² See [Johns Hopkins University, Coronavirus Resource Center](https://www.jhu.edu/coronavirus/) (last updated February 8, 2021).

³ See <https://www.nytimes.com/interactive/2020/us/covid-cases-deaths-tracker.html>

⁴ Centers for Disease Control and Prevention, COVID-19 Hospitalization and Death by Race/Ethnicity, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html> (Nov. 30, 2020).

in the United States. And nonwhite Americans, especially African Americans, have been hit hard on nearly every front.”⁵

In January 2020, New York City’s unemployment rate was 3.5 percent. As of December 2020, it was 11 percent and that is a decrease from the worst months of 2020, June and July when a staggering 20 percent of New Yorkers were out of work.⁶ New York State is in the midst of a financial crisis that was caused by the health crisis. The only way to combat these dual crises is to keep people in their homes where they can avoid COVID, where they can seek employment opportunities and remain employed.

Summary of Recommendations

This testimony concerns the work of the New York State Office of Temporary and Disability Assistance, Office for the Aging, the Office of New Americans, the Department of State. We will discuss the positions set forth below:

- I. **Address On-going Homelessness Crisis** – Adopt the recommendations of the Coalition for the Homeless, which was submitted under separate cover, that are not otherwise addressed in this testimony.
- II. **Add Critical Public Benefits and Housing Support Measures to the Budget** –
 - A. Adopt measures to ensure that low-income New Yorkers have access to housing assistance needed to prevent eviction and homelessness and maximize federal aid for this purpose.
 - 1. Eliminate the FHEPS lawsuit requirement.
 - 2. Require OTDA to ensure that its disbursement of federal money for the purposes of emergency rent assistance is fair and efficient.
 - B. Adopt time-limited measures during the COVID-19 crisis to enable low-income New Yorkers to meet their most basic needs.

⁵ Harmeet Kaur, *The coronavirus pandemic is hitting black and brown Americans especially hard on all fronts*, CNN (May 8, 2020), <https://www.cnn.com/2020/05/08/us/coronavirus-pandemic-race-impact-trnd/index.html>.

⁶ See <https://labor.ny.gov/stats/laus.asp>.

1. Forgive repayment of rent arrears grants during the duration of the crisis.
 2. Eliminate the 45-day waiting period for Safety Net Assistance as contemplated by State law during “emergency circumstances.”
 3. Suspend income, resource, and repayment rules to enable struggling New York households to get through the economic crisis:
 - (a) Suspend the 185 percent of the Standard of Need Rule.
 - (b) Make the “earned income disregard” rules fair to all New York families.
 - (c) Suspend current resource limits and expand Social Services Law §131-n exclusions so families do not have to choose between losing even meager savings and short-term assistance.
 - (d) Suspend utility grant repayments and recoupments of inadvertent overpayments of benefits.
 - (e) Ensure that all forms of COVID-19 relief are treated as invisible in determining initial and ongoing eligibility for Cash Assistance.
 4. Ensure maximum flexibility for the benefit of low-income New Yorkers and require transparency.
- C. Support legislation to address long-term inequities in the provision of housing assistance and assist disabled and elderly SSI recipients.
1. Adopt longer-term housing solutions that avert homelessness.
 2. Require Fair Treatment of a Child’s Unearned Income.
- III. Health** – Provide Level Funding for the Managed Care Consumer Assistance Program (MCCAP)
- IV. Disability Advocacy Project (DAP)** – Provide Level Funding
- V. Immigration** – Increase funding for the Liberty Defense Project
- VI. Foreclosure Prevention** – Restore \$20 million in funding for the Homeowner Protection Program (HOPP)
- VII. Child Welfare** – Pass implementing legislation for the federal Family First Prevention Services Act and restore preventive services funding

Recommendations of The Legal Aid Society

I. Homelessness Support

We respectfully urge the Legislature to adopt the recommendations of The Coalition for the Homeless that are not otherwise addressed in this testimony, submitted under separate cover today by Shelly Nortz, Deputy Executive Director for Policy.

II. Public Benefits and Housing Support

The Governor's 2021-22 Budget fails to include many critical measures in the area of social services for which Legal Aid has been advocating since the onset of the pandemic, and New Yorkers now look to the Legislature to ensure that these needs are finally addressed. Accordingly, we urge the Legislature to effectuate the following changes. Where existing bills contain the recommended changes, we include the bill numbers for your reference.

We have organized our Public Benefits and Housing Support recommendations into three categories: (A) ensuring that low-income New Yorkers have access to housing assistance needed to prevent eviction and homelessness; (B) adopting time-limited measures that will enable more low-income New Yorkers to meet their most basic needs during this time of economic and public health emergency; and (C) adopting legislation that addresses longer-term inequities in the provision of housing assistance and that will assist children, people with disabilities, and the elderly.

A. Adopt measures to ensure that low-income New Yorkers have access to housing assistance needed to prevent eviction and homelessness and maximize federal aid for this purpose.

1. Eliminate the FHEPS lawsuit requirement. The State “FHEPS” program is available in New York City to certain eligible families as an ongoing rent supplement where the severely low shelter allowance otherwise provided to households is not enough to cover rent. OTDA currently requires households seeking FHEPS to have a non-payment proceeding pending against them in Housing Court as a pre-condition to program eligibility (known as the “lawsuit requirement”). This requirement does not exist in the State Social Services Law, and OTDA is

free to dispense with the requirement. Nevertheless, the agency has refused to do so.⁷ This means that instead of enabling households to access one of the only forms of ongoing housing assistance now available, they will have to wait until they are sued, which in many cases is being deferred by landlords pursuant to the moratorium.

Preventing tenants from accessing FHEPS now, and thereby forcing them to face prolonged housing instability and uncertainty, makes no sense from the perspective of public health or as a matter of government efficiency. From a public health perspective, failing to eliminate the lawsuit requirement means forcing tenants and their landlords to appear in person in overcrowded Housing Courts when the moratoriums ends. Such over-crowded conditions will continue to be a public health risk even after the worst of the COVID-19 pandemic has faded. Moreover, creating such pent-up demand will require an already over-taxed New York City Department of Social Services and OTDA to process an overwhelming number of FHEPS applications at the same time, overwhelming staff, and inviting increased error and delay, and further uncertainty for our clients and their landlords. In addition, some families will no longer be eligible for FHEPS when the moratorium ends because by that point their arrears will be too high to qualify. Stakeholders representing landlords are in agreement with this common-sense fix.⁸ The FHEPS lawsuit requirement should be eliminated.

2. Require OTDA to ensure that its disbursement of federal money for the purposes of emergency rent assistance is fair and efficient. The budget tasks OTDA with the task of administering the disbursement of federal money to tenants facing rent arrears.⁹ In

⁷ On February 8, 2021, plaintiffs sued OTDA for failing to eliminate the lawsuit requirement. *See Soriano v. Hein* (Sup. Ct. N.Y. Co. Feb. 8, 2021).

⁸ *See* Policy Recommendations of the New York City Eviction Prevention Roundtable, *Preventing Eviction for New Yorkers Amid Covid-19*, (Jan. 20201), <https://www.enterprisecommunity.org/download?fid=14688&nid=11615>

⁹ *See* <https://www.budget.ny.gov/pubs/archive/fy22/ex/agencies/appropdata/TemporaryandDisabilityAssistanceOfficeof.pd>

December, Congress passed and the former President signed into law a COVID relief package which included \$25 billion in relief to tenants. The money can be used for rent arrears, for three months of future rent and for utility costs. The funding mechanism is the Coronavirus Relief Fund (CRF), first created in the CARES Act. The allocation formula was set in the CARES Act and allows for a direct allocation for New York State and New York City and other localities with populations of more than 200,000. New York State will receive \$800 million, the remaining approximately \$480 million goes directly to the New York State localities which applied for the allocation.

We urge OTDA to learn from the mistakes made by those who designed and implemented the failed New York State Homes and Community Renewal COVID relief program. That program layered eligibility requirement upon eligibility requirement, required immense amounts of documentation and required tenants to pay more than 30 percent of their new reduced income toward their rent arrears. The program was opened quickly and soon closed. There was no attempt to reach out to the community-based groups who are working with those most affected by the crisis. The application required tenants to apply through an online portal that was only accessible to tenants who spoke English. The program discriminated against immigrants in violation of federal law as it was not open to all tenants regardless of immigration status.¹⁰ Because the program required so much documentation, tenants were asked to supplement their applications and then never heard from the program again. In the end, New York State was only able to spend \$40 million of the \$100 million allocation.¹¹ While Governor

¹⁰ See *Poder in Action v. City of Phoenix*, __ F. Supp. 3d __, 2020 WL 7245072 (D. Ariz. 2020) (declaring that eligible non-citizens can obtain federal housing assistance regardless of immigration status because city program fell under Personal Responsibility and Work Opportunity Reconciliation Act exception for “short-term, non-cash, in-kind emergency disaster relief”).

¹¹ See <https://hcr.ny.gov/system/files/documents/2020/10/covid-rrp-report.pdf>.

Cuomo reopened the program in December, only minor changes were made to the program which did not cure its flaws and there is every reason to believe that the State will be unable to spend the remaining \$60 million. Meanwhile, it is estimated that New York State tenants owe between \$1.3 and \$2.2 billion in back rent.¹²

Any program for rent relief must be open to all tenants regardless of immigration status. Any other position is in violation of federal law. *See Poder*, 2020 WL 7245072 (D. Ariz 2020)

New York State must ensure that New York City tenants receive their fair share of the monies allocated. New York City's direct allocation was determined by a formula set by the CARES Act: 45 percent of New York City's proportion of New York State's population. New York City directly received 19.8 percent of New York State's allocation. ANHD has published a report analyzing what percentage of the funds would be New York City's fair share.¹³

According to ANHD, 63 percent of New York State's renters live in New York City. If New York City's allocation matched its percentage of renters, we would see \$800 million for our renters. It is clear that the COVID pandemic has laid bare the racial and economic inequality experienced by people of color. New York City houses 73.5 percent of all Black renters, 79.3 percent of all Latinx renters and 83.4 percent of all Asian renters in New York State.¹⁴ Our costs are higher too. New York City's median rent is \$1443 versus \$1280 in the rent of the State.¹⁵ Even accounting for population, New York City's renters will be shortchanged. New York City and New York State must commit to a just recovery that ensures that the most impacted and most vulnerable among us do not fall further behind.

¹² For estimates on back rent owed, we rely on Stout, a nationally recognized research firm that has been analyzing census data and producing bi-weekly State-by-State estimates of rent owed. [New York's analysis is available here.](#)

¹³ See <https://anhd.org/blog/new-york-citys-unfair-share>.

¹⁴ *Id.*

¹⁵ *Id.*

The Emergency Rental Assistance program created by the federal law requires that grantees provide relief to tenants with incomes of under 80 percent of Area Median Income (AMI) and that the grantees prioritize tenants with incomes of under 50 percent of AMI. We recommend that the rent relief program first prioritize tenants with incomes of under 30 percent of AMI and then 50 percent of AMI.

After considering the rental assistance programs created by States and localities from CARES Act funds, the National Low Income Housing Coalition (NLIHC) recommended the best practices of program design.¹⁶ NLIHC recommends that grantees allow applicants to self-certify that they qualify for the program. Clearly, New York State's over-reliance of documentary proof of tenant eligibility in the flawed New York State Homes and Community Renewal COVID relief program ensured that desperate tenants received no relief. We are particularly concerned for our clients without immigration status or those who work in the grey economy who have lost their jobs but are unable to prove loss of income to the satisfaction of government bureaucrats. The rent relief money must be issued quickly and easily. There is no reason to put artificial barriers before desperate tenants. Additionally, the application process must be simple and accessible. The program must provide language justice and have multiple channels for tenants and landlords to apply. Any rent relief program must not leave behind low income New Yorkers on the other side of the digital divide.

Even were New York City to receive its fair share, there is not currently enough money to cover every low-income New Yorker who owes rent. The designers of New York's program should consider targeting emergency rental assistance to areas with high shares of housing instability, job loss, and populations disproportionately impacted economically by the pandemic,

¹⁶ See <https://nlihc.org/resource/nlihc-releases-report-best-practices-state-and-local-emergency-rental-assistance-programs>.

including communities of color, which have been hardest hit by the pandemic. We recommend targeting the most impacted census tracts and providing the assistance through a lottery rather than on a first come first serve basis. The lottery should initially target tenants at or below 30 percent of AMI. First come first serve programs often leave behind historically marginalized communities.

Payments to landlords covering rent arrears should include basic tenant protections. Landlords that receive this funding should agree that the payments resolve the tenants rent arrears and that the landlord will not sue the tenant for back rent for this time period. Additionally, landlords should agree not to evict tenants without good cause for a period of at least one year. Landlords should forgive all late fees and legal fees connected to the rent arrears.

Housing insecurity affects Black renters and other renters of color disproportionately. According the United States Census Departments Pulse survey, as of the week ending January 18, 32 percent of all New York State renters have no or little confidence of paying rent in February.¹⁷ But when we break this number out and look at race and Latinx origin, the racial disparity is stark. 52 percent of Latinx renters, 45 percent Black renters, 41 percent Asian renters and only 8 percent white renters have no or little confidence that they can pay rent in February. How we provide relief to renters in New York State will determine whether we leave our Black tenants and tenants of color behind to face decades of recovery from this crisis. The Legislature must ensure that the COVID relief recovery centers Black communities and communities of color and advances racial equity.

¹⁷ See Census.gov, Week 22 Household Pulse Survey, January 6 – January 18, <https://www.census.gov/data/tables/2021/demo/hhp/hhp22.html> (Last accessed January 29, 2021)

B. Adopt time-limited measures during the COVID-19 crisis to enable low-income New Yorkers to meet their most basic needs, including housing.

Because many existing forms of rental assistance are dependent upon eligibility for benefits like Cash Assistance (Safety Net Assistance (SNA) and Family Assistance (FA)), recommendations that will ensure that more very low-income New Yorkers obtain and maintain eligibility for Cash Assistance will likewise provide support to more New York families facing eviction when the moratoriums cease.

1. Forgive repayment of rent arrears grants during the duration of the crisis.

Currently, certain recipients of existing forms of rent arrears grants are required to repay at least a portion of those grants to the agency. *See* NY Soc. Serv. L. § 131-w. For one, this requirement deters needy families from applying for assistance as they are wary of accumulating debt with no idea how they will repay it in the future. Even where there is no deterrence effect, this repayment requirement makes no sense during the pendency of the public health and economic crises due to COVID-19, as families struggle to put food on the table and are not assured stable employment even when the crisis ends. Repayment of rent arrears grants required under the Social Services Law should be suspended during the duration of the crisis.

2. Eliminate the 45-day waiting period for Safety Net Assistance as contemplated by State law during “emergency circumstances.”

At this time, applicants for Safety Net Assistance have to wait up to 45-days before their Cash Assistance grant becomes recurring. Our clients do not generally apply for Safety Net Assistance 45-days in advance of their need for help. Instead, they seek assistance as a last resort, in the wake of a health emergency, escape from domestic violence, or a sudden job loss. The law puts the onus on clients to apply for five-day “immediate needs grants” during the 45-day period if they need assistance during that time. This means that a household that needs help

during the whole waiting period would be forced to apply for nine immediate needs grants, putting a great burden on them and the local social services agency.

Fortunately, the Social Services Law recognizes that in “emergency circumstances,” such as the times we face today, the 45-day period can be suspended and the state will reimburse the local districts for grants made in the interim. *See* NY Soc. Serv. L. § 153(8). Such emergency circumstances should be declared by OTDA on behalf of the districts, enabling them to streamline the process of delivering assistance to clients while the 45-day clock is running.

3. Suspend income, resource, and repayment rules to enable struggling New York households to get through the economic crisis.

These measures enable more low-income New Yorkers who are living at or under the federal poverty level to access public assistance, including housing benefits like FHEPS, which are only available to households eligible for Cash Assistance. It is critical that the following rules be suspended during the crisis, and they should also be considered as the subject of permanent reforms:

(a) **Suspend the 185 percent of the Standard of Need Rule.** The outdated 185 percent of the standard of need requirement has no place in today’s economic crisis. Aside from having income under the federal poverty level, which is adjusted upward every year, public assistance recipients are not permitted to have more than 185 percent of the “standard of need” (benefit amount for their household).¹⁸ *See* NY Soc. Serv. L. § 131-a (10). But unlike the federal poverty level, the standard of need or benefits level has not been increased in nearly ten years, since 2012. As a consequence, the federal poverty level is now significantly higher than 185 percent of the standard of need in every New York county. This means many Cash Assistance recipients, especially those who are working part-time right now, are made ineligible for Cash Assistance despite having earnings under the federal poverty level. Accordingly, eliminating the 185 percent of the standard of need requirement is essential to help low-wage workers remain eligible for Cash Assistance when they need it most. The cost of this change is minimal because the public assistance grant is reduced for households with earned income and the stability that affected families will achieve will avoid even greater costs to the state in the long-run.

(b) **Make the “earned income disregard” rules fair to all New York families.** Another change that will enable families with low earnings to make their income

¹⁸ The “standard of need” refers to the maximum level of Cash Assistance available to a particular family, based upon the total of the allowances set forth by family size in 18 N.Y.C.R.R. §§ 352.2 & 352.3.

stretch further during this crisis and beyond is to reform the earned income disregard rules.¹⁹ Currently, section 131-a(8)(a)(iii) of Social Services Law only allows households containing a minor child to disregard earned income, which means the income is not otherwise subtracted from the household's Cash Assistance grant. We recommend three critical changes.

First, enable all households to take advantage of the disregard, not only households with minor children. Allowing single individuals and adult-only households to disregard a portion of their earnings would support their ability to maintain employment and would alleviate homelessness caused by insufficient income.

Second, during the pandemic, OTDA should be required to increase the amount of income disregarded for all families above the 54 percent currently allowed.²⁰ This will enable more families to maintain income up to the federal poverty level during the economic crisis.

Third, OTDA should be required to apply the disregard to all new applicants for ongoing Cash Assistance and not limit the disregard to only those households who have received Cash Assistance during the past four months, which is the current rule.²¹

(c) Suspend resource limits and expand exclusions in Social Services Law § 131-n, so families do not have to choose between losing even meager savings with short-term assistance. Families are limited to \$2,000 in savings or assets (\$3,000 for families who have a household member 60 or over).²² Under Social Services Law § 131-n, certain assets are excluded from maximum. Such asset tests were put in place originally to ensure that limited dollars for public assistance would go to families with the greatest need. However, such asset tests undermine the goal of financial independence. Families who lose Cash Assistance because they have amassed just \$2,500 in savings end up back in need of assistance following any emergency expense that brings them back within the asset limit. An increasing number of states are eliminating consideration of assets or increasing the exemptions for assets. For example, New York and 33 other states have eliminated their SNAP asset tests completely. Eight states have eliminated their Cash Assistance asset tests completely: Alabama; Colorado; Hawaii, Illinois, Louisiana, Maryland, Ohio, and Virginia.²³ An additional five states (California, Connecticut, the District of Columbia, Montana and Vermont), expressly exempt retirement accounts.²⁴

New York should follow the lead of other states. Especially considering the depth and breadth of the current crisis, it makes no sense to require households to spend down meagre retirement savings and face longer term financial instability just so they can access the help provided by Cash Assistance in the short-term. Moreover, New York's rules increase the financial burden on such households by causing them to face steep tax penalties for early

¹⁹ See *Temporary Assistance Budgeting: 2020 Earned Income Disregard and Poverty Level Income Test*, <https://otda.ny.gov/policy/directives/2020/ADM/20-ADM-06.pdf>

²⁰ *Id.*

²¹ N.Y. Soc. Serv. L. § 131-a(8)(a).

²² 18 N.Y.C.R.R. § 352.23

²³ The Welfare Rules Databook: State TANF Policies as of July 2019, Table I.C.1. Asset Limits for Applicants, 79-80. Urban Institute, 2019, <https://wrd.urban.org/wrd/databook.cfm>

²⁴ *Id.* at 185-87.

withdrawals. Finally, making these overdue changes will conserve the agencies' human resources by reducing a cycle of case closure, reapplication, and case closure that come with enforcing the asset rules. The Urban Institute found that eliminating asset tests leads to an increase in bank accounts, and to the amount of savings.²⁵ Having a bank account helps families conduct basic financial transactions, save for emergencies, build credit history, and access, fair, affordable credit.²⁶

Now is the time for New York to suspend the asset limits and exclusions under Social Services Law § 131-n.

(d) Suspend utility grant repayments and recoupments of inadvertent overpayments of benefits. At this difficult time, when New Yorker's household income and resources must be conserved, OTDA should direct local districts to suspend emergency utility grant repayments under Social Services Law § 131-s until the COVID-19 crisis is over. Likewise, the local agencies should be directed not to recoup overpayments of benefits under Social Services Law § 106-b, instead of burdening grant recipients and the agencies from processing individual "undue hardship" reduction requests.

(e) Ensure that all forms of COVID-19 relief are treated as invisible in determining initial and ongoing eligibility for Cash Assistance. The State should allow New York households to maximize federal relief dollars by ensuring that they do not count as income or resources in the calculation of Cash Assistance eligibility even where federal law does not so specify.

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4. Ensure maximum flexibility for the benefit of low-income New Yorkers and require transparency. OTDA should be required to promptly post its waiver requests submitted to federal agencies like the U.S. Department of Agriculture, as well as local district waiver requests to OTDA and OTDA's responses, to ensure agency transparency and accountability. Moreover, OTDA should be required to seek maximum flexibility from the federal government in the administration of Cash Assistance and SNAP to ensure that more New Yorkers obtain and maintain benefits.

²⁵ Caroline Ratcliffe, Signe-Mary McKernan, Laura Wheaton, Emma Kalish, Catherine Ruggles, Sara Armstrong, Christina Oberlin, *Asset Limits, SNAP Participation, and Financial Stability*, Urban Institute (June 2016), <https://www.urban.org/sites/default/files/2016/06/29/2000843-asset-limits-snap-participation-and-financial-stability.pdf>.

²⁶ Federal Deposit Insurance Corporation, *What is Economic Inclusion?* (2014), <http://www.economicinclusion.gov/whatis/>

C. The Budget should incorporate legislative language that addresses longer-term inequities in the provision of housing assistance and assists children, people with disabilities, and the elderly.

1. The Legislature should adopt longer-term housing solutions that avert homelessness and enable low-income families to spend more of their income on basic needs.

FHEPS and rent arrears assistance is not enough to prevent massive evictions and homelessness caused by the lack of affordable housing, which has only been exacerbated by the COVID-19 economic crisis. New Yorkers need longer term solutions and there is no reason to wait. The Housing Access Voucher Program (HAVP) (A.3701 Cymbrowitz/S.2804 Kavanagh) and Home Stability Support (HSS) program (A.1620 Rosenthal/S.2375 Krueger) are complementary solutions that address this need. The HAVP program would ensure affordable rents by implementing a voucher program that caps rental obligations at 30 percent of income for eligible households. HSS establishes realistic rent supplements (up to the Fair Market Rent) to prevent eviction and homelessness state-wide. Such solutions are essential to bringing New Yorkers back to a state of health and security long-term.

2. Require Fair Treatment of a Child's Unearned Income by Supporting (A.9064 Hevesi/S. 7260 Persaud). This bill, which was passed by the Legislature in 2019 but vetoed by the Governor, should be incorporated into the budget. The bill would amend Social Services Law §§ 131a(8) and 131-c to enable families in which a child has unearned income – such as Social Security Survivor's or Disability Benefits – to maintain eligibility for Cash Assistance without counting the child's income toward the entire family's budget, which is unfair to the child and the family who is trying to make ends meet on inadequate levels of assistance. This change would especially help non-parent caregivers of children who have parents who have deceased or are dealing with other urgent circumstances, such as incarceration

or recovery from disabilities or substance abuse. Studies show that children placed in care with relatives fare much better emotionally and intellectually than children who live in foster care with strangers.²⁷ Although the bill referenced above was vetoed by the Governor, he indicated that its intent was laudable and should be considered during budget negotiations.²⁸

III. Health – Provide Level Funding for the Managed Care Consumer Assistance Program (MCCAP)

The Legal Aid Society strongly supports the inclusion in the Executive Budget of \$1.767 million to provide level funding for the Managed Care Consumer Assistance Program (MCCAP). This crucial program, administered by the New York State Office for the Aging (NYSOFA), provides individual assistance to elderly New Yorkers and individuals with disabilities, helping them access Medicare services, coordinate with Medicaid and other supplemental insurance, and reduce health care costs.

The Legal Aid Society and the other five organizations that comprise the MCCAP network also provide technical assistance and support to the statewide network of Health Insurance Information Counseling and Assistance Program (HIICAP) and assist with the high volume of calls received by the HIICAPs during Medicare’s annual open enrollment period.

The COVID-19 pandemic has only intensified the need for MCCAP services. Policy changes intended to preserve Medicaid coverage during the pandemic have created confusion for some individuals as they transition into Medicare. We have helped avoid coverage gaps by swiftly assisting clients whose benefits were incorrectly discontinued during the emergency. In addition, we have helped numerous clients dually eligible for Medicare and Medicaid to preserve

²⁷ G. Wallace, E. Lee, *Diversion and Kinship Care: A Collaborative Approach Between Child Welfare Services and and NYS’s Kinship Navigator*, 16 Journal of Family Social Work, 418-419 (2013), http://www.nysnavigator.org/pg/professionals/documents/Wallace_Lee_2013_Diversion.pdf

²⁸ Veto Message. 164 (2019-2020), <http://www.nystatewatch.net/www/NY/19R/pdf/NY19RSB04809VET.pdf>

their benefits and services, including home care services, which are essential to allow elderly individuals and New Yorkers with disabilities to live safely at home while nursing homes and other institutional settings have been significant sources of COVID-19 infection.

IV. Disability Advocacy Project (DAP) – Provide Level Funding

The Legal Aid Society’s Government Benefits and Disability Advocacy Project provides vital services to vulnerable New Yorkers to ensure they are able to receive the benefits to which they are entitled: maximizing their income and supporting their long-term wellbeing. New Yorkers with disabilities are more likely to be unemployed and living in poverty than individuals without disabilities. Approximately 34 percent of working-age adults with disabilities live in poverty in the city, more than twice the rate for New Yorkers without disabilities and significantly higher than the state or national average.

Representing claimants seeking benefits via the disability-based programs administered by Social Security Administration (SSA) – Supplemental Security Income (SSI) and Social Security Disability (SSD) Insurance – is critical in providing a source of income for many New York City residents and directly reduces the number of individuals forced to live in poverty. During the last fiscal year (July 1, 2019 – June 30, 2020), The Legal Aid Society represented 811 unique clients in their disability appeals – obtaining a total of \$3,624,109.58 in retroactive awards and securing \$135,646.61 in monthly benefits for our clients. As a result, the vast majority of these clients no longer needed to receive Cash Assistance benefits issued by the New York State Department of Social Services and were able to access greater economic stability in their lives. The application process for these vital benefits is cumbersome and opaque and results in a 65 percent denial rate for initial applications based on recent SSA data. Our representation ensures that vulnerable New Yorkers without access to resources or alternative sources of

advocacy are able to access these vital programs – even more important during the COVID-19 pandemic as our communities continue to experience unprecedented financial strain. Pandemic-related changes to application processes such as the transition to remote proceedings pose additional challenges for many New Yorkers and continued funding for our services is vital to ensuring they can successfully navigate these programs. Maintenance of DAP funding is vital.

V. Immigration – Increase funding for the Liberty Defense Project

The COVID-19 pandemic has disproportionately impacted New York’s immigrant population, with noncitizen New Yorkers far more likely to contract the virus and facing heightened risk of dying or experiencing serious medical complications in the event of infection, while they have faced an unprecedented anti-immigrant agenda led by a federal government that had systematically terrorized our immigrant communities across the state and across the nation. As New Yorkers work in this challenging time to restore public health and economic stability, and as a new federal administration takes shape, it is vitally important that we invest in the immigrant communities that continue to be essential to every aspect of our livelihood and recovery. Immigrants in our state²⁹ own more than 300,000 businesses, account for one quarter of our workforce, and have an estimated \$118 billion in annual spending power. They are responsible for life-saving work during the global pandemic that sustains our economy and safeguards health and safety in our communities, and are disproportionately on the front lines as essential workers during the pandemic. As they make these invaluable contributions, New York State must continue to stand with them by supporting their continued access to free, high-quality legal services as they face the grave risks of deportation and dangerous federal detention

²⁹ Vera Institute of Justice, *Profile of the foreign-born population in The State of New York*, <https://www.vera.org/downloads/publications/profile-foreign-born-population-new-york-city.pdf>

conditions, even under a new federal administration.

Support for the New York's Liberty Defense Project (LDP), which includes the pioneering upstate New York Immigrant Family Unity Project (NYIFUP), has been a critical investments by New York to safeguard health and stability in the face of deliberate harm caused by the federal government. With State funding, legal teams have adapted to extremely challenging circumstances during the COVID-19 pandemic to continue representing clients and uphold due process. NYIFUP and LDP clients have obtained their freedom from unsafe detention facilities, challenged unjust immigration policies and constitutional violations in federal court, connected with healthcare and social services, and remained at home with their families and in their communities. It is vital that increased investment in LDP be a central component of New York's response during this time of unparalleled need. LDP's pioneering representation work directly supports the ground-up, community-based growth that will be integral to New York's long-term recovery post-pandemic.

VI. Preventing Foreclosures - Restore crucial HOPP funding

Foreclosure prevention is a critical legal service we provide our clients. As part of a statewide network of non-profit housing counselling and legal service providers, we urge the Executive to restore \$20 million in funding in the budget to continue funding of the Homeowner Protection Program (HOPP). HOPP funding enables us to help homeowner keep their homes by defending them in foreclosure actions and redressing abusive real estate and mortgage practices, including deed theft. HOPP funding is more critical than ever as almost four times as many New York homeowners are delinquent on their mortgages than at the height of the 2009 recession. As moratoriums and forbearance programs end, New York could see its worst foreclosure crisis.

HOPP is a crucial part of the safety net for homeowners to avoid homelessness, to stabilize communities and to sustain New York's economic well-being.

VII. Child Welfare – Pass implementing legislation for the federal Family First Prevention Services Act and Restore Preventive Services Funding

Congress passed the Family First Prevention Services Act (FFPSA) as part of the Bipartisan Budget Act of 2018 (H.R. 1892). Two of the main components of the FFPSA are (1) federal reimbursement for certain services designed to support and preserve families and reduce the number of children entering foster care, and (2) a reduction in federal funding for congregate care placements of children in foster care. The FY2021 Executive Budget Education, Labor and Family Assistance (ELFA) Article VII bill includes provisions that purport to implement changes necessary for New York to comply with the congregate care requirements of the FFPSA at Part M. It is critical that New York meets the requirements of the FFPSA to ensure that New York children in foster care are supported by funding from the federal government for which they are eligible. However, the proposal put forward in the ELFA bill must be amended in certain critical ways. In addition, while Congress has for the first time made funding under title IV-E of the Medicaid Act available for preventive services, the Executive Budget proposes cutting funding for child welfare preventive services and the supervision and treatment services for juveniles program (STSJP).³⁰ The State should maintain funding for STSJP and restore child welfare preventive services to the statutorily required level.

The FFPSA limits congregate foster care placements to certain specialized facilities. Children whose needs may not be met in a family foster home are required to have their needs assessed by a “qualified individual” (QI) who may determine whether the child should be placed

³⁰ NY Executive Law § 529-b.

in a “qualified residential treatment program” (QRTP). Unless the placement is approved by both the QI and the Family Court within certain specified time frames, title IV-E funding will be lost. Consistent with the FFPSA, the ELFA bill requires that a child be moved out of a QRTP within 30 days of a QI finding that the placement is not appropriate; however, the bill is silent regarding the procedure to be followed when a court finds that the placement is not appropriate. The bill should be amended to cover these circumstances. In addition, the ELFA bill provision that would require a child to be moved out of a QRTP within 30 days of an QI finding that it is not an appropriate placement should be modified to avoid the possibility of a child being moved multiple times if the outcome of the court hearing is inconsistent with the QI assessment. Because a child's best interest is paramount, the legislation should also allow flexibility for a child not to be moved immediately if it is not in the child's best interest (for example, when a child might benefit from completing the school year at a QRTP before being moved to a foster home).

The ELFA bill should also be amended to ensure that the family court has appropriate authority to ensure that the provisions of the FFPSA are implemented appropriately. For example, the family court should have clear authority to determine the ongoing necessity of QRTP placement at every permanency hearing and to make appropriate orders with respect to its findings. While the current bill requires the agency to document the ongoing necessity, the court should be required to make an independent assessment of ongoing necessity.

While the bill language restricts the placement of children in QRTPs, it does nothing to restrict their placement in other congregate care settings (such as group homes or institutions) that do not qualify as QRTPs or other placements eligible for federal reimbursement under title IV-E. In order to help maximize the number of children who are title IV-E eligible and to better

meet the goal of placing as many children as possible in foster homes rather than congregate care settings, New York should modify the ELFA provisions so that the family court has authority to review the appropriateness of any congregate care placement and make appropriate orders consistent with its findings and in the best interest of the children before it.

The ELFA bill should also be amended to ensure that all of the relevant provisions of the FFPSA are incorporated into New York Law. For example, the FFPSA requires specific documentation in a child's case record (including efforts to identify and include all individuals described in the permanency team, contact information for family and permanency team and other family/fictive kin who aren't part of the team, evidence that meetings are held at a time and place convenient for family, evidence that the parent provided input on the members of the team (if goal is return to parent), placement preferences of family and team re: sibling placements; and, if the QI recommendation is not the same as the family preferences, the reasons why the preferences of the team and of the child were not recommended). In order to comply with the federal statute, those requirements should be included in the Social Services Law provisions regarding the case record. Finally, the statute should incorporate the FFPSA requirement that a lack of available foster homes shall never constitute an "extenuating circumstance" that would justify placement of a child in a QRTP.

Conclusion

Thank you for the opportunity to submit this testimony today and for your leadership in helping New Yorkers get through the current crisis.

Respectfully Submitted,

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