

Testimony of The Legal Aid Society

on

**THE MAYOR'S FISCAL YEAR 2011
PRELIMINARY BUDGET**

Presented before

The New York City Council

Presented by:

Steven Banks, Attorney-in-Chief
The Legal Aid Society

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The Legal Aid Society welcomes this opportunity to testify before the New York City Council concerning the Fiscal Year 2011 Preliminary Budget and its impact on the Legal Society's client services.

City funding supports the Society's legal assistance in the areas of civil legal services, criminal defense, and parole revocation defense. Special annual allocations from the Council for criminal defense and civil services provide crucial funding for the Society's legal assistance for New Yorkers who have nowhere else to turn for legal help. This testimony describes the impact of the Preliminary FY11 Budget funding levels for criminal defense and civil legal services for low income New Yorkers in all five boroughs of the City.

We are mindful of the extreme financial difficulties that the City is facing. At the same time, these extraordinary economic conditions are having an especially harsh impact on low income New Yorkers and the need for the legal help that the Society provides to these struggling families and individuals is increasing exponentially.

Against this backdrop, the proposed City budget cuts for criminal defense and civil legal services in the Preliminary FY11 Budget will hurt families and individuals who need legal help in the midst of this severe economic downturn and New Yorkers accused – often wrongfully – of criminal conduct.

In the criminal defense area, we cannot keep taking on new cases, provide the constitutionally mandated defense for New Yorkers, and absorb new City cuts, especially at a time when our caseload of new cases continues to increase as a result of increased arrests in New York City – even as officials proclaim that crime is down.

On the civil side, the numbers of vulnerable New Yorkers who are seeking our civil legal assistance have increased dramatically during this extraordinary economic downturn even as our City funding has decreased and we are forced to turn away eight out of every nine New Yorkers who seek our help. With the new proposed City cuts, we will have to turn away more families and individuals who need legal aid to get unemployment and disability benefits, flee from domestic violence, and prevent evictions, foreclosures, and homelessness – which is at record levels in New York City.

We greatly appreciate the support that the Council has historically provided in the budget process. In this testimony, we will focus on the proposed funding levels in the Preliminary FY11 Budget for the Society's criminal defense representation and civil legal services.

The Legal Aid Society: The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal and juvenile rights matters, while also fighting for legal reform.

The Legal Aid Society has performed this role in City, State and federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of 850 of

the brightest legal minds. These 850 Legal Aid Society lawyers work with 600 social workers, investigators, paralegals and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 25 locations in New York City, the Society provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel.

The Society's legal program operates three major practices — Civil, Criminal and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program. With its annual caseload of more than 300,000 legal matters, the Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective that is unmatched in the legal profession.

The Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, the Society's law reform representation for clients benefits some 2 million low income families and individuals in New York City and the landmark rulings in many of these cases have a State-wide and national impact.

Criminal Defense Services: Since 1965, the Legal Aid Society has served as the primary defender for persons accused of crimes in New York City who cannot afford counsel. With criminal defense trial offices in the Bronx, Brooklyn, Manhattan and Queens, the Legal Aid Society represents indigent defendants accused of crimes ranging in seriousness from alleged disorderly conduct to first degree murder. The Legal Aid Society's criminal defense program is at the forefront of efforts to address new issues in the criminal justice system, ranging from assisting in the design and staffing of specialized court parts that deal with drug abuse, domestic violence, mental illness and juvenile offenders to consulting regularly with State and City officials on policy issues of importance to our clients and securing system-wide reform through our Special Litigation Unit. The Society's Special Litigation Unit, for example, litigated the landmark case that established the 24-hour standard for arrest-to-arraignment in New York State.

In April 2009, the State Legislature enacted a landmark law authorizing the Chief Administrative Judge to enact caseload standards for the Legal Aid Society and other criminal defense lawyers in New York City that will be phased in over the next four years. The Chief Administrative Judge is proceeding to promulgate the standards.

This law was enacted in order to ensure that low income New Yorkers who are accused of crimes – often wrongfully – in New York City will be represented by lawyers with proper caseloads. This action by the Legislature is so significant that the United States Attorney General Eric Holder has cited this law as one of two major breakthroughs for the provision of indigent defense in the entire nation.

As you may know, there has been a great deal of focus on the City's plans for 18-b private attorneys in the current criminal defense RFP bidding process which the City conducts periodically pursuant to the procurement law. However, against the background of the new State

criminal defense caseload standards and from the perspective of the Legal Aid Society and our clients, the most important issue in the current RFP process is the need to continue the \$11.3 million in annualized funding that the Society has received from the Council – preferably in a baseline budget allocation rather than a Council supplement. The Society relies on this \$11.3 million that the Council has allocated in order to provide comprehensive client services and support our current criminal defense staff, including staff attorneys who are members of the Association of Legal Aid Attorneys/UAW and support staff who are members of 1199/SEIU.

The Preliminary FY11 Budget proposes to eliminate this \$11.3 million in funding which would prevent the Society from complying with the caseload standards that the Chief Administrative Judge is promulgating and will result in the elimination of Legal Aid staff. The Society has no excess criminal defense staff to eliminate because it maintains a ratio of 10 lawyers for every supervisor, investigator, social worker, and paralegal as required by the criminal defense staffing ratios set by the First Department.

Over the past eight years, the Society’s criminal defense contract with the City has not provided sufficient baseline funding to enable the Society to cover annual cost increases – such as occupancy and health care cost increases – or, more importantly, deploy sufficient staff to provide a constitutionally mandated defense, especially as the number of New Yorkers who are arrested has increased. Since the new contract went into effect in FY03, the Society has greatly appreciated the City’s provision of an additional \$2.82 million in FY05 to establish a City-funded Parole Revocation Defense program to further reduce City costs and improve client services, capital funding in FY07, FY08, FY09, and FY10 to enhance the Society’s technology infrastructure and case management systems, and a 3 percent baseline funding increase for a COLA for the FY08 fiscal year (after four years without a COLA increase). Nevertheless, during these years, the Society could not have continued to provide criminal defense representation to indigent New Yorkers without special annual infusions of funding allocated by the Council in the adopted budget – beginning with \$11 million in the FY05 budget process and continuing to the current \$11.3 million in FY10. While fully funding constitutionally mandated criminal defense representation is an Executive branch obligation, annual Council funding has become integral to the Society’s ability to operate a criminal defense program for indigent New Yorkers.

The Preliminary FY11 Budget cut of \$11.3 million in current Legal Aid Society criminal defense funding is coming at a time of increasing arrests in New York City and increasing need for our constitutionally mandated criminal defense services. In fact, the Society’s annual criminal defense caseload increased from some 197,000 new cases in fiscal year 2002-2003 to approximately 210,000 new cases in 2005-2006, to nearly 227,000 new cases in 2007-2008, and to some 232,000 new cases in 2008-2009. In FY10, we are on a pace to handle 240,000 new cases. (A chart showing these increases in the number of new cases that the Society has handled each year is attached to this testimony.)

As a result of these increased arrests in New York City, annually the Legal Aid Society’s criminal defense staff of 435 attorneys is handling more than 100,000 cases which survive a first court appearance, and approximately 30 percent of those cases are felonies. Nearly 83 percent of our criminal defense attorney staff has caseloads significantly in excess of the annual standards

set by the Appellate Division, First Department, which limit annual criminal defense attorney caseloads to 400 misdemeanors or 150 felonies, with felonies counted as 2.66 misdemeanors in mixed caseloads. The average annual weighted caseload for attorney staff who handled more than the First Department standards permit is now 718 cases, and our overall average pending caseload is in excess of 100 cases per attorney.

Our criminal defense contract with the City requires the Society to handle all of the non-conflict cases in the arraignment shifts to which the City assigns us, and requires that we handle a minimum standard of 88 percent of the cases in those arraignment shifts or face a financial penalty. As required by our contract, based on the number of non-conflict cases in our shifts, the Society actually handles approximately 90 percent of the cases in the arraignment parts to which we are assigned. However, the current City contract makes no provision for increasing funding even when our caseload increases as it has.

Although we are mindful of the extraordinary fiscal situation, in order to address this continuing crisis with respect to the governmental obligation to provide resources for constitutionally mandated defense representation, it is essential that the adopted City budget for 2010-2011 restore the \$11.3 million Preliminary Budget cut for the Society's criminal defense services. This restored funding is needed to enable the Society to keep taking new cases and provide constitutionally mandated criminal defense representation - especially given the significant impact for New Yorkers charged with even relatively minor offenses in terms of collateral consequences for housing, employment, education, public benefits, and immigration,.

The requested level of 2010-2011 funding for our criminal practice is also necessary to enable the Society to continue to provide special client services in the New York City criminal justice system that the Legal Aid Society is in a unique position to provide. For example, the Society deploys 19 paralegals to provide client services to the public in various locations outside of the Society's offices. These services, which are not limited to Legal Aid clients, include four paralegals who serve the public in satellite offices or other locations in City courthouses, and 15 staff members who work full-time in the City jails, assisting clients to arrange for the payment of bail, correcting errors in release dates, securing medical attention, scheduling assessment interviews with ATI (alternatives to incarceration) programs, communicating with their attorneys, and retrieving personal property upon release.

In each of our borough offices, the Society deploys a paralegal every weekday to assist members of the public with legal matters, including arranging surrenders on arrest and bench warrants, assisting people in paying fines and scheduling community service, and securing emergency mental health and drug treatment services. The Society also assigns an attorney and paralegal to represent inmates who are appealing jail discipline assessments in the Rikers Island Writ Court.

Legal Aid also continues to play a central role as the training ground for public defenders in New York City. Legal updates and training materials developed by the Society's 10-person training and support unit are provided at no charge to defenders and 18-b attorneys city-wide and State-wide. The Society also deploys special immigration staff to assist clients with immigration issues. In addition, the Society has assigned paralegals and attorneys to assist in handling the

calendar in high-volume and specialized practice court parts created by former Chief Judge Judith Kaye, including the integrated domestic violence, drug treatment, and mental health courts.

The cost of these systemic services is absorbed by the Society within our City funding allocation even though these costs are not always attributable to individual cases and thereby artificially inflate the Society's cost per case. These client services are in addition to appellate and post-conviction representation which the Society provides for New Yorkers pursuant to other contractual arrangements with the City,

For all these reasons, the Society respectfully requests a restoration of \$11.3 million in the adopted FY11 budget. With the Society's increased criminal defense workload, the truth is that in order to bring the Legal Aid Society's caseloads into compliance with constitutional requirements additional funding is needed beyond this restoration of \$11.3 million. The State criminal defense case cap law holds out the promise that indigent New Yorkers represented by the Society and other criminal defense attorneys will have lawyers with proper caseloads. That promise will be undone if the City does not maintain its current support for criminal defense which includes this \$11.3 million.

Civil Legal Services: The Society provides civil legal services through our neighborhood-based offices in all five boroughs of New York City and city-wide units that serve families and individuals with special needs. Our civil program provides legal assistance in literally every community in New York City.

In addition to contacting us directly, clients are referred to the Society by the constituent services staffs of elected officials as well as the courts, community and social services organizations, government agencies, or by word of mouth. Other legal services groups also refer their clients to us when they cannot provide all necessary services, have limited or no case intake capacity, or do not serve a particular community.

Annually, we handle some 32,000 individual civil matters for the most vulnerable New Yorkers: survivors of domestic violence, senior citizens, disabled or chronically ill children and adults, immigrants fleeing oppression, unemployed workers, persons with HIV infection, and children and adults faced with evictions, foreclosures and homelessness. We help clients with legal problems involving: domestic violence and family law; elder law for senior citizens; housing and homelessness; income and economic security assistance such as federal disability benefits, employment and low wage worker matters, earned income tax credits, federal food stamps, and public assistance; immigration; health care, including Medicare Part D, Medicaid, and access to hospital charity support; HIV and AIDS; and housing development and community development opportunities to help clients move out of poverty.

The continuing extraordinary economic conditions are having an especially harsh impact on low income New Yorkers and the need for the civil legal help for these struggling families and individuals is increasing exponentially. Every day, civil legal services programs like the Society provide for thousands of vulnerable New Yorkers a lifeline for basic survival. And the situations our clients are facing – loss of jobs, foreclosure, eviction, hunger – are the grim

hallmarks of this current fiscal crisis. The work performed by civil legal services programs also saves government millions of dollars a year and is a proven, tested and wise investment. Last year, for example:

- millions of public dollars were saved because we are able to preserve homes, avert homelessness for New Yorkers, and keep families together;
- millions of dollars in retroactive federal disability awards were obtained for clients in place of State and City public assistance payments;
- the monthly disability benefits, Earned Income Tax Credit refunds, and Unemployment Insurance benefits we obtain for New Yorkers were reinvested by them and stimulated the economies of their communities; and
- these community investments, in turn, sustained jobs and additional economic activity.

Annually, the Society handles some 32,000 civil legal matters in literally every zip code in the City, consisting of 35.9% of our cases from Brooklyn, 26.7% from the Bronx, 16.5% from Queens, 14.4% from Manhattan, and 6.5% from Staten Island. However, we are able to help only one out of every nine New Yorkers who seek our help with civil legal problems because of lack of resources. The situation has become particularly dire since the economic downturn which is having such a harsh impact in our client communities, and the need for our civil legal services is more crucial than ever. Homelessness is at record levels in New York City, and unemployment, hunger, and foreclosures are on the rise.

In recent months, we have seen unprecedented increases in requests for help in core areas of need:

- a 29% increase in requests for help with unemployment benefits and employment problems;
- a 40% increase in requests for health law assistance and help obtaining Medicaid, Medicare, and other health care coverage;
- a 12% increase in requests for help to obtain food stamps, federal disability benefits, and public assistance;
- a 16% increase in requests for domestic violence and family law help;
- a 15% increase in requests for help from current or former low wage workers with earned income tax credit or other low income taxpayer problems;
- a 21% increase in requests for eviction prevention representation; and
- a stunning 800% increase in requests for foreclosure defense assistance.

To make matters worse, the Preliminary FY11 Budget proposes to eliminate all civil legal services funding for the following Council civil legal services initiatives that the Council funded in the FY10 budget.¹ The consequences of eliminating this critical City civil legal services funding will be dire – increases in evictions, foreclosures and homelessness, increases in the

¹ The programs that will be eliminated include a grant for Legal Services NYC to provide representation to parents in Family Court cases while the Legal Aid Society is separately funded by the State to represent children in those proceedings.

number of women and children who cannot escape domestic violence, increases in the numbers of immigrants lawfully in this country who will be wrongfully deported, and increases in the numbers of children and adults who will go without subsistence income, health care, and food because of bureaucratic mistakes that cannot be challenged effectively in the absence of counsel.

Again, although we are mindful of the City's fiscal condition, based on the critical need for civil legal services throughout the City, restored funding for FY11 is essential for these programs which are slated for elimination in the Preliminary Budget:

The City-wide Low Income Civil Legal Services Program: Since 1993, the City Council has allocated annual funding to the Legal Aid Society and Legal Services NYC to provide civil legal services in all five boroughs for particularly "at-risk" clients, including senior citizens, survivors of domestic violence, disabled children and adults, and persons living with HIV/AIDS. Substantial numbers of these New Yorkers are referred to Legal Aid and Legal Services offices by the constituent services staff of Councilmembers and City agency staff. Funding for this program is evenly divided between Legal Aid and Legal Services. In the adopted FY09 and FY10 budgets, funding for this program was reduced by 59 percent from a pre-FY09 level of \$3.676 to \$1.5 million currently, which has resulted in at least 1,822 fewer households served this year. If this funding is not restored, we will have to substantially reduce our provision of civil legal services in the Bronx, Brooklyn, Manhattan, Queens, and Staten Island notwithstanding the increasing numbers of New Yorkers who desperately need legal assistance in these difficult economic times.

The Supplemental Security Income (SSI)/Unemployment Insurance (UI) Advocacy Program: In the FY2006 budget process, the Council established a new initiative to allocate \$2.5 million to Legal Services and the Society to provide legal representation to help disabled public assistance recipients secure federally-funded Supplemental Security Insurance (SSI) benefits and unemployed workers obtain Unemployment Insurance Benefits. This Council initiative generates significant City and State savings in averted public assistance expenditures when constituents receive federal benefits or unemployment benefits. Eliminating this program will eliminate these cost savings.

The Council-funded SSI advocacy program funds Legal Services and Legal Aid to help low income disabled children and adults obtain Social Security disability benefits and move off public assistance. By securing federal SSI benefits for these individuals, the program shifts the costs of cash benefits and Medicaid to the federal government and secures federal refunds for the City to cover the cost of benefits paid prior to a determination of eligibility for SSI. The Council-funded Unemployment Insurance (UI) Advocacy Program helps public assistance-eligible New Yorkers who were initially denied unemployment benefits on appeal. Unemployment benefits cost the City and State nothing; they are paid from a special fund created through payroll taxes. Each public assistance-eligible person who gets unemployment benefits saves the City not only their 25 percent portion of cash public assistance but also Medicaid and administrative costs.

Funding for this combined SSI/UI Advocacy Program is evenly divided between Legal Aid and Legal Services. In the adopted FY09 and FY10 budgets, funding for this program was

reduced by 48 percent from a pre-FY09 level of \$2.5 million to \$1.3 million currently, which has resulted in at least 1,241 fewer families served this year. If this funding is not restored, we will have to substantially reduce our provision of crucial unemployment and disability legal assistance in the Bronx, Brooklyn, Manhattan, Queens, and Staten Island notwithstanding the increasing numbers of New Yorkers who are seeking these vital services to receive assistance in obtaining unemployment insurance benefits and federal disability benefits.

The Anti-Eviction and SRO Legal Services Program: Since the 1980s, the City has funded legal services programs in all five boroughs (including the Legal Aid Society, Legal Services, the Westside SRO Project, MFY Legal Services, and the Northern Manhattan Improvement Corporation) to provide legal assistance to low- and moderate-income tenants faced with illegal evictions from their homes as well as services for tenants in single-room occupancy buildings known as SRO housing. These programs have helped thousands of low-income working families, disabled New Yorkers, and senior citizens, who are especially vulnerable to harassment and illegal eviction. In the adopted FY09 and FY10 budgets, funding for this program was reduced by 25 percent from a pre-FY09 level of \$3 million to \$2.25 million currently, which has resulted in at least 1,900 fewer “units” service (including full case representations, training programs, outreach sessions, and tenant association assistance). If this funding is not restored, the Legal Aid Society will be unable to continue to operate our anti-eviction program that provides legal assistance to tenants faced with homelessness in the Bronx, Queens, and Staten Island, to senior citizens in Brooklyn and community residents in Bushwick, and to tenant associations in East Harlem, Harlem, Inwood, and Washington Heights.

Immigration Initiative Funding For Legal Services For Immigrants: The Society is the preeminent provider of legal assistance for low income immigrants through our network of neighborhood-based offices and community outreach sites in all five boroughs of the City. Together with Legal Services NYC, the Society provides IOI-funded immigration legal services and legal assistance for low wage immigrant workers in all five boroughs of the City. IOI funding for each organization has been awarded at a level that has been reduced from a pre-FY09 level of \$596,000 to a current level for the Society of \$348,000, with the result that fewer low income immigrants will receive legal assistance. Again, the Preliminary FY11 Budget completely eliminates funding for this program. If this funding is not restored, we will have to substantially reduce our provision of civil legal services for immigrants in the Bronx, Brooklyn, Manhattan, Queens, and Staten Island.

For all these reasons, we urge that these crucial civil legal services programs be restored in the adopted FY2011 budget.²

2 In the adopted FY09 budget, Council funding for the \$765,000 Earned Income Tax Credit (EITC) Legal Assistance Program was completely eliminated. Beginning in the FY05 adopted budget, the Council established a new EITC legal services program operated by the Society and Legal Services to help working families qualify to receive the EITC refund, protect working families from unfair auditing practices, and increase tax credit benefits for these working families. The de-funding of this initiative has resulted in the denial of critical legal assistance for 740 households, which helps families move from welfare to work, and the elimination of a significant infusion of federal tax credit funds in the local economy.

We thank the Council for your continuing support for these essential criminal defense and civil legal services programs. We will continue to update you during the FY11 budget process concerning our funding needs so that we can serve clients who depend on the Legal Aid Society to provide access to justice.

Submitted by,

Steven Banks
Attorney-in-Chief
The Legal Aid Society
199 Water Street
New York, New York 10038
Tel: 212-577-3277
sbanks@legal-aid.org

City-Wide

	FY04	FY05	FY06	FY07	FY08	FY09	FY10	Diff
Felony Intake								
July	2,498	2,500	2,498	2,550	2,703	2,439	2,359	(80)
August	2,509	2,362	2,556	2,531	2,779	2,638	2,473	(165)
September	2,520	2,248	2,531	2,410	2,670	2,564	2,287	(277)
October	2,602	2,749	2,679	2,867	2,783	2,745	2,335	(410)
November	2,402	2,119	2,451	2,483	2,438	2,403	2,060	(343)
December	2,071	2,275	2,213	2,385	2,178	2,016	1,880	(136)
January	2,459	2,394	2,253	2,875	2,460	2,279	2,361	82
February	2,545	2,343	2,116	2,351	2,394	2,060	2,008	(52)
March	2,522	2,445	2,444	2,541	2,518	2,417	-	
April	2,501	2,551	2,429	2,295	2,477	2,182	-	
May	2,582	2,631	2,368	2,646	2,571	2,476	-	
June	2,444	2,509	2,476	2,721	2,503	2,330	-	
Total Intake	29,655	29,126	29,014	30,655	30,474	28,549		(1,381)
Disposed at assignment	1068	940	594	779	790	841		
% disposed at 1st appearance	3.6%	3.2%	2.0%	2.5%	2.6%	2.9%		
Total surviving 1st appearance	28,587	28,186	28,420	29,876	29,684	27,708		
Intake at end of February	19,606	18,990	19,297	20,452	20,405	19,144	17,763	
Disposed at end of February	646	706	413	492	542	571	589	
Surviving 1st appearance at end of Feb	18,960	18,284	18,884	19,960	19,863	18,573	17,174	(1,399)
Misdem/Other Intake								
July	15,338	14,143	14,064	15,629	16,692	15,414	17,897	2,483
August	14,315	13,791	15,531	16,064	17,842	16,789	17,915	1,126
September	15,088	12,994	14,950	15,533	16,907	16,556	16,964	408
October	16,118	15,835	15,790	16,215	16,970	17,412	17,752	340
November	14,429	14,350	14,617	14,514	14,925	15,495	16,806	1,311
December	13,118	13,110	13,055	13,998	13,481	14,817	15,460	643
January	15,501	14,418	14,160	18,034	16,885	17,579	17,920	341
February	17,577	14,966	14,661	16,253	15,786	17,059	15,992	(1,067)
March	17,270	16,477	16,890	18,024	18,408	18,946	-	
April	15,714	17,175	15,740	16,588	16,376	17,799	-	
May	16,025	16,572	16,047	17,001	15,914	18,425	-	
June	14,761	15,858	15,421	16,276	15,969	17,772	-	
Total Intake	185,254	179,689	180,926	194,129	196,155	204,063		5,585
Disposed at assignment	116,944	109,100	114,387	120,229	111,597	127,066		
% disposed at 1st appearance	63.1%	60.7%	63.2%	61.9%	56.9%	62.3%		
Total surviving 1st appearance	68,310	70,589	66,539	73,900	84,558	76,997		
Intake at end of February	121,484	113,607	116,828	126,240	129,488	131,121	136,706	
Disposed at end of February	77,373	69,184	74,366	78,343	80,523	80,901	85,927	
Surviving 1st appearance at end of Feb	44,111	44,423	42,462	47,897	48,965	50,220	50,779	559
Total Annual Casefoad								
Total cases	214,909	208,815	209,940	224,784	226,629	232,612		
Total surviving 1st appearance	96,897	98,775	94,959	103,776	114,242	104,705		
Total Surviving 1st appearance at end of Feb	63,071	62,707	61,346	67,857	68,828	68,793	67,953	(840)