

**TESTIMONY OF THE LEGAL AID SOCIETY  
BEFORE THE ASSEMBLY STANDING COMMITTEE ON HOUSING  
ON NYCHA'S PLAN TO "PRESERVE PUBLIC HOUSING"**

May 25, 2006

The Legal Aid Society is one of the oldest and largest providers 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 the poor. The Society is counsel on numerous class-action cases concerning the rights of public housing residents and is counsel to the New York City Public Housing Resident Alliance. We work closely with the Community Service Society on public housing issues.

We very much appreciate the opportunity to testify before the Assembly Standing Committee on Housing. We especially welcome the leadership of Chair Vito Lopez.

**The NYCHA Deficit**

NYCHA faces a \$168 million annual operating deficit. The NYCHA proposals in the draft FY 06 Plan Amendment and the FY07 Plan include ceiling rent increases, the use of Section 8 voucher funds to support State and City-assisted public housing, and a yet-unwritten Moving-to-Work Proposal to HUD for greater flexibility. These proposals are intended to close the operating gap.

The deficit is significant. It must be addressed. Closing the deficit is a major objective of the NYCHA Plans. We believe the deficit is largely the result of government funding cuts and shortfalls---at all levels of government, although Washington plays a major role.

NYCHA developments are mostly the federal government's responsibility. The federal government paid for the construction of most of NYCHA's developments and gives annual operating and capital allotments for their maintenance. However, the State of New York paid for the construction of 12,180 units in New York City which are not the federal government's responsibility, but are State public housing. NYCHA estimates that these units should receive \$57 million a year to operate them and have massive deferred capital needs. Since 1998, the governor has eliminated all operating and capital funds for these units. Prior to 1998, the state only contributed \$11 million toward the state developments' operating expenses – far below the actual amount it costs to operate these developments.

In addition, the State has shortchanged NYCHA on public assistance rent payments. Under special cost-saving agreements, the State and City pay NYCHA very low rents on behalf of public assistance households. For instance, NYCHA receives a "shelter grant" or "welfare rent" of only \$137 monthly for a 2-bedroom apartment occupied by a publicly-assisted family. That is well below NYCHA maintenance and operating costs. In 1993, these rent levels were raised for new public assistance families in State/City-assisted housing ---to "shelter allowance" levels (\$400 now for a 3-person family.) But in 2005, the State limited those rent payments to 30-percent of household income, which often falls below the shelter allowance.

Since the City and State each pay 25-percent of TANF public assistance, and 50-percent of Safety Net assistance, these arrangements save them money. But it deprives NYCHA of adequate rents to meet its operating costs. In 2002, over a quarter (27%) of NYCHA households received some income from public assistance.

\_\_\_\_\_ We recommend restoration of annual State funding for operating and capital subsidies at the level required to preserve State public housing.

We also recommend that the State increase the shelter grant and rent payments to NYCHA for public assistance families. Current payments do not cover NYCHA operating costs and contribute to the deficit. The failure of the State to make payments to support its public housing has real and dramatic consequences. NYCHA has proposed rent increases for some of the poorest New Yorkers and will take needed Section 8 vouchers away from the Section 8 waiting list of 125,000 families. The State's failure is putting all public housing and Section 8 housing in jeopardy.

### Proposed Ceiling Rent Increases

NYCHA current ceiling rent levels, set in 1989, are based on the number of bedrooms in the apartment--for instance, the ceiling rent for 2 bedrooms is \$495. The ceilings have worked, as planned, to keep families in the community as incomes rise. Since 1989, ceiling rent families have increased from 18,700 to 47,000 households (now 27 percent of NYCHA's 180,000 households.)

Ceiling rent levels have not changed since 1989, despite rising NYCHA maintenance and operating costs. NYCHA claims current financial pressures make it necessary to propose an increase in the ceilings.

It is important to understand that the proposed ceiling rents are not just an increase in the old levels---they are based not only on **apartment size**, but also on **household income** and **household size (number of persons.)** For a given size apartment, the ceiling rent depends on household income and size. Higher income and smaller households are subject to higher ceilings. If your income increases, or your household becomes smaller, your ceiling rent may increase, even in the same apartment. This is a change in the structure of ceiling rents, as well as in the levels.

An increase in ceiling rents may be necessary, but NYCHA provides no justification for the new dollar levels it has chosen. Some increases are as high as 40 percent over a two-year phase-in period. The proposed ceilings appear to be lower than prevailing market rents for private apartments of comparable size across the city. If there are good reasons for the new ceiling rent levels, NYCHA should explain them. Otherwise the ceiling rent increases should be reconsidered and renegotiated.

State and City funding roles need to be factored into NYCHA Plans to close the deficit: resumption of City/State operating subsidies, increases in NYCHA rents for publicly-assisted families, and cuts in NYCHA payments to the Police Department for services that the City is mandated to provide would lessen the pressure on ceiling rents. The State and the City need to do their share to cover the gap.

We recommend that NYCHA phase in ceiling rents over a longer period with year to year increases capped at no more than 5%. It is not fair to require the poorest New Yorkers to face rent increases of 10-40% over a short period of time. Hardships should be considered. For some households, meeting ceiling rent increases may result in hardship---for instance, those carrying high medical, child care, or tuition costs. There should be an appeal process for adjustments.

### **Moving-to-Work Proposal**

\_\_\_\_\_ NYCHA is applying to HUD to become part of the agency's "Moving to Work" (MTW) Program. Participating Housing Authorities are exempted from most federal rules on public housing. Some Authorities in the MTW Program have:

- o Imposed time limits on how long residents can live in public housing. (Limits range from 3 to 7 years.)

- o Eliminated the Brooke Amendment, forcing families to pay more than 30 percent of their income on rent.
- o Imposed a work requirement on residents, evicting public housing and Section 8 families who do not work.
- o Demolished public housing or transferred it to private developers.

In addition, MTW Housing Authorities can waive resident grievance procedures, resident participation regulations, and Section 3, which requires residents be hired for construction projects.

We do not know whether NYCHA will take any of these actions, because NYCHA has refused to detail in writing what federal waivers it wants. Without a written, detailed proposal, there is no meaningful resident or community input.

NYCHA has said it wants to be part of MTW so that it can flexibly combine its 3 sources of federal funding---operating subsidies (to help pay for basic maintenance and operations, including fuel costs), capital subsidies (for modernization---major repairs, like boilers, roofs, cabinets, and other renovations), and Section 8 Voucher Funds (to help families meet rents in the private market.) Combining these funds means NYCHA can take money from one program and put it into another. We believe NYCHA would transfer money from Section 8 to public housing, as it is now proposing for City/State assisted developments. This means fewer waiting list families would be able to get Section 8 vouchers, and that Section 8 may not be able to meet rising rents for families who already have vouchers.

## **Section 8 Vouchers and City/State Public Housing**

NYCHA proposes to use Section 8 voucher funds to support 8,400 units of City and State-assisted public housing, in order to close the operating deficit in those developments not receiving federal operating subsidies. Under federal law, NYCHA is permitted to "project base"--that is, designate specific units for---up to 20 percent of its Section 8 voucher funds. (About 90,000 households now receive Section 8 vouchers.)

*We strongly oppose this proposal:*

- The result will be a net loss in funds available to current Section 8 voucher holders and to waiting list families. Federal voucher funding is a limited resource and continued HUD support is uncertain. Current voucher holders face rapidly rising rents in NYC. The waiting list includes 128,000 families. Transferring NYCHA voucher funds to support City/State public housing means less funds for other low-income New Yorkers who need vouchers.
- Section 8 should not be used to relieve the City and State of their responsibility to support the units they developed.

The City and State have eliminated their funding of annual operating subsidies, contributing to the operating deficit confronting NYCHA. They must help close the gap by resuming annual operating subsidies.

- Section 8 households in City/State-assisted public housing may not have the same rights as other NYCHA residents. Section 8 voucher holders lose their vouchers once their income goes above the eligible level---if income drops the next year, they are not entitled to a voucher again. For NYCHA residents in the federal developments, rent is based on income---if your income suddenly falls, you can apply for a rent decrease, and continued assistance is assured.

## **Changes to the Tenant Selection & Assignment Plan (TSAP)**

TSAP governs who gets into public housing and Section 8 vouchers, and who can transfer from one public housing apartment to another. NYCHA is proposing a number of changes in TSAP:

- o Homeless people in certain City-funded shelters---who were burned out of their buildings/apartments, or displaced and forced out by vacate orders or other emergencies—will lose their high priority for public housing.
- o NYCHA will not accept Section 8 applications from homeless people.
- o NYCHA is adding a Section 8 priority for residents in City/State-assisted public housing.
- o Half of public housing vacancies will now go to residents seeking transfers---currently only one-third are set aside for resident transfers.

We recommend restoration of Section 8 priorities for homeless people. People who are homeless are in an emergency situation and NYCHA should accept their Section 8 applications. Section 8 resources should be used to meet critical housing needs, not to make up for deficits due to State and City funding cuts and shortfalls.

## **NYCHA Plans Without Resident Involvement?**

\_\_\_\_\_ Under federal law---The Quality Housing Act of 1998---Housing Authorities are required to work with a duly-constituted Resident Advisory Board (RAB) in the preparation of the Draft Annual Plan. The New York City RAB takes the position that NYCHA issued the Draft Plans to the press on April 20th, 2006 without review or adequate consultation with the RAB.

NYCHA's failure to get the input of the RAB on the proposed changes in NYCHA policies is a

violation of the resident participation requirement. Unfortunately, it is also a symptom of the chronic problems NYCHA and the Citywide Council of Presidents (CCOP) have in working together to represent and inform residents---the strongest recent example is NYCHA's failure to distribute \$17 million in HUD funds set aside for tenant participation activities since 2002. The major concern here is that the proposed NYCHA Plans have questionable status, because of the lack of federally-mandated resident involvement.

**Conclusion**

\_\_\_\_\_ We appreciate the opportunity to testify before the Assembly Standing Committee on Housing today.

Respectfully Submitted:

Judith Goldiner  
The Legal Aid Society  
Civil Appeals and Law Reform Unit  
199 Water Street  
New York, NY 10038  
212 577 3332