

**TESTIMONY FROM NYCHA EXECUTIVE VICE PRESIDENT OF
OPERATIONS CARLOS LABOY-DIAZ
RIGHT-SIZING: NYCHA'S POLICY OF TRANSFERRING TENANTS IN
UNDER-OCCUPIED APARTMENTS
CITY COUNCIL COMMITTEE ON PUBLIC HOUSING
TUESDAY, OCTOBER 23, 2012 – 10:00 AM
14TH FLOOR COMMITTEE ROOM, 250 BROADWAY**

Chairwoman Rosie Mendez, Members of the Committee, and other distinguished Members of the City Council, thank you for the opportunity to discuss with you the New York City Housing Authority's (NYCHA) policy of "right-sizing," our mechanism to ensure that every family in public housing has access to an apartment with ample space to fulfill its unique needs. I am Carlos Laboy-Diaz, Executive Vice President for Operations. Joining me is Brian Clarke, Vice President of Operations for Support Services.

NYCHA's establishment 80 years ago was, in part, a reaction against the crushing, unsanitary, and overcrowded conditions in our City's tenements and slums. That's why, in fulfilling our fundamental charge to provide decent, affordable housing for low- and middle-income New Yorkers, we are committed to making sure that families have the space they need. Quality of life for NYCHA residents – our highest concern – often corresponds directly with the availability of appropriate space. Ensuring that every public

housing family is in an apartment of appropriate size poses a huge challenge, one that NYCHA has wrestled with over the years. We recognize that there is much room to improve our current process, and that is why *Plan NYCHA*, our roadmap for the preservation of public housing, lays out the need to get this issue right. To that end, we have begun to assess our policies and procedures and work toward a new model for the future. We fully recognize the impact that this endeavor will have on NYCHA residents across the City –including seniors and new families, heads of households, and children of all ages – and are therefore dedicated to moving forward in a way that is inclusive, collaborative, and sensitive. But make no mistake: we must take action. To be successful, we will need collaboration not only from NYCHA’s leadership and staff, but also from residents and other stakeholders vested in the wellbeing of public housing families. I will provide a brief overview of our current process, the real challenges that we face, what we’ve done so far, and how we plan to move forward.

Policy and Process

The U.S. Department of Housing and Urban Development (HUD), our principal regulator, requires that every public

housing authority place families in apartments of appropriate size. Each authority, however, has the leeway to craft specific policies to achieve this goal. Our current process for “right-sizing” apartments begins with our annual review, during which all residents must provide NYCHA with documentation indicating their income and family size. Using the information collected during this review, NYCHA deems families in apartments with one extra bedroom “under-occupied”; families in apartments with two or more extra bedrooms are considered “extremely under-occupied.” Conversely, families needing one additional bedroom are deemed “overcrowded” and those needing two or more extra bedrooms are considered “extremely overcrowded.”

Regarding NYCHA’s focus on the under-occupied, residents in both “under-occupied” and “extremely under-occupied” apartments receive a letter indicating that they should visit their Housing Manager to sign up for the transfer list, at which point they can request a transfer to an apartment of appropriate size in any specific development, including their own. This request process is required by NYCHA regulation. From this point in the process on, our focus – with regard to both follow-up and enforcement – is on the residents of “extremely under-occupied” units. If these residents do not

sign up for the transfer list, they receive a second letter to the same effect as the first letter requesting that they sign up for transfer. If after this second notification these residents do not put themselves on the transfer list, they are automatically placed on a list for transfer to a development within their borough selected by the Tenant Selection and Assignment Plan (TSAP) computer system. Even after residents are notified of the borough list placement, they still have a small window of opportunity to choose to transfer to a specific NYCHA development. If, however, they are placed on a borough list and subsequently selected by TSAP for a specific apartment, they must accept that apartment. If they decline the offer of an appropriately sized available apartment, their NYCHA tenancy may be at risk.

Through our recent assessment of this process, we have determined that over 56,000 households— nearly a third of NYCHA's total — live in apartments that are not the correct size for their family composition. 44,436 live in “under-occupied” units and 11,890 are in “extremely under-occupied” apartments. At the same time, we have more than 15,000 families living in overcrowded units.

Overcrowding Affects Real Families

One of these 15,000 families is that of Mouhamadou Kane. When he moved into a studio in the WSUR Brownstones in Manhattan 10 years ago, he was a bachelor – the space was perfect for his needs. Then – thanks in part to the stability that this affordable apartment provided – Mouhamadou got married and had a son and a daughter. Now this family strains to fit their lives – cooking, homework, dressing, and undressing, not to mention three beds – into that same room. Mouhamadou has been waiting for a transfer since 2005.

Or consider Iris and Francis Checo, who live with their three sons in the two-bedroom apartment they moved into over 12 years ago, when their eldest son was a toddler. Two of their sons, teenagers, now share a bed.

Unfortunately, the Kanes and Checos aren't alone – across our City, it is increasingly difficult for larger families to find apartments that meet their needs. Last year, only 14 percent of New York City's rental units had three bedrooms, and only 2 percent had four or more. Because many of these larger apartments are managed by NYCHA – where 22 percent of our units are three-bedroom and 4 percent are four-bedroom

or larger – it is only fair that we find a way to get our growing families into the larger apartments required by their family size.

This sense of basic fairness is what leads residents like DeReese Huff to place themselves on the list to transfer into smaller, more appropriate apartments. DeReese was raised, along with her nine siblings, in a five-bedroom apartment that was later passed on to her and her own daughter.

Wanting another family to receive the same opportunity that she had enjoyed, she requested a transfer to a smaller apartment and now lives with her 13-year-old in a two-bedroom apartment.

Recognizing that moving is a disruption in the life of any family, when residents like DeReese transfer into smaller, more appropriately sized apartments, we provide a number of resources for their moves, including help with moving expenses. Our Family Services Department also assists frail or disabled residents with moving logistics and other concerns. NYCHA procedure currently provides an extra bedroom for residents needing large medical equipment. In addition, if residents have other specific needs as a result of a

disability, we will consider any reasonable accommodation they may request.

Our Efforts So Far

We have shared at prior hearings how, in the process of developing *Plan NYCHA*, NYCHA has engaged with our vast network of stakeholders to an unprecedented degree, addressing each of the *Plan's* critical imperatives. The issue of right-sizing apartments has been no exception: for the past year and a half, we've been carefully investigating and discussing the issue with residents, resident leaders, elected officials, and other advocates, stressing at every point along the way how important it is for us to build a new path forward. As of the beginning of this month, we have 11,672 families on our transfer list.

Moving Forward

Although we've made these strides, we know that a lasting, sustainable solution will only be accomplished with the support and investment of our most important partners – including residents and elected officials – and by fundamentally transforming several of the policies that affect

overcrowded families. In the 2013 Annual Plan that we submitted to HUD on October 18th, we proposed changes to TSAP that would further weight the preference for newly vacant apartments in favor of transfers for current residents, as opposed to new applicants. We expect that we'll receive HUD approval of this proposal in the first quarter of 2013. In the interim, we will continue to develop our plan by engaging a working group of stakeholders who will, over the coming months, review our plan and provide feedback.

This group will help NYCHA to stay nimble and flexible as more solutions are implemented, and keep us accountable to all of our stakeholders. We know that there is room for improvement— for example, we've heard a lot about the tone of our letters, and we're working right now to review and rectify those communications. The best way for us to tackle this issue fairly and sensitively is to continue to invite as many voices as possible to the table.

We are also working to develop new affordable and supportive housing options, giving residents in both under-occupied and overcrowded apartments opportunities for newly created homes. This is happening currently at Pomonok Houses, where we have developed senior housing.

In the future, we also expect to pursue more housing options at Soundview, Boulevard, and Forest Houses.

Your continued support is vital for us as we endeavor to preserve public housing in New York City for generations to come. For that reason, we welcome your continued collaboration in our effort to fight overcrowding in public housing and request that you inform your constituents about the benefits that our entire City enjoys when all NYCHA families can live in apartments that fit their needs. Thank you for your time today to discuss this important matter. I look forward to updating you on our progress in the coming months, and am happy to answer any questions you may have.



LINDA B. ROSENTHAL
Assemblymember 67th District

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

CHAIR
Subcommittee on Mitchell-Lama

COMMITTEES
Agriculture
Corporations, Authorities & Commissions
Energy
Health
Housing
Tourism, Parks, Arts & Sports

**TESTIMONY OF ASSEMBLYMEMBER LINDA B. ROSENTHAL BEFORE THE NEW
YORK CITY COUNCIL COMMITTEE ON PUBLIC HOUSING HEARING ON NEW
YORK CITY HOUSING AUTHORITY DOWNSIZING POLICY**

October 23, 2012

Good morning. I am Assemblymember Linda B. Rosenthal, and I represent the 67th Assembly District, which includes the Upper West Side and parts of Clinton/Hell's Kitchen in Manhattan. I am testifying today in regard to the New York City Housing Authority's (NYCHA) implementation of its underoccupancy policy—the transfer of residents who fall below Housing and Urban Development (HUD) occupancy guidelines into apartments of appropriate size.

As a member of the New York State Assembly's Committee on Housing and an elected official who has assisted countless constituents in the four NYCHA developments in my district (Amsterdam Houses, Amsterdam Addition, Harborview Terrace and the Dome Site), I understand the need to maximize the utilization of the City's precious public housing stock. I am, however, extremely concerned by the lack of forethought that has been evident throughout the process to implement and enforce NYCHA's underoccupancy policy. I have heard from dozens of public housing residents in my district who have been given misleading and often incorrect information by the housing assistants to whom they were directed.

NYCHA began implementing its underoccupancy policy by sending letters in English only to all tenants it believed to be underoccupying their apartments. Many of these tenants have lived in their apartments for decades, some for their entire lives, and the prospect being forced to move from their lifelong homes is fraught with emotion; NYCHA's abrupt approach was particularly insensitive to its tenants' needs. These letters did not explain that the transfer was mandatory, whether there were exceptions to the transfer requirements or the consequences of refusing to transfer or failing to respond to the letter. Instead of actually providing residents with adequate information, NYCHA instructed them to meet with housing assistants, who it turns out were woefully untrained on the policy. Residents told me that they were first advised by housing assistants that the transfer was mandatory, and then, that it was optional. Some were told that there were exceptions to the transfer requirement, and later that no exceptions existed. My staff was even initially told by a NYCHA management office that the transfer was optional. Residents could not make sense of all this conflicting information, leaving them subject to tenancy termination and eviction proceedings without any explanation.

To help tenants through this Kafka-esque process, I wrote a letter to public housing residents in my district offering my assistance and clarifying the basics of the underoccupancy policy. Some tenants who had either not noticed or had intended to ignore the letter were, in fact, willing to transfer once my staff informed them that they would not have to move out of their development. Others were glad that they could move to a development with a high priority for their transfer. Many of the tenants who requested a transfer now have begun calling my office because, months

after they submitted transfer applications, they have still received no word and no transfer from NYCHA. NYCHA appears to be putting more effort into trying to evict tenants uninterested in transferring than it is into actually moving the willing tenants. Tenants might also be more willing to move if they were kept within their own buildings; NYCHA considers buildings far away from each other to be in the same development, even though tenants never would.

With many concerns on underoccupancy not adequately addressed by the local management office, I wrote to the Chairman with a list of questions. The response, three months later, provided critical information that neither I nor tenants had previously been told. NYCHA wrote that it was not only prioritizing so-called “extremely underoccupied” units—units underoccupied by two or more bedrooms—for transfer, but that tenants not extremely underoccupying their units “may generally decline to transfer without the consequence of facing a termination of tenancy proceeding.” That NYCHA neither put this information in writing for tenants nor adequately trained housing assistants on this absolutely critical piece of information is simply unacceptable.

Moreover, NYCHA’s letter contradicts a 2002 NYCHA General Manager’s Directive—GM 3689—disseminated by the Legal Aid Society in a memo on underoccupancy. The Directive states that tenants may refuse one apartment and only be taken for termination of tenancy proceedings after tenants refuse two apartments offered to them; that tenants are exempt from transferring under specific medical circumstances; and that tenants who move are entitled to a waiver of new security deposits and reimbursement of moving expenses. The letter I received, by contrast, states that tenants may not refuse any specific unit, that there are no exceptions to the transfer requirement and that tenants will receive only \$350 toward moving expenses.

NYCHA has apparently changed its underoccupancy policy drastically since 2002, but has neglected to publicly issue any new directives, nor has it publicized any clear policy to which tenants and public housing stakeholders can refer. The need for such a publicized policy could not be clearer given the conflicting information originally provided by housing assistants and the class-action lawsuit recently filed against NYCHA claiming that management offices enforce the underoccupancy policy in such radically different ways that NYCHA is out of compliance with HUD regulations. Perhaps NYCHA should use its recently renewed \$200,000 contract with a digital brand management consultant to ensure that a clear, uniform policy is publicized and widely disseminated, rather than simply to bury the NYCHA’s bad press. NYCHA must also act immediately to ensure that all management staff is adequately trained on the underoccupancy policy, make transfers of those willing to move a top priority and provide more assistance than the meager \$350 it currently offers to its residents to assist with moving expenses. Anything less, at this point, would be insulting to all NYCHA tenants and stakeholders. Thank you.

My name is Madelyn Innocent and I'm long time resident of Douglass houses, and a member of Community Voices Heard-who is concerned with how this rush attitude in placing residents who are in under-occupied apartments. I understand the urgency because there are so many families are on the waiting lists. I get it, but whose fault is it?

I know Chairman John Rhea hasn't been at NYCHA for a very long time, but he and NYCHA are frightening residents especially seniors, the disable and people who have a language barrier. I don't think this was well thought out plan, as you are well aware by now because of all the uproar that has occurred. This is the same as banks loaning money to people for a home that they knew in the long run wouldn't be able to keep up with the payments.

Residents may not own these apartments, but it is still their homes where they raise their kids and their grandkids. I wouldn't know how to explain this to my grandkids if I had, but the only way to explain it is, if you poor you have no voice and anyone could throw you out of your home any time they want to. That is no way to treat anyone. If it were a family member that this was happening to you would be ready to fight for their home. This is all we are doing.

There is a more efficient way of doing it and humane.

*To expect a senior citizen or a long-time resident to be able to leave everything they know and have being accustomed to after years of building community without any counseling or consultation is careless and inhumane. There needs to be a thorough sit down and explanation of the process and options, especially with senior citizens.

*Senior citizens and long-time residents should also have help with not only dealing with the psychic trauma but with the physical trauma of moving their belongings. Currently NYCHA is offering a credit of \$350 dollars towards their first month of rent to help with the moving costs. How is it possible in this day and age, especially with a senior citizen that has accumulated years of furniture and life belongings to be expected to move with \$350 dollars of credit. Where in NYC can anyone move 30-40 years of lifetime accumulations for a few hundred dollars. This is unfair, traumatizing and inhumane.

NYCHA needs to think of the residents first and fine tune the procedures so the residents are not unfairly traumatized and are treated humanely with dignity and respect!

Ana Alameda Testimony

My name is Ana Alameda. I have lived in my 3 bedroom apartment for over 36 years. My son and grandson have lived with me for over 10 years, and during that time, I have repeatedly included them on my annual recertification and asked management to include them in my household.

On March 3, 2010, I got a notice my lease was being terminated because of "unauthorized occupants" also known as my son and grandson who were in my apartment. The very next day, I got a second notice, but this one was informing me that I had been selected for a transfer to a one bedroom apartment because NYCHA believed my apartment was "extremely underoccupied." The notice told me to contact the management office to schedule a rental interview, and that failure to do so would mean that the application would be placed in the "inactive file." I did not get any further notices regarding this transfer. Two months later, in May 2010, I got a notice that said my tenancy was being terminated because I had failed to transfer to a smaller apartment. I was scheduled for a hearing in July, 2010, which was then repeatedly adjourned through 2011. Then the case was withdrawn.

Then in April, 2012, I got another letter telling me that my lease was being terminated for breach of rules and regulations and instructing me to attend a meeting with the housing manager. The meeting was adjourned so I could attend with my attorney, but there was no date set. At no time did anyone from NYCHA help me put them on my household. Had NYCHA responded to my repeated requests to add my family, then I would not have been asked to move, and I would not have faced the fear that my tenancy would be terminated and I would lose my apartment.

I am a plaintiff in the case brought by Legal Services against NYCHA. Right now, my lawyers are working to resolve the issue of adding my son and grandson to the household, which will allow me to remain in my apartment.

Will Reese Testimony

My name is Will Reese, Jr. and I have been living in a NYCHA apartment for more than fifty years. I worked for NYCHA for over twenty years before I was hurt on the job and had to take disability and retire.

In 2009, NYCHA began the process of terminating my tenancy because they say that I failed to transfer to a smaller apartment.

During my termination hearing, I explained that when NYCHA asked me to do so, I had willingly submitted a transfer request in September, 2007, and when I was notified that an apartment was available in December, 2008, I went to look at because I had intended to move. I had told NYCHA that my two daughters were living with me, and included them on my annual recertification from 6 years-from 2003 to 2009 and that was the reason I turned down the apartment. I wanted to keep my family together.

At no time did anyone from NYCHA offer to help me by having my daughters removed from their mother's NYCHA household and added to my household. At no time did anyone give me a form to request permission to add them to the household.

I was never told, nor did I ever imagine, that by turning down the apartment that NYCHA would terminate my tenancy and try to have me evicted.

During my termination hearing, I explained that in spite of my concerns about my family, I was willing and able to move to a smaller apartment. Even though I was willing to cooperate with a transfer, I lost the hearing. My lawyer has been helping me appeal the decision, but I have lost two appeals. If I lose my apartment, I have nowhere else to go and will end up homeless.

Bronx

Legal
Services NYC

NYCHA'S TRANSFER POLICY FOR UNDER-OCCUPIED APARTMENTS

Presented before:

The New York City Council
Committee on Public Housing

Presented by:

Amy Leipziger
Staff Attorney

October 23, 2012

Arbitrary Selection

NYCHA distinguishes between households which are “extremely underoccupied”—those who have two or more extra bedrooms and household that are only “underoccupied”—those with a single extra bedroom. NYCHA’s written policy gives local project managers complete discretion over which underoccupied households will be required to move. This obviously is an invitation to arbitrary decision making. Moreover, although NYCHA’s written policy states that all extremely underoccupied households will be required to move, it is apparent that this is not the case in practice. Again, without written standards for which families are and are not chosen to move, there will inevitably arbitrary decisions.

The experience of one of our clients, whom I will call Ms. Williams, demonstrates that the unfettered discretion granted to local project managers is not utilized wisely. Ms. Williams is 84 years old and has lived in her apartment for over forty years. Because she has only one extra bedroom, she is classified as underoccupied rather than extremely underoccupied. Given that Ms. Williams is elderly and not in great health, the project manager could have used his discretion not to require her to move. Instead, she was selected for a mandatory transfer and, although she was willing to move, she was put into a tenancy termination proceeding because her request to stay in the same building was regarded as a lack of cooperation.¹

Failure of NYCHA to timely respond to request to add family member to HH

Ironically, we often hear from our clients who have been targeted for downsizing that they have been trying without success to add family members to their households for years. In these situations, NYCHA’s failure to assist tenants in adjusting their household compositions

¹ NYCHA eventually settled the charges against Ms. Williams but only after our office notified them of our intent to include her in the federal suit.

contributes to the very underoccupancy that NYCHA wants to reduce. For example, our client Ms. DeJesus, a disabled senior citizen (and native Spanish speaker) was visited by a representative from NYCHA who instructed her to sign a form in English agreeing to transfer to another apartment. She signed the form, not understanding its contents, and subsequently received a notice that she had been selected for a one bedroom apartment. She went to the management office with her adult granddaughter (who had recently moved in with her to help provide care) and requested permission to add the granddaughter to the household. NYCHA inexplicably informed Ms. DeJesus that to add her adult granddaughter required permission from the woman's mother. NYCHA failed to take any additional steps to assist her, and shortly thereafter, Ms. DeJesus received a notice that NYCHA was considering terminating her tenancy.

Failure of NYCHA to provide grievance

NYCHA is obligated by federal law to provide a grievance process to resolve disputes with tenants whenever it intends to take a negative action regarding a tenant, but it ignores this requirement in the case of downsizing. Had they been given access to the grievance process Ms. Williams and Ms. DeJesus might have been able to persuade NYCHA that Ms. Williams' advanced age ought to exempt her from downsizing or that Ms. DeJesus should be allowed to add her granddaughter to her household instead of downsizing. NYCHA claims that disputes can be resolved through its tenancy termination procedures, but tenants have access to the process only if they have declined to move and are already being threatened with eviction as a result.

Unnecessary Evictions

Unfortunately, when tenants are in termination proceedings it is sometimes too late for

them to resolve their dispute with NYCHA. Our client, Will Reese, Jr., was shown one potential transfer apartment. He turned it down because he had been trying for years to get his daughters added to his household and still hoped to work that out with NYCHA. NYCHA put him in a tenancy termination proceeding and when he appeared at his hearing with counsel stating that he was willing to move he was told it was too late. He lost his hearing and has lost two levels of court appeal and may be evicted soon.

Notice Issues

One of the other problems with NYCHA's approach to downsizing is that the notices it provides tenants about the process are extremely confusing. In particular, when a tenant turns down a proposed transfer apartment, they are not told that they may be evicted as a consequence. Instead, tenants are given a form to sign that tells them that their application for a transfer will not be considered again for a year, giving them the false impression that the matter has been resolved. Mr. Reese, for example, was given this form to sign, so at the critical moment when he was turning down the only transfer apartment he was ever offered Mr. Reese was not told that his decision would result in his eviction.

Inadequate Reimbursement of Moving Costs

Finally, NYCHA offers tenants only \$300 to defray moving costs. Obviously, this will often be inadequate and low income NYCHA tenants are then forced into a situation in which they cannot afford to move but if they decline to move they will be evicted.

Though our federal case began with three tenants, other tenants who are experiencing problems continue to contact us.. We are currently in negotiations with NYCHA to address these

issues, and we have been informed that NYCHA is contemplating changing its policy with respect to the “underoccupied” but not extremely underoccupied apartments and is revising its notices. We hope that the council will continue to monitor these issues and the other issues which have arisen during this downsizing process to assure that vulnerable tenants are not needlessly displaced.

Again, we very much appreciate the committee’s interest in this important issue and thank you for the opportunity to testify today.

Testimony by New York Legal Assistance Group (NYLAG)

**before the New York City Council,
Committee on Public Housing:**

**Oversight: Rightsizing/Downsizing—
NYCHA's Policy of Transferring Tenants in Under-Occupied Apartments**

October 23, 2012

Chairwoman Rosie Mendez, Council Members, and staff, good morning and thank you for the opportunity to speak about NYCHA's Policy of Transferring Tenants in Under-Occupied Apartments. My name is Kamilla Sjödín and I am the Supervising Attorney of the Housing Project at the New York Legal Assistance Group, a nonprofit law office dedicated to providing free legal services in civil law matters to low-income New Yorkers. NYLAG serves immigrants, seniors, the homebound, families facing foreclosure, renters facing eviction, low-income consumers, those in need of government assistance, children in need of special education, domestic violence victims, persons with disabilities, patients with chronic illness or disease, low-wage workers, low-income members of the LGBT community, Holocaust survivors, as well as others in need of free legal services.

We are testifying today because although we understand NYCHA's goal to ensure that its apartments are appropriately occupied and to ultimately increase the number of individuals appropriately housed by the Authority, we are very concerned with the way

NYCHA is implementing its new plan to effectuate this goal because of the way we have seen it affect the lives of many of its tenants.

Specifically, we have seen several clients who are seniors, have lived in their NYCHA apartments for many years, often several decades, who may have received notices, but failed to fill them out, usually due to lack of understanding of the importance and potential consequences of not responding to the notices. We have one client in particular, who is a senior and a Holocaust survivor, who came to the United States in 1978 and obtained her NYCHA apartment a few years later. She lives in a three bedroom apartment in which she raised her children. Her entire community is in and around her particular project. Her mother even lives in the same development. She speaks only Russian and, as a result, did not understand the notices sent by NYCHA and was, therefore, unable to properly respond to them. Because she failed to respond to the notices sent her, she is now faced with moving far away from her world or being evicted. This has caused her great stress and anxiety.

We are additionally concerned that NYCHA has implemented this blanket plan without having enough small or right-sized apartments into which to move these families. This gives the appearance that NYCHA is almost expecting the tenants not to comply with the notices and is, in a sense, setting tenants up to be evicted. If this is not its intention, the way the plan has been implemented, unfortunately, still has the effect of potentially causing thousands of tenants, particularly seniors, to become homeless.

We would like NYCHA to revise its new policy with input from tenant advocate groups. Some of the things we would like NYCHA to consider include, but are not limited to, the following:

1. Revising the notices that go out to tenants to make sure they include clear instructions, as well as information regarding both the opportunity to seek a grievance hearing if they do not agree with the request and very clear information about the potential consequences of not responding;
2. Making the notices available in different languages;
3. Before moving to evict, reviewing the transfer requests as part of the recertification process;
4. Ensuring that NYCHA's social services obligations are met where appropriate and meeting with clients to explain the transfer obligations and consequences prior to commencing eviction proceedings;
5. Standardizing the process so as to not violate anyone's rights to due process and to minimize arbitrary enforcement of this policy by any Housing Assistants who are notorious for pursuing evictions against tenants whom they simply do not like; and
6. Ensuring tenants and the public that commencing eviction proceedings against these longtime tenants will be an absolute last resort.

We would welcome the opportunity to further discuss or comment on these matters in the future.

Thank you for the opportunity to testify today.

Respectfully submitted,

Kamilla Sjödin, Supervising Attorney



Testimony by The Legal Aid Society

Before the New York City Council Committee on Public Housing Oversight Hearing: Rightsizing/Downsizing- NYCHA's Policy of Transferring Tenants in Under-Occupied Apartments October 23, 2012

The Legal Aid Society (the Society) in New York City is the nation's oldest and largest not-for-profit provider of legal help for vulnerable low-income children and adults.

Operating from 25 locations in New York City with a full-time staff of over 1,700, the Society handles more than 300,000 individual cases and legal matters each year. The Society operates three major practices: the Criminal Practice, which serves as the primary provider of indigent defense services in New York City; the Juvenile Rights Practice, which represents virtually all of the children who appear in Family Court as victims of abuse or neglect or as young people facing charges of misconduct; and the Civil Practice, which improves the lives of low-income New Yorkers by helping families and individuals obtain and maintain the basic necessities of life - housing, health care, food, and subsistence income or self-sufficiency.

With a focus on enhancing family stability and security, through a network of neighborhood offices and city-wide special projects in all five boroughs of the City, the Civil Practice helps vulnerable families and individuals with these legal problems: housing, foreclosure and homelessness; family law and domestic violence; income and economic security assistance (such as unemployment insurance benefits, federal disability benefits, food stamps, and public assistance); health law; immigration; HIV/AIDS and chronic diseases; elder law for senior

citizens; low-wage worker problems; tax law for low-income workers; consumer law; education law; community development opportunities to help clients move out of poverty; and reentry and reintegration matters for clients returning to the community from correctional facilities.

Typically, clients seek assistance from the Civil Practice after exhausting all other avenues for assistance. The Society's Civil Practice is the safety net when all other safety nets fail. During the past year, our Civil Practice completed work on over 43,000 individual cases and legal matters, benefiting nearly 100,000 low-income children and adults, with an additional two million low-income New Yorkers benefiting from our law reform and class action litigation.

The Society is counsel on numerous class-action cases concerning the rights of public housing residents and Section 8 tenants and is a member of the New York City Alliance to Preserve Public Housing, a local collaboration of New York City Housing Authority (NYCHA) resident leaders, advocates and concerned elected officials.

We appreciate the opportunity to testify before the City Council's Public Housing Committee concerning NYCHA's policies governing and its practice of transferring tenants in under-occupied apartments. We greatly appreciate the leadership of Chair Rosie Mendez and her commitment to public housing and Section 8 residents. We support NYCHA's goal to more effectively utilize its current stock of affordable housing units, thereby enabling those families who currently live in over-crowded apartments the opportunity to live in an appropriately sized apartment. However, we have concerns regarding the manner in which NYCHA's enforcement of its occupancy standards has been recently undertaken and the negative impact that its current strategy is having on NYCHA residents and their families. We have witnessed widespread fear, anxiety and confusion among NYCHA residents around the issue of rightsizing.

Introduction

Over the course of the last 18 months, NYCHA has paid much greater attention to the issue of under-occupancy and "rightsizing" than ever before in its history. Indeed, "optimizing apartment usage" forms one of NYCHA's ten imperatives contained in Plan NYCHA, released in December, 2011.

In February, 2012, during testimony before this Committee on Plan NYCHA, NYCHA estimated that of approximately 180,000 apartments, 50,000 are currently under-occupied. Of those 50,000 under-occupied apartments, NYCHA estimated that 30,000 are occupied by seniors. NYCHA also estimated that there are *officially* 15,000 overcrowded apartments. Further, NYCHA stated that of the 50,000 under-occupied apartments, 5,500 households were now on the transfer list, in line for a smaller apartment¹.

Many of the seniors who now reside in under-occupied (or extremely under-occupied) apartments have lived in NYCHA's public housing for decades and for some, their current apartment is the only home that they have known for decades. After raising their families in their two or three bedroom apartments, they live alone, now that their children have grown and moved out of the apartment. Living right next door to these two or three bedroom apartments that are now under-occupied are many families who live in unimaginably cramped conditions, surviving in a studio or one-bedroom apartment when the size of their family warrants a two or three bedroom apartment.

When one does the math, the issue is that the numbers just don't add up. The reality is that the number of households that are under-occupied far exceeds the number of available studio or one-bedroom apartments within NYCHA's developments into which they can move. When most of NYCHA's public housing developments were built, they were built to house families and the current reality of an aging community was not envisaged.

This new reality must inform NYCHA's actions and process as it undertakes its commitment to right-size families. NYCHA has been trying to effectuate transfers against the backdrop of its current transfer procedures, contained in its Tenant Selection and Assignment Plan (TSAP) and Management Manual. Recently, NYCHA has aggressively pursued extremely under-occupied and under-occupied tenants, to get them to sign the *Transfer: Tenant Request to Transfer* form in order to place the tenant on a waiting list, the current way in which the tenant transfer process proceeds. This practice has caused widespread panic, anxiety and fear among NYCHA's

¹ Plan NYCHA, released December, 2011, provided the following numbers in connection with under-occupancy: 154,000 families on the public housing waiting list; more than 55,000 under-occupied apartments representing 32% of the total units; over-crowded households represent 8% of the total units.

residents and community. However, even if every under-occupied household is eventually placed on a waiting list for a smaller apartment, the reality is that there are simply not enough smaller apartments to which they can move under current NYCHA policies and procedures and so the ability of NYCHA to effectively right-size families is extremely limited.

NYCHA needs to re-think its transfer policies and process to reflect today's realities if it is to successfully right-size its resident families.

Occupancy Standards, NYCHA's TSAP and "Rightsizing"

Federal law and NYCHA procedures require that a public housing household certify its income and household composition on an annual basis. This information is used to calculate rent for a family and also, to determine the number of bedrooms needed for household size (governed by Federally mandated Occupancy Standards).

If after annual review, NYCHA determines that an apartment is under-occupied or extremely under-occupied ("under-occupied" unless otherwise stated), absent exceptions listed in the Management Manual a tenant is *required* to transfer to a smaller apartment². NYCHA is obligated to send letters as notification to each under-occupied tenant- including an *Under-Occupancy First Request* letter, to which a *Transfer: Tenant Request for Transfer* form is required to be attached. The Management Manual provides that the management office shall meet with an under-occupied tenant to discuss transfer options. The Management Manual requires that the management office discuss the following- moving incentives, waiver of charges, provision of moving expenses.³ During the interview, management offers the tenant the following transfer choices: an intra-project transfer, or an inter-project transfer to any development. Furthermore, NYCHA's management manual requires that during the interview, the manager ensure that the *Transfer: Tenant Request for Transfer* form is completed by the

² NYCHA Management Manual, Chapter 1, Occupancy, VI 6(c)(1)-5).

³ NYCHA provides \$350.00 to tenants moving from underoccupied apartments to proper sized apartments. After the tenant signs the new lease, the Housing Manager gives the tenant \$100.00 from petty cash. The balance of the moving incentive (\$250.00) is paid a credit to the account after the tenant has moved, returned former keys, and Housing Manager has possession of the apartment. Welfare recipients are not eligible for these incentives. DOSS provides their clients with moving expense money. Management Manual, Chapter 1, Occupancy, VI 6(e)(3)(c).

tenant. A tenant that requests an intra-project or inter-project transfer is placed on the waiting list for such development.

If the tenant fails to respond to the notification letter or fails to sign the *Transfer: Tenant Request for Transfer* form, the TSAP and Management Manual require that the tenant must be placed on a waiting list for an appropriate size apartment that becomes available in their *borough* of residence.

The Management Manual provides that a tenant who refuses one apartment offer, or two apartment offers if certified to the borough wide waiting list, is in violation of the lease and subject to Termination of Tenancy proceedings⁴.

Issues Surrounding NYCHA's Enforcement of Under-Occupancy Procedures

We see numerous issues with the way in which NYCHA is undertaking the transfer of tenants in under-occupied apartments.

1) The letters that NYCHA sends to under-occupied residents are incomplete and do not contain the information required under the Management Manual or TSAP. For example, routinely, the letter does not have a copy of the *Transfer: Tenant Request to Transfer* form attached.

2) The letters do not adequately inform tenants of the transfer process. For example, there is no information about how many apartments a tenant may be shown before he/she is subject to a termination of tenancy proceeding and is at risk of eviction.

3) Tenants are not being given an opportunity to meet with the housing manager/staff to discuss transfer options, as is mandated by NYCHA procedures and offered in the letter sent to tenants. For example, routinely, when tenants go to the management office in response to the letter, they are told by receptionists to drop off a signed copy of the *Transfer: Tenant Request to Transfer* form and to leave the office without any meeting with the housing manager.

4) There is a lack of consistency across NYCHA's housing development staff as to how the transfer process is being implemented. For example, some developments appear to have a

⁴ Management Manual, Chapter 1, Occupancy, VI (6)(f).

greater understanding and familiarity with NYCHA's TSAP and Management Manual and the procedures thereunder than others.

5) All of the above problems have helped contribute to widespread panic, anxiety and anger among NYCHA residents, especially the elderly.

6) The math just simply does not work. The number of households in under-occupied apartments far exceeds the number of available studio/one bedroom units in NYCHA public housing developments. NYCHA's aggressive push to get tenants to sign transfer request forms is misplaced when there is in reality an insufficient number of smaller apartments available for these tenants to move into.

We recommend:

1) NYCHA needs to re-think and re-design its transfer process given the new realities of the composition of the population of NYCHA housing. Simply pushing to get tenants signed-up to the transfer waiting list does not lead to transfers being effectuated in any meaningful numbers, but instead is causing confusion, fear and frustration among NYCHA residents, many of whom have resided for many years in apartments and have never before been faced with the issue of down-sizing.

2) Until it implements a new process for transfers, NYCHA should re-draft its Under-Occupancy letter so that it more clearly spells out the transfer process, including without limitation, the source of NYCHA's obligation to effectuate transfers, a tenant's rights in the process and that a refusal to accept an apartment (or two in the case of the borough waiting list) can lead to the commencement of a termination of tenancy proceeding and the eviction of a tenant from his/her home.

3) NYCHA needs to spend more time meeting with its tenants building-by-building, or one-on-one, to help them understand the transfer process and find out from the tenants what NYCHA should do to make the process work more effectively.

4) NYCHA needs to more effectively enlist the help of its social workers and social services support staff to create a transfer program that reflects the needs and realities of moving a population mainly made up of seniors or disabled families. For instance, the \$350.00 moving expenses credit is woefully inadequate in the New York City market and many tenants have

belongings that simply will not fit in a smaller apartment and need help with storing/disposing or moving the belongings.

Thank you again for the opportunity to testify before the Committee on Public Housing.

Respectfully Submitted:

Steven Banks, Attorney in Chief
Adriene Holder, Attorney in Charge, Civil Practice
Judith Goldiner, Attorney in Charge, Law Reform Unit
Lucy Newman, Of counsel
THE LEGAL AID SOCIETY
199 Water Street, 3rd floor
New York, New York 10038
(212) 577-3466

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 10/23/12

(PLEASE PRINT)

Name: Ava Fevrier

Address: _____

I represent: Adelphi University School of Social

Address: 75 Varick Street, New York, NY ^{work}

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 10/23/2012

(PLEASE PRINT)

Name: Terrell Adepoju - Adelphi University

Address: _____

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Paul Sawyer

Address: 230 W. 72nd, #2F

I represent: Assembly member Linda B.

Address: 230 W. 72nd, #2F Rosenthal

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

Name: Ana Plancha (PLEASE PRINT)

Address: LSNYC

I represent: tenant in NYCHA

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

Name: ALAN PELIKOW (PLEASE PRINT)

Address: 250 BROADWAY 9th FLOOR

I represent: NYCHA

Address: (SAME)

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 10/23/12

Name: NYLAG by Kamilla Sjodin (PLEASE PRINT)

Address: 7 Hanover Sq. 18th Fl, NY NY 10004

I represent: NYLAG

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☒ in opposition

Date: 10/23/2012

(PLEASE PRINT)

Name: Gilbert Alicea

Address: 765 F.D.R. Dr.

I represent: GOLES

Address: 169 Ave. B - N.Y. 10009

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: SONIA REPSIT

Address: CARVER HOUSES

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: ARNOLD ARJU

Address: MITCHELL HOUSES

I represent: _____

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: MARCELYN INNOCENT

Address: DOUGLASS HOUSES

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☒ in opposition

Date: 10/23/13

(PLEASE PRINT)

Name: Ann Valdez

Address: 3178 Bayview Ave

I represent: CVH

Address: 115 E. 106th St.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 10/23/12

(PLEASE PRINT)

Name: LUCY NEWMAN - THE LEGAL AID SOCIETY

Address: 199 Water St 3d fl. NY NY

I represent: The Legal Aid Society

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Will Feese, Jr.

Address: LSNYC Bronx

I represent: NYCHA tenant

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Amy Leiziger

Address: Legal Services NYC - Bronx

I represent: tenants in NYCHA

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Ana Alonzo

Address: LSNYC - Bronx

I represent: NYCHA tenant

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 10/23/12

(PLEASE PRINT)

Name: CARLOS LABOY

Address: 250 BROADWAY 12TH FLOOR

I represent: NYCHA

Address: (SAME)

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 10/23/12

(PLEASE PRINT)

Name: BRIAN HONAN

Address: 250 BROADWAY (16TH FLOOR)

I represent: NYCHA

Address: (SAME)

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 10/23/12

(PLEASE PRINT)

Name: Carlos Laboy

Address: _____

I represent: NYCHA

Address: _____

Please complete this card and return to the Sergeant-at-Arms.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 10/23/12

(PLEASE PRINT)

Name: Bados (P. P. P.)

Address: _____

I represent: NYCHA

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☒ in opposition

Date: 10/23/12

(PLEASE PRINT)

Name: Rolando Bonilla

Address: 136 West 91 Street

I represent: Staten Wiss Tower

Address: 136 West 91 St

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 10/23/12

(PLEASE PRINT)

Name: Paul Sawyer

Address: 230 W. 72nd St., #2F

I represent: AM Linda Rosenthal

Address: 230 W. 72nd St., #2F

Please complete this card and return to the Sergeant-at-Arms