

July 30, 2025

**New York City Housing Authority
Public Hearing**

**Re: Draft Significant Amendment to the Fiscal Year (FY) 2025 Annual Plan and the
FY 2026 Draft Annual Plan
Written Testimony of the New York Legal Assistance Group**

The New York Legal Assistance Group (“NYLAG”) uses the power of the law to help New Yorkers experiencing poverty or in crisis combat economic, racial, and social injustices. We address emerging and urgent needs with comprehensive, free civil legal services, financial empowerment, impact litigation, policy advocacy, and community partnerships. We aim to disrupt systemic racism by serving clients whose legal and financial crises are often rooted in racial inequality.

NYLAG works closely with community organizations, agencies, and elected officials, and operates numerous legal clinics in locations such as community centers, courthouses, and hospitals. With the full implementation of Right to Counsel at the NYCHA Office of Impartial Hearings (“OIH”), NYLAG created the Public Housing Justice Project (“PHJP”) within its Tenants’ Rights Unit (“TRU”). NYLAG’s PHJP is the first team of legal advocates in New York City dedicated to directly representing NYCHA residents. PHJP represents residents in both Section 9 and Permanent Affordability Commitment Together, known as “PACT”, developments.

The proposed Significant Amendment provides for a much-needed overhaul of NYCHA’s Tenant Selection and Assignment Plan by increasing the priority given to reasonable accommodation and safety transfer requests. We applaud this change. For too long, NYCHA’s overly complex transfer system failed to prioritize residents living with disabilities or adequately protect survivors of domestic violence, leaving them to wait years for a new apartment. However, these changes are not enough to adequately protect residents in need of a transfer. Even with these changes, we still expect that there will be residents who have protracted wait times for an acceptable apartment. For those who cannot safely remain in, or physically access, their current apartment while they wait, these lengthy wait times put them at risk of eviction and loss of their deeply and permanently affordable housing because NYCHA’s policies do not currently provide for protections against termination of tenancy cases based on failing to occupy their homes while waiting for a needed transfer.

NYCHA’s practice of pursuing terminations of tenancy cases against residents in the process of seeking Violence Against Women’s Act (“VAWA”) and reasonable

accommodation transfers raises serious Fair Housing and Americans with Disabilities Act concerns and retraumatizes residents during particularly vulnerable times. As such, we strongly urge NYCHA to adopt procedural protections and rights for its residents seeking safety and reasonable accommodation transfers in order to rationalize the transfer process, ensure that residents are not put at greater risk of displacement, and to fulfill NYCHA's purported policy interest and intent with the proposed changes to its TSAP.

A. Regardless of TSAP Priority, NYCHA's Current System Puts Residents at Risk of Eviction Due to NYCHA's Own Delays

Delays in NYCHA's transfer system—whether avoidable or not—result in due process violations, exacerbate existing inequities and destabilize Black and Latinx families and communities. NYCHA residents seeking transfers based on overcrowding, reasonable accommodations, or even safety issues will have to wait months, if not years, for a unit to open up. During this time, NYCHA expects these families to live in unlivable conditions, put themselves at risk of continued violence, or, perhaps most confoundingly, reside in apartments they physically cannot access due to new disabilities. These long wait times for transfers can have cascading effects on clients. By way of example:

1. We represented Mr. M. in a termination of tenancy proceeding based on allegations that he was failing to occupy his apartment. At the time we were retained, he was indeed not living in his apartment: he was living in a rehabilitative nursing home. Mr. M. had effectively been kidnapped in his own home and held there by local drug dealers for months. Eventually, the NYPD staged a raid to rescue Mr. M. who was then admitted to a rehabilitative nursing home due to the malnourishment and abuse he had experienced while being held captive. After clearing the apartment, the NYPD put a padlock on the front door. Through his power of attorney, Mr. M., who was also cognitively disabled, applied for a safety transfer. Despite the fact that Mr. M. had a pending safety transfer due to being a victim of a traumatic crime in his own apartment, NYCHA brought a termination of tenancy case based on failure to occupy. When we explained the situation to NYCHA, instead of withdrawing the charges and facilitating the transfer, the NYCHA Law Department amended the charges to include nondesirability based on the actions of Mr. M.'s assailants. Mr. M. died in the nursing home, fighting his termination of tenancy, waiting for his transfer, and unable to access his apartment due to the padlock.
2. We represented Mr. S. in a termination of tenancy proceeding based on allegations that he was failing to occupy his apartment. However, the only reason he was not in his apartment was because he was wheelchair-bound in a nursing home, and the facility would not discharge him until he was transferred to an

accessible unit. While his tenancy was ultimately not terminated, Mr. S. died in the nursing home, waiting for his transfer.

3. We are representing Ms. L. in a termination of tenancy proceeding based on allegations that she is not occupying her apartment. However, Ms. L. has been waiting for five years for a safety transfer after she was assaulted in the development and her daughter was groped in the development. For five years, Ms. L. and her daughter have been kept away from their home for their own safety due to NYCHA's failure to timely process their transfer.
4. We are representing Ms. X. in a termination of tenancy proceeding based on allegations that she is not occupying her apartment. She previously received a VAWA transfer due to domestic violence and was moved into an apartment that was not habitable due to horrendous conditions, including persistent leaks and pervasive mold. She requested a new transfer, but the option she was given was back to the zip code that she had requested to leave due to domestic violence and safety concerns. Out of desperation due to the toxic conditions of the apartment she was in, she accepted the transfer in order to maintain her NYCHA apartment but often stayed with her mother due to safety concerns.

These cases exemplify how, regardless of the TSAP, NYCHA's current policies and procedures penalize residents who are waiting for a transfer. In each of these cases, our clients were entitled to an apartment transfer under the Americans with Disabilities Act and Rehabilitation Act or the Violence Against Women Act and had pending transfer requests. Also in each of these cases, NYCHA brought and prosecuted terminations of tenancy based on failure to occupy, when the only reasons our clients were not in their apartments were because NYCHA's own delays in processing their transfers left their apartments inaccessible.

NYCHA residents should not need to choose between their own safety and preserving their homes. Without express protections for residents who have applied for a safety or reasonable accommodation transfer, NYCHA's current system will continue to destabilize and displace families who are entitled to protections under state and federal law.

B. NYCHA's Failure to Promulgate Procedural Protections for Residents Seeking Safety and Reasonable Accommodation Transfers Raises Serious Fair Housing Concerns

We are gratified to see that NYCHA acknowledges the urgent need of safety and reasonable accommodation transfers and is raising the priority levels for these groups. However, even with these much-needed changes, no transfer will be immediate. In such scenarios, NYCHA's policy of bringing terminations of tenancy proceedings based on failure to occupy the apartment raises serious Fair Housing concerns.

In New York City, people with disabilities and survivors of domestic violence are protected from housing discrimination under local, state, and federal law. The Violence Against Women Act—or “VAWA”—was expanded in 2005 to include public housing programs.¹ In doing so, Congress acknowledged that “[w]omen and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence”.² As applied to public housing, a main legislative intent of VAWA is to prevent homelessness or adverse actions based on, or related to, a resident’s status as a survivor of domestic violence.³

Similarly, the Fair Housing Act, as amended by the Fair Housing Amendments Act in 1988, makes it illegal to discriminate in housing practices on the basis of disability.⁴ Pursuant to 42 U.S.C. § 3603, federally assisted public housing authorities, such as NYCHA, are governed by the antidiscrimination prohibitions of 42 U.S.C. § 3604(f). Under this statute, housing providers may not make housing unavailable to a renter on the basis of that person’s disability.

The Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973 provide similar protections to NYCHA residents with disabilities.⁵ Under these statutes, NYCHA is prohibited from excluding individuals with disabilities from its programs on the basis of their disability. Both the New York State and New York City Human Rights Laws apply the same protections.

NYCHA’s current and proposed TSAPs both provide special accommodations for residents with disabilities or domestic violence survivors, and the proposed TSAP crucially raises the priority levels of those transfer applicants. However, although this is an important step, it is only half of what impacted residents require. The TSAP system provides the needed accommodation but does not protect those who need it from adverse actions based on it. The fact that NYCHA’s Law Department is able to—and, in fact, does—pursue terminations of tenancy proceedings while there are pending transfer requests belies the presumed intent of its policies, such as the ones proposed here, which supposedly seek to protect survivors of domestic violence or residents with disabilities in need of reasonable accommodations. These terminations may not be retaliation for seeking the transfer, but they still are an adverse action based on needing the transfer but not receiving it in a timely manner. Without an express policy, NYCHA attorneys will continue to pursue these terminations and subsequent evictions regardless of the pending transfer and their obligations under the applicable federal laws. This gap in NYCHA’s policies and procedures creates space for a practice that raises serious fair housing concerns.

C. NYCHA Must Rationalize Its Transfer Procedures by Promulgating a Rule That Protects Applicants from Termination and Eviction

To ensure that residents who need reasonable accommodation or safety transfers can meaningfully access them, NYCHA must promulgate rules that protect those residents from termination of tenancy and subsequent evictions while those transfer requests are pending.

NYCHA has previously updated its policies in order to protect residents from eviction based on NYCHA's administrative delays or errors. In 2021, NYCHA entered into a consent decree in which it agreed to not start a nonpayment eviction case or termination of tenancy based on Chronic Rent Delinquency while there is a pending Interim Recertification or Rent Grievance. NYCHA then went on to update its own policies and procedures. In furtherance of this, NYCHA's Admissions and Continued Occupancy Policy, Chapter 12(D)(i)(4) now provides that when a resident submits a rent grievance, NYCHA staff must not initiate or proceed with existing eviction proceedings based on non-payment of rent or administrative proceedings where the sole charge is Chronic Rent Delinquency (CRD). By recognizing that rents may be set incorrectly and residents have a right to apply for adjustments accordingly and that the outcome of those grievances speak to the fundamental merits of a nonpayment or CRD proceeding, NYCHA rationalized these two separate proceedings, ensuring that they work in conjunction with one another and that no resident is pressured to forego any of their due process rights.

NYCHA must take similar steps here by modifying the TSAP and the ACOP to protect tenants seeking reasonable accommodation or safety transfers from having their tenancy terminated based on failure to occupy their apartments. Similarly to how tenants seeking rent adjustments should not be evicted for non-payment of rent, tenants who are seeking transfers because they cannot safely access their apartments should not have their tenancy terminated for failing to occupy their apartments. As we have seen in our practice, leaving it up to residents to make these ADA and VAWA arguments does not guarantee that NYCHA will discontinue the case. If this is true with representation, it is surely just as, if not, more prevalent with the substantial portion of residents who go unrepresented at OIH. Instead of leaving it up to the tenants to make this argument, NYCHA should relieve them of that litigation burden and codify this protection in its ACOP and TSAP by providing that NYCHA staff must not initiate or proceed with existing eviction proceedings based on failure to occupy while a reasonable accommodation, domestic violence, intimate partner violence, or other safety transfer request is pending.

NYCHA has a duty under federal, state and local laws to accommodate residents who are survivors of domestic violence or are in need of reasonable accommodations due to disabilities. This includes providing required transfers and not taking adverse actions against them on the basis that they need a safety or reasonable accommodation transfer. We are glad NYCHA is taking the important step of updating the TSAP and we strongly

urge NYCHA to take the additional, and important, step of ensuring that residents are protected while they wait for their transfer application to be processed.

Respectfully submitted by:

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