

*Submitted
testimony*



Empire Justice Center

Making the law work for all New Yorkers

Albany ♦ Rochester ♦ Westchester ♦ Long Island

Joint Legislative Public Hearings on 2016-2017 Executive Budget Proposal:

Housing

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Introduction

Thank you for the opportunity to testify today. My name is Kirsten Keefe and I am Senior Attorney for Empire Justice Center. We are a statewide legal services organization with offices in Albany, Rochester, Westchester and Central Islip (Long Island). Empire Justice provides support and training to legal services and other community-based organizations, undertakes policy research and analysis, and engages in legislative and administrative advocacy. We also represent low income individuals, as well as classes of New Yorkers, in a wide range of poverty law areas including foreclosure prevention, public benefits, domestic violence and civil rights.

Empire Justice Center's budget and legislative priorities highlight the critical value of bringing greater stability to the lives of low income New Yorkers, through a variety of means. Our testimony will address two ways in which New York has the opportunity to make strategic investments that will have an incalculable positive effect on the lives of individual New Yorkers, as well as a very practical economic and societal benefit for communities and our state.

I. Fuel and Shelter Allowances Must Go Up

As discussed in our recent report released in December 2015, "Turn Up the Heat: It's Time to Raise New York's Shelter and Fuel Allowances,"¹ there is nothing more central to the concept of meeting basic needs to stabilize people's lives than ensuring that families and individuals can live in safe, decent, stable housing. But as has been widely reported, the number of New Yorkers who now live in housing that is unsafe or overcrowded, or who are homeless - staying in shelters or on the street - continues to increase to record-breaking levels. **New York's rate of homelessness is more than double the national average.** In fact, our State saw the greatest increase in homelessness in the nation from 2013 to 2014, a shameful trend that saw no signs of abating in 2015 and through the new year.²

Being homeless harms families and compromises the future of New York's children. Stable housing is crucial for the overall mental and physical health of families, especially for a child's optimal development and educational success.³ "Homeless children have worse physical health, are less likely to have a regular source of medical care, and are more likely to use emergency rooms," as compared with other children who live in stable housing.⁴

The Governor announced a bold and progressive agenda for reducing future homelessness in New York in his State of the State Address. While Empire Justice fully supports the important

¹ See <http://www.empirejustice.org/assets/pdf/publications/reports/turn-up-the-heat/turn-up-the-heat-report.pdf>.

² The increase in homelessness is reported in National Alliance to End Homelessness, "The State of Homelessness in America, 2014," and in U.S. Department of Housing and Urban Development, "The 2014 Annual Homeless Assessment Report to Congress" October 2014. Regarding the continuing rise in homelessness in 2015, see, for example, Hansi Lo Wang, "New York City Struggles to Keep up with High Homeless Numbers," an NPR report, August 2015.

³ See, for example, Hannah Emple, *Stable Housing is Unequivocally Good for Children and Families*, Children Health Watch, 2012; Maya Brennan, Patrick Reed, and Lisa A. Sturtevant, *The Impacts of Affordable Housing on Education: A Research Summary*, Center for Housing Policy, November 2014; Rebecca Cohen, *The Impacts of Affordable Housing on Health: A Research Summary*, Center for Housing Policy, May 2011.

⁴ National Law Center on Homelessness & Poverty, *Beds and Buses: How Affordable Housing Can Help Reduce School Transportation Costs* at 4, September 2011.

role that affordable housing plays in stabilizing families and communities, New Yorkers in crisis cannot afford to wait – they need solutions now. Building new, affordable housing is an essential component to fighting homelessness, but it is equally important to address the drastic disconnect between the cost of decent housing and the allowances provided to public assistance recipients to pay for housing. New York State has some of the most expensive housing in the nation, yet the shelter portion of the public assistance grant (known as the “shelter allowance”) has not remotely kept pace with relentless rental cost increases. For households forced to rely on public assistance as their source of income, the current benefit sets people up to become homeless and contributes to the trauma and chaos faced by low income families in our state on a daily basis, and ensures that tax payers end up footing the bill in other, more costly ways.

As described in our report, Empire Justice compared the allowable shelter grant given to a family on public assistance with the “Fair Market Rents” (FMR) established by the Federal Department of Housing and Urban Development as a measure of the inadequacy of the shelter allowance.⁵ For example, in Albany County, the monthly FMR for a one-bedroom unit is \$823, while the maximum shelter allowance for a household of three is \$309 per month, or about 38% of the FMR. In Erie County, the one-bedroom FMR is \$626, while the shelter allowance for a household of three is \$301, or about 48% of the FMR. Finally, in Dutchess County, the FMR for one bedroom is \$1036, and the shelter allowance for three is \$292—just over 28% of the FMR. **There is no county in New York where the shelter allowance provides enough money to cover even half of the Fair Market Rent.** For many poor New Yorkers living in more expensive locations, such as the New York City suburbs, the grant rarely amounts to even a third of the FMR, which it is a measure of the cost of decent, but modest housing.

Further, for those households who must pay for heat separately from their rent, there is an additional allowance to pay for heating. **The heating allowance has not been raised since it was created in 1987, nearly 30 years ago. Over that time, the cost of heating oil has quadrupled and natural gas heat has doubled.** Households receiving public assistance for basic needs, even if they receive an additional heat allowance, have been pushed further into poverty over time in New York because their entire grant is subsumed by their housing cost. And typically that isn’t even enough to cover their housing.

Take, for example, one Empire Justice client: Ms. V is a 58 year old woman who lives in the Capital Region. She has a long work history as an administrative assistant, but the lagging job market has been a barrier to consistent employment in the past few years, forcing her to move from one temporary job to another. Ms. V’s apartment costs her \$575 per month and she pays separately for her heat. When her Unemployment Insurance benefits ran out in the autumn of 2014, she was forced to apply for help from the local Department of Social Services (DSS). Her total public assistance grant was only \$425 per month, including both her heating and shelter allowances, which the DSS sent directly to her landlord. After four months of receiving public assistance, Ms. V received a utility shut off notice. She had received a single HEAP payment, but still owed \$421.99. Ms. V returned to the DSS to apply for help keeping her utilities on, and

⁵ The FMR is “the 40th percentile of gross rents for typical, non-standard rental units occupied by recent movers in a local housing market.” It is thus a rent level for decent, modest housing.

the DSS paid the outstanding balance on her utility account, but incorrectly put Ms. V into a repayment agreement for the utility assistance that further reduced her monthly welfare grant. Now, one year later, Ms. V's landlord is threatening to evict her for nonpayment of the full rent. Because of the inadequacy of the heating and fuel allowances available to Ms. V, she is now teetering on the brink of homelessness – which will make securing stable, long-term employment exponentially more difficult.

As illustrated by Ms. V, the inevitable consequence of these miniscule heating and shelter allowances is that households in need in New York State have little or no chance of retaining decent housing and are thrust into crisis by a system purported to be the safety net. Families are forced to divert the part of their welfare grant designated for basic needs like clothing and transportation to attempt cover their rent, and even then, are still at risk of being forced to live in overcrowded, substandard, even illegal housing in order to keep a roof over their heads. There are 120,000 homeless students in our State's public schools, a number that increased by a third from 2009 to 2014, and it is many of these most vulnerable students who are most affected by these overlapping gaps in assistance.

The paradox in this situation is that, while families on public assistance are unable to afford sufficiently heated, stable housing with their welfare grant, the **local counties are required to pay exponentially more to house these same families when they become homeless.** Emergency housing is extremely expensive. New York State's homeless shelter system costs the state over \$1 billion dollars annually.⁶ In 2008, Orange County estimated that "the average cost of providing services to a homeless family... equaled \$157 per day (\$4,710 per month)."⁷ The 2008 Fair Market Rent for a one-bedroom unit in Orange County was \$901 per month, and for two bedrooms was \$1,103. So, providing a family with sufficient rent for decent, stable housing would have cost less than one-quarter of the cost of placing them in emergency housing. It is startling to consider the cost savings and vastly improved quality of life for low income families that reasonable shelter and heating allowances would offer so many households.

Emergency housing and services for the homeless are essential, but the long term solution rests in enabling low income households to secure and retain decent, permanent housing on a workable budget. For these reasons, Empire Justice recommends that:

- As a down payment, New York must increase the shelter allowance to at least 50% of regional Fair Market Rents to bring a modicum of stability to the lives of the poorest New Yorkers, and reduce the costly and cumulative harm that is the unavoidable result of homelessness. This down payment will be a critical step toward truly meeting the housing needs of families and individuals living on welfare.
- Increase the fuel for heating allowance to an amount commensurate with the market rate after 28 years. Going forward, OTDA should be required to reassess the market

⁶ Governor Andrew Cuomo, State of the State and Budget Address (January 13, 2016). Available online at <http://www.governor.ny.gov/news/video-transcript-built-lead-governor-cuomos-2016-state-state-and-budget-address>

⁷ Orange County Department of Social Services, "Proposal for Revised Shelter Supplement," 2008.

rates on a regular basis, not to exceed once every five years, and increase the fuel for heating allowance accordingly.

- Implement an immediate moratorium on local district's recoupment of energy-related payments from ongoing public assistance cases because of the long-standing inadequacy of the public assistance grant in meeting fuel and utility costs, until such time as the fuel for heating grant is increased.

II. Create the Community Restoration Fund

Our second recommendation focuses on New York's ongoing foreclosure crisis. The Office of Court Administration's report to the Legislature in November 2015 shows that the foreclosure crisis continues at record levels in New York. OCA estimated 41,675 new foreclosure cases were filed in 2015, down slightly from 43,868 filed in 2014 and 46,696 filed in 2013, though still considerably higher than the pre-crisis 2006 number of 26,706⁸. New York has made great strides in abating the costs of foreclosures with strong court protections aimed at keeping homeowners in their homes. There has also been incredible investment by the state and more recently, the Office of the Attorney General, to ensure homeowners in every county have ready access to reputable and professional assistance from non-profit housing counseling and legal services providers. The result has been tremendous - 61% of homeowners have representation through their foreclosure process. It is our belief that while the foreclosure crisis persists in New York, we will emerge stronger in the end because of our commitment to keeping people in their homes and keeping neighborhoods intact.

But a new challenge in the foreclosure world has developed that adds a grave threat to homeowners and communities that New York has yet to address. In the past two years, HUD and the Federal Housing Finance Agency (FHFA, the overseer of Fannie Mae and Freddie Mac) have started selling pools of distressed mortgage notes. These pools are sold for pennies on the dollar and are being bought in bulk by Wall Street investment firms. The goal of the Wall Street firms is to turn a profit on these mortgage notes. They do a quick assessment, and if they can't easily modify a loan, they are quick to foreclose. They are not banks concerned about community reputation, nor are they subject to the same rules and programs developed to keep homeowners in their homes. The Wall Street investors are neither structured nor patient enough to work with the homeowners and their housing advocates on meaningful solutions.

These sales are posing a problem for individual homeowners who may have been able to save their home if a bank still owned their mortgage note, but now are dealing with an investor who won't work with them. And the sales pose an equally devastating risk for communities. In every pool, there will be a percentage of mortgage notes on homes that the investor will not be able to easily modify, or foreclose on and resell. These are the eyesores in our communities, the properties that need additional investment or to be demolished. The investors write them off as a loss and walk away, leaving municipalities and local communities left holding the bag.

⁸ 2015 Report of the Chief Administrator of the Courts Pursuant to Chapter 507 of the Laws of 2009, available at <https://www.nycourts.gov/publications/pdfs/2015ForeclosureReport.pdf>

The Wall Street investors are simply more concerned with quick profits than with our homeowners and communities.

To address this problem, New York State needs a non-profit fund that cares about what happens to these properties. The fund would buy these pools of mortgage notes instead of allowing Wall Street to carelessly profit on them. We recommend that New York invest \$100 million of the bank settlement recoveries to create the Community Restoration Fund (CRF). Instead of allowing these mortgage notes to land in the hands of disinvested Wall Street investors, the CRF would own them and be in a better position to work with homeowners through New York's existing network of housing advocates to modify loans and keep people in place. For properties that are vacant and abandoned, or which have to be foreclosed, the CRF can reinvest profits and work with municipalities, land banks, land trusts and other community partners to ensure a positive disposition of the property whether it be rehabbed and resold, or demolished. The "zombie property" issue - referring often times to vacant and abandoned properties languishing in the foreclosure process or thereafter, owned by absent third parties - has been a growing concern in New York and this new trend of Wall Street buyers is only worsening the problem. New York can be competitive and take control of this problem with proper investment.

My colleagues and I stand ready to work with you to address these two important issues that could both have an immense impact on the well-being and economic stability of New York State's families and communities.

Thank you once again for the opportunity to testify today. Please feel free to contact me at should you have any questions.

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