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March 29, 2023

Thomas Makely
Office of Temporary and Disability Assistance
40 N. Pearl St., 16th Fl.
Albany, NY 12243
Via e-mail: thomas.makely@otda.ny.gov

Re: Comment on Rule Review of 18 NYCRR Part 352, TDA-32-02-0004 Shelter Allowance

Dear Thomas Makely:

Empire Justice Center is 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 public assistance.

Empire Justice Center submits this comment for the Office of Temporary and Disability Assistance's (OTDA) rule review of the shelter allowance and shelter supplements at 18 NYCRR Part 352 published in the New York State Register on January 25, 2023.

Pursuant to SAPA 207(2), OTDA must review each rule every five years, providing an analysis of the legal need and basis for the rule. If the agency opts to continue a rule without modification, it must include a statement setting forth a reasoned justification for continuation of the rule without modification. SAPA 207(4). There is no reasoned justification for continuation of the shelter allowance and supplement rule, as further described herein. For that reason, we urge OTDA to amend 18 NYCRR 352.3 to increase the shelter allowances to 100% of the fair market rents (FMR) identified by the federal Department of Housing and Urban Development (HUD),

and to increase the allowance annually in line with the FMR. Supplements should also be set to HUD FMRs to increase the likelihood that households will be able to obtain and retain housing.

I. The shelter allowances set forth in 18 NYCRR 352.3 are arbitrarily low and have no relationship to the cost of housing in New York State.

The rent allowances for households receiving temporary assistance set forth in 18 NYCRR 352.3(a) were last updated in 2003. As detailed below, habitable units in the private rental market priced at or below the shelter allowance do not exist, most recipients of public assistance are unable to secure tenant-based subsidies or project-based subsidized housing, and most public assistance households do not have other income or sufficient other income to secure housing without becoming severely cash-burdened.

To determine the cost of housing in New York State and nationwide, the Department of Housing and Urban Development (HUD) engages in a detailed analysis of rents in the private housing market using data from the American Community Survey. Using that data, HUD determines the "fair market rent" (FMR) for housing that meets basic quality standards for each jurisdiction. An area's FMR is the amount that a tenant would need to pay for privately owned, decent, and safe rental housing of a modest (non-luxury) nature with appropriate amenities (i.e., including cooking and bathing facilities).[1] It is set at the 40th percentile of gross rents paid.

Below a certain rent threshold, habitable rental units simply do not exist according to HUD's analysis. Looking into HUD's modeling, rental units listed below $495 per month are excluded from the distribution of standard quality gross rents in every county in New York State. HUD's analysis found that units priced at or below $495 were either subsidized housing or substandard housing.[2] In Long Island and other high rent areas, that number increases to $758 – in other words, HUD has determined that there are no private market units that meet basic housing quality standards in those areas that rent for less than $758 per month. Put simply, there are no units in the private rental housing market that comply with basic rental housing health and safety codes, including basic plumbing and heating, at rents that are significantly below the FMR.

The FMR presents the most reasonable standard for measuring what it costs to afford decent housing in New York State, but the shelter allowance is hundreds – and in the case of the City, thousands – of dollars below the FMR. In Albany, for instance, the shelter allowance for a family of three is $309 per month while the HUD FMR for a two bedroom is $1313 – over $1000 higher. In fact, in every jurisdiction in New York State, the shelter allowance is below the threshold where HUD's analysis indicates there are no habitable units in the private rental market. The chart on the following pages demonstrates the dramatic difference between the

[1] 24 CFR 888.113.

[2] *See, e.g., ACS 2020 5-Year Adjusted Standard Quality Gross Rent Calculation for Albany-Schenectady-Troy, NY MSA*, US Dept. of Hous. & Urban Dev., https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2023_code/2023acs_dist_calc_sq5.odn?cbsasub= METRO10580M10580&percentile=0.4&year=2023&fmrtype=Final&areaname=Albany-Schenectady-Troy,%20NY%20MSA&tabletype=cbsasub&act_rent=1044.0&br_size=2.

shelter allowances and the most reasonable measure of housing costs in the state: the HUD FMR. The shelter allowance bears no rational relationship to the actual cost of housing in New York State, and as such, the 18 NYCRR 352.3(a) must be amended.

Shelter Allowance for a 3 Person Household with Children Compared to HUD's 2023 2 Bedroom Fair Market Rent			
County	Shelter Allowance	FMR	Shortfall
Albany County	$309	$1,313	($1,004)
Allegany County	$273	$826	($553)
Bronx County	$400	$2,451	($2,051)
Broome County	$290	$964	($674)
Cattaraugus County	$269	$826	($557)
Cayuga County	$290	$937	($647)
Chautauqua County	$285	$826	($541)
Chemung County	$283	$1,039	($756)
Chenango County	$264	$829	($565)
Clinton County	$275	$992	($717)
Columbia County	$290	$1,107	($817)
Cortland County	$281	$947	($666)
Delaware County	$274	$826	($552)
Dutchess County	$412	$1,583	($1,171)
Erie County	$301	$1,069	($768)
Essex County	$268	$934	($666)
Franklin County	$259	$826	($567)
Fulton County	$272	$962	($690)
Genesee County	$294	$946	($652)
Greene County	$281	$1,123	($842)
Hamilton County	$267	$1,013	($746)
Herkimer County	$275	$995	($720)
Jefferson County	$276	$1,221	($945)
Kings County	$400	$2,451	($2,051)
Lewis County	$279	$899	($620)
Livingston County	$307	$1,186	($879)
Madison County	$304	$1,109	($805)
Monroe County	$343	$1,186	($843)
Montgomery County	$283	$889	($606)
Nassau County	$445	$2,297	($1,852)
New York County	$400	$2,451	($2,051)
Niagara County	$294	$1,069	($775)

Oneida County	$287	$955	($668)
Onondaga County	$303	$1,109	($806)
Ontario County	$308	$1,186	($878)
Orange County	$421	$1,583	($1,162)
Orleans County	$302	$1,186	($884)
Oswego County	$300	$1,109	($809)
Otsego County	$280	$990	($710)
Putnam County	$441	$2,451	($2,010)
Queens County	$400	$2,451	($2,051)
Rensselaer County	$296	$1,313	($1,017)
Richmond County	$400	$2,451	($2,051)
Rockland County	$434	$2,451	($2,017)
Saratoga County	$316	$1,313	($997)
Schenectady County	$311	$1,313	($1,002)
Schoharie County	$286	$1,313	($1,027)
Schuyler County	$275	$900	($625)
Seneca County	$288	$926	($638)
St. Lawrence County	$281	$909	($628)
Steuben County	$271	$844	($573)
Suffolk County	$447	$2,297	($1,850)
Sullivan County	$297	$1,008	($711)
Tioga County	$285	$964	($679)
Tompkins County	$317	$1,487	($1,170)
Ulster County	$350	$1,498	($1,148)
Warren County	$299	$1,119	($820)
Washington County	$295	$1,119	($824)
Wayne County	$302	$1,186	($884)
Westchester County	$426	$2,029	($1,603)
Wyoming County	$279	$826	($547)
Yates County	$286	$997	($711)

The only type of housing that is affordable for tenants receiving public assistance is federally subsidized housing capped at 30% of income, or housing in the private market subsidized with tenant-based rental assistance like the Housing Choice Voucher program (Section 8). Unfortunately, however, most recipients of public assistance in New York State do not have tenant-based federal rental assistance or live in project-based subsidized housing. Only 17.4% of families receiving Family Assistance and 35.5% of families with children receiving Safety Net

Assistance have those benefits.[3] And for those that do not, waitlists are typically years long and are often closed to new applicants. For instance, in 2022, the Albany Housing Authority reported that its waitlist had been closed since 2019 and there were 4890 households on the waitlist.

When the new shelter allowance was promulgated in 2003, in guidance, OTDA indicated that "welfare recipients should be encouraged through work incentives to purchase higher quality housing if desired."[4] The agency did not explain how people exempt from work requirements due to medical issues, safety concerns related to domestic violence, and so forth, were supposed to manage on the inadequate allowance. Of households without children receiving Safety Net Assistance, 50.8% were exempt from work requirements in 2021. Further, because of the low standard of need, recipients become ineligible for public assistance long before their incomes are sufficient to be able to afford the high cost of housing in New York State. The severe housing instability due to cost-burdens, overcrowding, and homelessness caused by the inadequacy of the shelter allowance certainly does not help public assistance recipients become better equipped to obtain or maintain employment or work toward their goals.

OTDA and local districts are aware of and have acknowledged the inadequacy of the shelter allowance. OTDA indicated that people experiencing homelessness cannot access housing with the shelter allowance alone.[5] In the Child Poverty Reduction Advisory Council, Commissioner Tietz repeatedly indicated that the shelter allowance must be raised to reduce child poverty. In their Homeless Services Plan, Steuben County DSS noted that "the only housing that the lowest income households can afford is often considered substandard."[6] Ontario County cited the "inadequate shelter allowance for Temporary Assistance recipients" as one of the main reasons for homelessness in their community.[7] And in Tompkins County, the Department of Social Services noted that "for single individuals receiving [Temporary Assistance] of $400 per month," they can't even access federally subsidized tax credit properties because their incomes are too low.[8] Almost all local districts identify the inadequacy of Temporary Assistance and disability benefits and low wages compared to the high cost of housing as the main reasons for homelessness in their communities.[9]

It is particularly noteworthy that for the Family Assistance program, paid for with the federal Temporary Assistance for Needy Families (TANF) block grant, a lack of funding cannot be used

[3] See Off. Of Family Assistance, U.S. Dept. of Health & Human Services, *Characteristics and Financial Circumstances of TANF Recipients Fiscal Year (FY) 2021*, at Tables 11 & 67 (2021), available at https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy2021_characteristics.pdf.
[4] OTDA 03 ADM-07.
[5] 09-ADM-10.
[6] Steuben County Homeless Services Plan (10/01/20-09/30/22), available at https://empirejustice.org/wp-content/uploads/2022/08/Steuben-County-Homeless-Services-Plan-2020-2022.pdf.
[7] Ontario County Homeless Services Plan (10/01/20-09/30/22), available at https://empirejustice.org/wp-content/uploads/2022/08/Ontario-County-Homeless-Services-Plan-2020-2022.pdf.
[8] Tompkins County Homeless Services Plan (10/01/20-09/30/22), available at https://empirejustice.org/wp-content/uploads/2022/08/Tompkins-County-Homeless-Services-Plan-2020-2022.pdf.
[9] See Homeless Services Plans, generally, available at https://empirejustice.org/resources_post/standard-need-charts/.

to justify OTDA's failure to increase the shelter allowance. According to a FOIL response provided to Empire Justice Center, in fiscal year 2021 alone, New York declined to spend $662,661,174 of its annual federal Temporary Assistance for Needy Families (TANF) block grant. Federal data indicates that cumulatively, the State of New York has an unobligated balance of $1,216,600,088 in federal TANF funding. While children remain in deep poverty, experiencing severe depravation and homelessness, the State is putting federal funding allocated to provide them with cash assistance in the bank.

There is no justification for continuing the shelter allowance as it currently stands. One goal of the Temporary Assistance program is to promote sufficient wellbeing to allow recipients to become self-supporting. For Family Assistance, the program is supposed to provide allowances sufficient to allow parents to adequately care for their children in their homes. The shelter allowance regulation, as it currently stands, undermines those stated goals.

Empire Justice Center encourages OTDA to increase the shelter allowance to HUD FMR for each jurisdiction, to be increased annually in line with the increase in the HUD FMR.

II. The shelter supplement program does not adequately resolve the insufficiency of the shelter allowance.

Pursuant to 18 NYCRR 352.3(a)(3)(i), local districts can request approval from OTDA to provide shelter supplements for households receiving public assistance who are experiencing homelessness or at risk of eviction.[10] But the regulation authorizing this optional supplement program does little to resolve the inadequacy of the shelter allowance for several reasons. Only 21 districts have approved Shelter Supplement programs for households receiving public assistance. In other words, most counties have not opted into the program even though homelessness exists in every county in New York State, or their plans have not been approved. Further, even where supplement programs do exist, most counties have not allocated sufficient funding to their supplement program to meet the level of need – in fact, in most counties, the number of supplements available is less than 10% of the number of households on public assistance. Even where supplements exist, benefits range from only 29% of FMR to a high of 86% of FMR, leaving many households trapped in homelessness because the benefits are insufficient to afford decent housing. Lastly, some programs have additional restrictive eligibility criteria, including (highly suspect) durational residency requirements. The Shelter Supplement program does not fill the gap left by the inadequate shelter allowance, failing to fulfill its purpose of preventing evictions and allowing households experiencing homelessness to obtain housing. The rule should be modified to require districts to offer monthly shelter supplements up to HUD FMR for all public assistance applicants and recipients who are experiencing homelessness or are at risk of homelessness (including due to overcrowding,

[10] 18 NYCRR 352.3(a)(3). See also NY Off. Of Temp. and Disability Assistance, Shelter Supplements Plans and Revisions, GIS 20 TA/DC012 (Feb. 21, 2020), available at https://otda.ny.gov/policy/gis/2020/20DC012.pdf.

substandard conditions, and other risk factors for homelessness), without durational residency requirements.

III. The Shelter Allowance and Shelter Supplement rules must be amended to reflect the cost of housing in New York State.

There is no reasonable justification for continuation of 18 NYCRR Part 352 without modification for the reasons described in this comment. Empire Justice Center encourages you to modify the rules at 18 NYCRR Part 352 to increase the shelter allowance to 100% of the HUD FMR and to require districts to provide supplements to 100% of the HUD FMR.

Sincerely,

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