

**NOTICE OF ADOPTION OF EMERGENCY RULE ESTABLISHING THE LIVING IN COMMUNITIES (“LINC”) FAMILY AND FRIEND REUNIFICATION RENTAL ASSISTANCE PROGRAM**

Pursuant to the authority of the Commissioner of the New York City Human Resources Administration (HRA), working jointly with the Commissioner of the New York City Department of Homeless Services (DHS), under Sections 603 and 1043(i) of the New York City Charter, Sections 34, 56, 61, 62, 77, and 131 of the New York Social Services Law, and Section 352.6 of Title 18 of the New York Codes, Rules and Regulations, notice is hereby given of the adoption of the following emergency rule, effective immediately, establishing a new rental assistance program for a limited number of families with children who are currently residing in DHS or HRA shelter. The program shall be referred to as the Living in Communities (LINC) Family and Friend Reunification Rental Assistance Program and, because it is the sixth in a series of LINC rental assistance programs that have been established over the past several months, it will also be referred to as “LINC VI.”

Section 1. Chapter 7 of Title 68 of the Rules of the City of New York is amended by adding a new subchapter C, entitled “Living in Communities Family and Friend Reunification (LINC VI) Rental Assistance Program” that reads as follows:

New text is underlined.

**Subchapter C: Living in Communities Family and Friend Reunification (LINC VI) Rental Assistance Program**

**§ 7-18 Definitions.**

For the purposes of this subchapter, the following terms shall have the following meanings:

(a) The “household” means the individuals who have applied for or are in receipt of LINC VI rental assistance pursuant to this subchapter, regardless of eligibility for public assistance.

(b) The “host family” means all individuals, other than the household, who are residing or who intend to reside in the residence towards which the LINC VI rental assistance payments will be applied. A host family shall include the primary occupant and may consist of a single individual.

(c) The “Living in Communities Family and Friend Reunification Rental Assistance Program” or “LINC VI Rental Assistance Program” means the rental assistance program established pursuant to this subchapter.

(d) A “program participant” means a household member who has entered into an agreement for housing to which LINC VI rental assistance payments have been or are being applied.

(e) A “primary occupant” is the person who has the primary responsibility for payment of the monthly rent for the residence towards which the LINC VI rental assistance payments will be applied or the owner of such residence. The primary occupant must reside in such residence.

**§ 7-19 Administration of the LINC VI Rental Assistance Program.**

HRA shall administer the LINC VI Rental Assistance Program, except that HRA shall make initial eligibility determinations pursuant to paragraph (1) of subdivision (a) of section 7-20 of this chapter for households residing in a DHS Shelter in consultation with DHS.

**§ 7-20 Initial Eligibility and Renewals.**

(a) Initial Eligibility for the LINC VI Rental Assistance Program.

(1) To be eligible for an initial year of LINC VI rental assistance, a household must meet the following eligibility requirements:

(A) The household must include at least one member who receives Public Assistance, and all household members who are eligible for Public Assistance must receive such benefits;

(B) The household must include a child who meets the criteria set forth in Section 369.2(c) of Title 18 of the New York Codes, Rules and Regulations;

(C) The household must include at least one member who: (i) is eligible for shelter as determined by DHS pursuant to Parts 351 and 352 of Title 18 of the New York Codes, Rules and Regulations or as determined by HRA pursuant to Sections 452.2(g) and 452.9 of Title 18 of the New York Codes, Rules and Regulations; and (ii) currently resides in the City shelter system;

(D) The household member described in subparagraph (C) of paragraph (1) of this subdivision must have resided in the City shelter system for at least ninety consecutive days, excluding gaps of up to three calendar days;

(E) The household must have identified a host family, consisting of relatives or friends of the household who live in the City of New York, that has agreed to permit the household to reside in its residence and to receive a monthly rent payment from the household that does not exceed the applicable maximum rent set forth in the table in subdivision (a) of section 7-21 of this chapter;

(F) The host family and the host family's residence must meet the requirements of subdivision (j) of section 7-24 of this chapter.

(G) The household must have total gross income that does not exceed 200 percent of the federal poverty level as established annually by the U.S. Department of Health and Human Services.

(2) The number of eligible households that can be approved to receive LINC VI rental assistance will be limited by the amount of available funding. Applications must be submitted on a form and in a format established by HRA in consultation with DHS.

(b) Renewals after the First Year.

(1) Subject to the availability of funding, a household in receipt of LINC VI rental assistance will receive four one-year renewals of such assistance if it meets the following continued eligibility requirements:

(A) The household's total gross income does not exceed 200 percent of the federal poverty level as established annually by the U.S. Department of Health and Human Services;

(B) Where such activities are made available to the household, at least one member of the household must be continually engaged in ongoing case management activities designed to assist the household member in obtaining, maintaining and/or enhancing employment or to secure any benefits for which such member or household is eligible; and

(C) All members of the household eligible for Public Assistance must receive Public Assistance.

(2) HRA will determine a household's eligibility for renewal of LINC VI rental assistance at the end of each year of the household's participation in the program, subject to the availability of funding. Before the start of each one-year renewal, HRA will recalculate the household's monthly rental assistance amount pursuant to section 7-21 of this chapter. Except as provided in section 7-22 of this chapter, the monthly rental assistance amount will not change during the one-year renewal period.

(3) HRA in its discretion may waive any of the requirements set forth in paragraph (1) of this subdivision on a case-by-case basis if the household's failure to meet the requirement was due to circumstances beyond the household's control, or where non-renewal is likely to result in the household's entry into shelter.

**§ 7-21 Maximum Monthly Rent Obligations and Calculation of Rental Assistance Amounts.**

(a) Maximum Monthly Rent.

(1) The household's monthly rent shall not exceed the amounts set forth in the table below:

<u>Household Size</u>	<u>1 - 2</u>	<u>3 - 4</u>	<u>5 or more</u>
<u>Maximum Rent</u>	<u>\$650</u>	<u>\$750</u>	<u>\$1,000</u>

(2) Where the primary occupant receives Public Assistance, the household's monthly rent cannot exceed the difference between the primary occupant's payment obligation for the residence and the primary occupant's shelter allowance under Section 352.3 of Title 18 of the New York Codes, Rules and Regulations at the time of the effective date of the household's lease or rental agreement.

(3) In no event shall the household's monthly rent exceed the household's proportionate share of the rent for the residence. The determination of what constitutes the household's proportionate share of the rent shall be based on the formula set forth in Section 2525.7 of Title 9 of the New York Code of Rules and Regulations or a comparable measure.

(b) Rental Assistance Amount.

(1) The monthly rental assistance amount shall be equal to the household's monthly rent.

(2) HRA shall pay the monthly rental assistance amount directly to the primary occupant of the residence, each month for so long as the household remains eligible, the household continues to reside in the residence, and funding for the program remains available.

**§ 7-22 Moves.**

(a) A household receiving LINC VI rental assistance may not move to a new residence and maintain eligibility for LINC VI rental assistance except with the approval of HRA and provided that the move must be to a residence within the City of New York. The program participant must obtain such approval prior to moving to a new residence, provided that HRA may consider a request for approval made after the move if a program participant is unable to obtain such approval prior to the move due to circumstances beyond the program participant's control. If the household is moving with its current host family to a new residence, HRA shall grant approval for the move. In all other situations, HRA shall grant approval for a move from one residence to another residence only upon a showing by the program participant that there is good cause for the move. If the requested move would result in an increase in the household's monthly rent, approval will also be subject to the availability of funding.

(b) If HRA has approved a move to a new residence, HRA shall recalculate the monthly rental assistance amount and that amount shall not change for one year from the effective date of the lease or rental agreement for the new residence. If the effective date of the lease or rental agreement for the new residence is not more than ten months after the start of the household's current year of participation in the program, then the household's current year of LINC VI rental assistance shall begin anew on the effective date of such lease or rental agreement. If the effective date of the lease or rental agreement for the new residence is more than ten months after the start of the household's current year of participation in the program and the household is eligible for renewal of LINC VI assistance, then the household's renewal period shall begin on the effective date of such lease or rental agreement.

**§ 7-23 Agency Review Conference and HRA Administrative Appeal Process.**

(a) Right to HRA Administrative Review.

A shelter resident or LINC VI program participant may request an agency review conference and/or an HRA administrative hearing to seek review of any determinations or actions made by DHS and/or HRA under this subchapter, as well as any failures to act, or failures to act with reasonable promptness, by DHS and/or HRA in implementing the provisions of this subchapter.

(b) Agency Review Conference.

(1) If a shelter resident or LINC VI program participant requests an agency review conference, HRA shall informally review and attempt to resolve the issues raised.

(2) A shelter resident or LINC VI program participant may request an agency review conference without also requesting an HRA administrative hearing. Requesting an agency review conference will not prevent a shelter resident or program participant from later requesting an HRA administrative hearing.

(3) An agency review conference must be requested within sixty days after the challenged determination or action, provided further that if an HRA administrative hearing is scheduled, an agency review conference must be requested reasonably in advance of the scheduled hearing date.

(4) A request for an agency review conference will extend the time period to request an HRA administrative hearing as set forth in paragraph (2) of subdivision (c) of this section to sixty days after the date of the agency review conference.

(c) Request for an HRA Administrative Hearing.

(1) An administrative hearing must be requested in writing. Such written request must be submitted by mail, electronic means or facsimile, or other means as HRA may set forth in an appeals notice.

(2) Except as provided in paragraph (4) of subdivision (b) of this section, a request for an administrative hearing must be made within sixty days after the challenged determination or action.

(d) Authorized Representative.

(1) Except where impracticable to execute a written authorization, a person or organization seeking to represent a shelter resident or LINC VI program participant must have the shelter resident's or program participant's written authorization to represent him or her at an agency review conference or administrative hearing and to review his or her case record, provided that such written authorization is not required from an attorney retained by such shelter resident or program participant. An employee of such attorney will be considered an authorized representative if such employee presents written authorization from the attorney or if such attorney advises HRA by telephone of such employee's authorization.

(2) Once HRA has been notified that a person or organization has been authorized to represent a shelter resident or LINC VI program participant at an agency review conference or administrative hearing, such representative will receive copies of all

correspondence sent by HRA to the shelter resident or program participant relating to the conference and hearing.

(e) Aid Continuing.

(1) If a LINC VI program participant requests an administrative appeal of a determination by HRA that rental assistance payments issued under section 7-21 of this chapter are to be reduced, restricted, suspended or discontinued, or that the program participant's household is not eligible for renewal pursuant to subdivision (b) of section 7-20 of this chapter, such program participant shall have the right to continued receipt of LINC VI rental assistance payments at the rental assistance amount in effect at the time of the determination until the hearing decision is issued pursuant to subdivision (l) of this section, provided that:

(A) The program participant requests the administrative appeal within ten days of the mailing of the notice of such determination; and

(B) The appeal is based on a claim of incorrect computation or an incorrect factual determination.

(2) There is no right to continued rental assistance payments pursuant to this subdivision where the sole issue on appeal is one of local, State or Federal law or policy, or change in local, State or Federal law.

(3) Rental assistance payments will not continue pending the issuance of a hearing decision when:

(A) The LINC VI program participant has voluntarily waived his or her right to the continuation of such assistance in writing; or

(B) The LINC VI program participant does not appear at the administrative hearing and does not have a good reason for not appearing.

(4) If a LINC VI program participant requests an additional appeal pursuant to subdivision (m) of this section, rental assistance payments will continue uninterrupted after issuance of the hearing decision until a written decision is issued pursuant to subdivision (l) of this section.

(f) Notice.

HRA shall provide the shelter resident or LINC VI program participant with notice of the date, time, and location of the administrative hearing no fewer than seven calendar days prior to the scheduled date of the administrative hearing, unless the issue underlying the request for an administrative hearing has been resolved and the shelter resident or program participant has withdrawn his or her hearing request.

(g) Examination of Case Record.

The shelter resident or LINC VI program participant or his or her authorized representative has the right to examine the contents of his or her LINC program case file and all documents and

records that HRA intends to use at the administrative hearing. Upon request by telephone or in writing, HRA shall provide such shelter resident or program participant with copies of all such documents, and copies of any additional documents in the possession of HRA and/or DHS that the shelter resident or program participant identifies and requests for purposes of preparing for the administrative hearing. HRA shall provide such documents at no charge reasonably in advance of the administrative hearing. If the request for such documents is made less than five business days before the administrative hearing, HRA must provide the shelter resident or program participant with copies of such documents no later than at the time of the administrative hearing.

(h) Adjournment.

The administrative hearing may be adjourned for good cause by the administrative hearing officer on his or her own motion or at the request of the shelter resident or LINC VI program participant, HRA, or DHS.

(i) Conduct of Administrative Hearing.

(1) The administrative hearing shall be conducted by an impartial hearing officer appointed by HRA who shall have the power to administer oaths and issue subpoenas and who shall have no prior personal knowledge of the facts concerning the challenged determination or action.

(2) The administrative hearing shall be informal, all relevant and material evidence shall be admissible and the legal rules of evidence shall not apply. The administrative hearing shall be confined to the factual and legal issues raised regarding the specific determination(s) for which the administrative hearing was requested.

(3) The shelter resident or LINC VI program participant shall have a right to be represented by counsel or other representative, to testify, to produce witnesses to testify, to offer documentary evidence, to offer evidence in opposition to the evidence presented by HRA and DHS, to request that the hearing officer issue subpoenas, and to examine any documents offered by HRA and DHS.

(4) An audio recording, an audio visual recording or written transcript of the administrative hearing shall be made.

(j) Abandonment of Request for Administrative Hearing.

(1) HRA will consider an administrative hearing request abandoned if neither the shelter resident or LINC VI program participant nor his or her authorized representative appears at the administrative hearing, unless either the shelter resident or program participant or his or her authorized representative has:

(A) contacted HRA prior to the administrative hearing to request rescheduling of the administrative hearing; or

(B) within fifteen calendar days of the scheduled administrative hearing date, contacted HRA and provided a good cause reason for failing to appear at the administrative hearing on the scheduled date.

(2) HRA will restore the case to the calendar if the shelter resident or LINC VI program participant or his or her authorized representative has met the requirements of paragraph (1) of this subdivision.

(k) Hearing Record.

The recording or written transcript of the hearing, all papers and requests filed in connection with the hearing, and the hearing decision collectively constitute the complete and exclusive record of the administrative hearing.

(l) Hearing Decision.

(1) The hearing officer shall render a decision based exclusively on the hearing record. The decision must be in writing and must set forth the administrative hearing issues, the relevant facts, and the applicable law, regulations and approved policy, if any, upon which the decision is based. The decision must identify the issues to be determined, make findings of fact, state the reasons for the determinations, and when appropriate, direct HRA to take specific action.

(2) A copy of the decision, accompanied by written notice to the shelter resident or LINC VI program participant of the right to further appeal and the procedures for requesting such appeal, will be sent to each of the parties and to their authorized representatives, if any.

(m) Additional Appeal.

(1) An appeal from a decision of a hearing officer may be made in writing to the Commissioner of HRA or his or her designee provided it is received by HRA through the procedures described in the notice accompanying the hearing decision within at least five business days after the delivery of the hearing officer's decision. The record before the Commissioner shall consist of the hearing record, the hearing officer's decision and any affidavits, documentary evidence, or written arguments that the shelter resident or LINC VI program participant may wish to submit.

(2) The Commissioner or his or her designee shall render a written decision based on the hearing record and any additional documents submitted by the shelter resident or LINC VI program participant and HRA or DHS.

(3) A copy of the decision, accompanied by written notice to the shelter resident or LINC VI program participant of the right to judicial review, will be sent to each of the parties and to their authorized representatives, if any.

(4) Upon issuance, the decision of the Commissioner or his or her designee made pursuant to an appeal under this section is final and binding upon HRA and must be complied with by HRA.

## **§ 7-24 Additional Provisions.**

(a) Households in the LINC VI Rental Assistance Program will be referred to service providers who will assist them with connecting to appropriate services in their communities.

(b) HRA shall provide a household moving from shelter moving expenses and a security deposit voucher equal to one month's rent to the extent available under Section 352.6 of Title 18 of the New York Codes, Rules and Regulations.

(c) Rental assistance provided under the LINC VI Rental Assistance Program cannot be combined with any other rent subsidies, except on a case-by-case basis.

(d) Waitlists will not be maintained for the LINC VI Rental Assistance Program.

(e) Shelter residents are responsible for identifying potential host families.

(f) A primary occupant who has entered into a lease or rental agreement with a household receiving LINC VI is prohibited from demanding, requesting, or receiving any monies, goods or services above the agreed-upon monthly rental amount. A primary occupant who demands, requests or receives any monies, goods or services above the agreed-upon monthly rental amount will be barred from further participation in any HRA rental assistance programs and may be barred from other rental assistance programs administered by the City of New York. Before placing a primary occupant on a disqualification list, HRA will provide notice to the primary occupant and opportunity for the primary occupant to object in writing.

(g) As a condition of participating in the LINC Family and Friend Reunification Rental Assistance Program, a primary occupant who has entered into a lease or rental agreement with a household receiving LINC VI rental assistance is prohibited from raising the household's monthly rent for one year from the effective date of the lease or rental agreement.

(h) The program participant must promptly inform HRA if any new person moves into the residence towards which LINC VI rental assistance payments are being applied.

(i) If a program participant is evicted or moves from the residence to which LINC VI rental assistance payments have been or are being applied, the primary occupant must return any over-payment to HRA.

(j) LINC VI rental assistance shall not be provided if HRA determines, in consultation with DHS, that residing with the host family in the residence poses a risk to the health, safety, or welfare of the household. In making such determination, HRA shall consider, but is not limited to considering, whether clearance with the Statewide Central Register of Child Abuse and Maltreatment has been completed for each host family member and whether any host family member is registered as a sex offender pursuant to Article 6-C of the New York Correction Law.

## **Statement of Basis and Purpose of Emergency Rule**

In order to implement the Mayor's priority of moving families with children into stable housing, and in a joint effort with the Commissioner of the New York City Department of Homeless Services (DHS), the Commissioner of the New York City Human Resources Administration (HRA) is adding subchapter C to Chapter 7 of Title 68 of the Rules of the City of New York to establish a new rental assistance program that will help relocate families currently residing in shelter to housing with friends and relatives. This program is the sixth in a series of rental assistance programs, referred to collectively as the Living in Communities or "LINC" Rental Assistance Programs, for homeless individuals and families or those in danger of entering the shelter system. This particular program is entitled the Living in Communities Family and Friend Reunification Rental Assistance Program and will also be referred to as "LINC VI."

There is an urgent need for this program. Shelter census data shows that the number of families with children in the DHS shelter system is at a record high, even taking into account the hundreds of families who have already been able to leave shelter under the three existing LINC programs targeted to families with children.

Specifically, between January 1, 2002 and December 31, 2013 the number of families with children in the DHS shelter system increased by 63%, including an 80% increase in the number of children. As of February 25, 2015, there were 11,900 families in the DHS shelter system, including 24,438 children. The increase in the shelter census is primarily because the length of stay of families in shelter has increased while the number of exits has declined. For example, the length of stay in shelter for families with children increased approximately 20% between August 2012 and December 2013.

As shelter census and length-of-stay rates have increased, the DHS shelter system for families with children has experienced its lowest vacancy rates since 2005. Indeed, on February 12, 2015, the vacancy rate for families with children in the shelter system was .97%. Although 1,186 units have been added to the shelter system for families with children between February 12, 2013 and February 12, 2015, the system continues to experience high capacity levels due to the decline in vacancy rates.

Census data also demonstrates the urgent need for an additional rental assistance program available to families whose lives have recently been affected by domestic violence. As of January 2015, there were 1,013 families, including 1,574 children, in HRA domestic violence shelters.

Over a twelve-month period, LINC VI will assist approximately 500 families with children to relocate from DHS family shelters or HRA domestic violence shelters and become securely housed in the community with friends and family members. The program will be available on a first-come first-served basis to families in shelter for at least 90 consecutive days who can identify a household consisting of relatives or friends willing to host them; rental assistance will be provided on behalf of LINC VI program participants to these "host families." HRA will only provide rental assistance where it has been determined that the family's move to the new residence will not pose a danger to the family's health, welfare or safety. The program will be subject to a review of annual funding.

The rule sets forth:

- definitions applicable to the new subchapter;
- a general description of responsibility for program administration and eligibility determinations;
- eligibility and renewal requirements;
- a description of how the monthly rental assistance amounts are calculated;
- review and appeal procedures; and
- additional provisions, including a description of certain program benefits as well as requirements for program participants and participating host families.

HRA's authority for this emergency rule may be found in sections 34, 56, 61, 62, 77, and 131 of the New York Social Services Law, sections 603 and 1043 of the New York City Charter, and Section 352.6 of Title 18 of the New York Codes, Rules and Regulations.

## **Required Finding Pursuant to New York City Charter Section 1043(i)(1)**

IT IS HEREBY CERTIFIED that the immediate effectiveness of this emergency rule establishing the Living in Communities (LINC) Family and Friend Reunification Rental Assistance Program, also referred to as “LINC VI,” is necessary to address the immediate need to relocate homeless families with children from Department of Homeless Services (DHS) shelters for families with children and Human Resource Administration (HRA) domestic violence shelters. The shelter system for families with children is currently experiencing a record high need for capacity. Providing sufficient shelter capacity to meet the needs of families with children who do not have permanent housing is a necessary City service. Without the immediate implementation of this rental assistance program to relocate families with children to stable housing with families and friends, other emergency measures would be required to meet the need for increased shelter capacity. It is therefore necessary to act by emergency rulemaking so that the City of New York and its agencies can immediately begin to use available rental assistance to relocate specific numbers of families with children from shelters to stable housing in the community, thereby taking immediate action with respect to shelter system capacity, pending the adoption of a final rule.

The number of families with children in the DHS shelter system is at a record high, even taking into account the hundreds of families who have already been able to leave shelter under the three existing LINC programs targeted to families with children.

Specifically, between January 1, 2002 and December 31, 2013 the number of families with children in the DHS shelter system increased by 63%, including an 80% increase in the number of children. As of February 25, 2015, there were 11,900 families in the DHS shelter system, including 4,438 children. The increase in the shelter census is primarily because the length of stay of families in shelter has increased while the number of exits has declined. For example, the length of stay in shelter for families with children increased approximately 20% between August 2012 and December 2013.

As shelter census and length-of-stay rates have increased, the DHS shelter system for families with children has experienced its lowest vacancy rates since 2005. Indeed, on February 12, 2015, the vacancy rate for families with children in the shelter system was .97%. Although 1,186 units have been added to the shelter system for families with children between February 12, 2013 and February 12, 2015, the system continues to experience high capacity levels due to the decline in vacancy rates.

Census data also demonstrates the urgent need for an additional rental assistance program available to families whose lives have recently been affected by domestic violence. As of January 2015, there were 1,013 families, including 1,574 children, in HRA domestic violence shelters.

No price can be put on the human costs of homelessness, and the record level of homelessness has a substantial fiscal impact for government. By immediately establishing the LINC Family and Friend Reunification Rental Assistance Program, HRA and DHS can immediately assist children, women and men currently living in DHS shelters and in HRA domestic violence shelters to relocate to stable housing with families and friends in the community. The program established under this rule provides an important new option for families that will increase the number of exits from shelter, helping to address and alleviate current demands on the shelter system.

Delaying implementation of this rule pending non-emergency rulemaking would result in longer

