

# New York City Council Finance Committee

Testimony from NYC Department of Finance

Commissioner Jacques Jiha, Ph.D.

November 20, 2018

1 Good morning, Chair Dromm and members of the Finance Committee. I am joined  
2 today by Jeffrey Shear, who is the Deputy Commissioner for Treasury and  
3 Payment Services at the New York City Department of Finance.

4 We come before you in support of legislation that will help low-income New  
5 Yorkers and seniors who are struggling to pay their property taxes and at risk of  
6 losing their homes.

7 Intro. 1143 fulfills a promise made to the Council in 2017, when we requested that  
8 the Council extends the City's tax-lien-sale authority.

9 At the time, we told the Council that we would design a payment plan that would  
10 take into account New Yorkers' ability to pay, and thereby help them stay out of  
11 the lien sale.

12 The legislation before you will do exactly that, with tremendous positive impacts  
13 for our most vulnerable property owners.

14 First, some background on why these new payment agreements are so necessary.

15 In the last ten years, property values have skyrocketed in New York City as a result  
16 of a number of factors, including record employment growth and low interest rates.

17 While this is good news for people who are selling their properties, it is not such  
18 good news for senior citizens and other homeowners living on a fixed income.

19 These are not people looking to flip their houses and make money. They want to  
20 stay in their neighborhoods and continue to contribute to their community. But as  
21 neighborhoods gentrify and development accelerates, their property values, and  
22 therefore their taxes, are rising—while their incomes remain the same.

23 As a result, many vulnerable homeowners wind up in the lien sale.

24 We know that the lien sale is an effective enforcement tool for the city. Voluntary  
25 compliance has greatly increased since its inception; property-tax delinquency has  
26 declined from an average of 4.4% to just 1.2% today.

27 That is important because each percentage-point increase in voluntary compliance  
28 is worth about \$260 million more in property-tax collection. So, the 3.2  
29 percentage-point difference results annually in \$830 million of additional revenue  
30 to fund critical City services.

31 But while the lien sale is effective, we want to do what we can to help seniors,  
32 single mothers, persons with disabilities, and others avoid becoming delinquent on  
33 their real property tax bills.

34 That's why we have significantly increased our outreach efforts to keep property  
35 owners out of the lien sale, whether by enrolling them in payment plans or helping  
36 them apply for exemptions that can reduce their taxes and remove their properties  
37 from the lien sale.

38 Over the past three years, we have averaged a total of about 3,900 liens sold,  
39 compared to an average of about 5,000 in the preceding three years—a decrease of  
40 22%.

41 As you know, under existing law, the Department of Finance offers a payment  
42 agreement that allows property owners who are behind on their property taxes to  
43 put as little as zero down and make payments of their delinquent taxes for a term of  
44 up to ten years. However, the agreements require that owners pay all of their newly  
45 incurred charges as they come due each quarter, which is difficult for many  
46 property owners.

47 For example, the median FY17 tax bill for a homeowner was \$4,447. While a  
48 homeowner may only have to pay a couple of hundred dollars each quarter for the  
49 delinquent taxes, he or she also must pay an additional \$1,100 per quarter to keep  
50 current. For some property owners these requirements are hard to meet, which  
51 leads some to default on the agreements.

52 Once an owner defaults on a payment-plan agreement, he or she is ineligible for a  
53 new agreement for five years, unless there are extenuating circumstances, such as a  
54 job loss or a death in the family—or, unless the owner somehow manages to pay  
55 20% of the total amount owed.

56 Given the high default rate, a growing number of property owners are claiming  
57 extenuating circumstances for their defaulted agreement so that they may receive  
58 another agreement and keep their property out of the tax-lien sale.

59 Basically, it all adds up to this: New York City's homeowners need relief, and this  
60 legislation will provide assistance to taxpayers who are experiencing hardship in  
61 paying their property taxes.

62 The legislation creates three new payment plans that take into account  
63 homeowners' income and ability to pay. The plans will be available to  
64 condominium and class-one homeowners and seniors who earn \$50,000 or less.

65 The new payment plans will allow homeowners not only to extend the repayment  
66 of their delinquent taxes, but to defer a portion of their current taxes until the home  
67 is sold or transferred to a new owner, at which point the City will collect, with  
68 interest.

69 In essence, the unpaid property taxes will be deferred, but not forgiven. The  
70 deferral amount is limited to 25% of the owner's equity for class-one properties,  
71 and 50% of equity for condominiums. Interest on the unpaid property taxes will  
72 continue to accrue at 7%, as established by current local law.

73 Here is a summary of the three payment plans in the new legislation:

74 A. The Low-Income Senior Plan will allow seniors to age in their homes. In  
75 order to qualify, class-one and condo owners must be 65 or older, earn less than  
76 \$50,000, and reside in the property for at least one year. The taxpayer can choose  
77 to make monthly or quarterly payments of 0% (full deferral), 25%, 50%, or 75% of  
78 back and prospective taxes.

79 B. The Fixed-Length Income-Based Plan is for homeowners who face short-  
80 term financial difficulties. They must earn less than \$50,000 and have resided at  
81 the property for at least one year. The homeowner can make monthly or quarterly  
82 payments of 2%, 4%, 6%, or 8% of their income to pay back taxes plus one year's  
83 worth of current charges.

84 C. The Extenuating Circumstances Income-Based Plan is for homeowners who  
85 meet the Department of Finance's legal definition of "extenuating circumstances."  
86 This includes the death or serious illness of the owner or an immediate family  
87 member, loss of income due to unemployment, or enrollment in the Department of  
88 Environmental Protection's water debt assistance program. Applicants must earn  
89 less than \$50,000 and have resided at the property for at least one year. They can  
90 choose to pay 2%, 4%, 6%, or 8% of their income to pay back taxes and current  
91 charges for as long as the extenuating circumstances persist. The tax deferral is  
92 capped at 25% of their equity in the property.

93 We expect that the new plans will be a more realistic option for people who are  
94 house-rich, but cash poor, and have trouble paying their property taxes. We will  
95 market them aggressively by including information in our notices and bills. We  
96 will seek traditional and social media publicity and will host a series of outreach  
97 events throughout all five boroughs, including joint sessions with Council  
98 Members and other elected officials.

99 It is important to note that these payment agreements will not affect City revenues.  
100 Since the City accounts on an accrual basis, only cash flow will be impacted.  
101 Based on the experiences of other localities with similar programs, we estimate  
102 that the total amount of property taxes that will be deferred over a ten-year period  
103 will be approximately \$14 million. We will collect the deferred property taxes via  
104 property closings or, as a last resort, via the tax-lien sale process, if the homeowner  
105 defaults on the agreement. Furthermore, the City's interest is protected by limiting  
106 the deferral amounts to 25% of the owner's equity.

107 In summary, this legislation is a win for everyone. The City will continue to collect  
108 the property taxes that fund its core services, while New Yorkers with limited  
109 means will be able to stay in the homes and the neighborhoods that they love.

110 We thank the Council for all you have done to help us reduce the number of  
111 homeowners in the lien sale and reach the people and communities who need our  
112 help. Today, we ask you to join us in support of Intro 1143-2018.  
113 Thank you. I will be happy to take any questions.





November 20, 2018

Testimony submitted to the New York City Council

Re: **Introduction 1143-2018**

Members of the City Council, thank you for this opportunity to testify regarding the proposed legislation, known as Introduction 1143, titled “A Local Law to amend the administrative code of the city of New York, in relation to installment agreements for the payment of real property taxes, assessments and other charges” (“Intro 1143” or the “Law”). My name is Arthur Burkle. I am a staff attorney in the Foreclosure Prevention and Community Economic Development Unit at Bronx Legal Services, a program of Legal Services NYC (LSNYC). I present this testimony on behalf of LSNYC regarding Intro 1143. First, I would like to thank the Committee on Finance and Chair Dromm for inviting LSNYC to testify at this hearing.

LSNYC is the largest provider of free civil legal services in the country, with offices in the Bronx, Brooklyn, Queens, Staten Island, and Manhattan. For over fifty years, LSNYC has provided critical legal help to low-income residents of New York City. Our organization works to reduce poverty by challenging systemic injustice and helping clients meet basic needs, including housing, education, health care, family stability, and income and economic security.

LSNYC is also the oldest and largest provider of foreclosure prevention legal services in New York City. Approximately 40 LSNYC advocates provide hundreds of NYC homeowners

each year with *pro se* advice and assistance, limited representation in court-mandated settlement conferences and full representation in defense of foreclosure and in affirmative litigation to combat predatory and discriminatory lending and abusive mortgage servicing practices. Since 2009, LSNYC has assisted over 12,000 homeowners. We have an informed perspective on the challenges homeowners face in all aspects of the judicial foreclosure process, including tax foreclosures. We also are particularly sensitive to the needs of the large numbers of low and moderate income clients, who confront a range of legal issues landing in our civil justice system, whom we are unable to represent, whether in foreclosure cases, consumer debt cases, or other areas of the law where the need outstrips the available resources.

Although Intro 1143 appears to be a positive step towards a more progressive policy that assists homeowners struggling to pay property taxes, aspects of the proposed Law negate its ameliorative intentions and could result in greater hardship for homeowners. At the same time, the Law's stringent annual reporting requirements would increase the administrative burden for the Department of Finance (the "Department"). Rather than support a compromise where a struggling homeowner can repay tax arrears over a long term, provisions of the Law seem designed to *increase* that homeowner's debt subject to repayment and expedite their path to a tax lien sale, and ultimately foreclosure. In its current form, the proposed Law would also adversely affect senior citizens with reverse mortgages.

### **Income Eligibility Requirement is Inadequate**

Section 11-322.1(c) sets forth general eligibility requirements that apply to all three installment agreement plans (the fixed-length income-based, senior low-income and extenuating circumstances installment agreements). Subsection (2) requires that the property be the

applicant's primary residence, while allowing for hospitalization or nursing home residence for two years or less. However, the Law should also allow for involuntary absences for any reason as an exception to the primary residence requirement.

Subsection (3) establishes an income eligibility limit of \$50,000 for the applicant and all additional property owners. This \$50,000 limit is arbitrary and unreasonable because it does not account for the geographic location of the subject property or the number of respective property owners. Property values, property tax charges, and resident income all vary widely across the city's boroughs. An income eligibility limit should acknowledge these disparities, and use as a guide the specific characteristics of a subject property's location.

Similarly, the income eligibility limit should account for the number of property owners of the subject property and allow for greater limits for additional homeowners.

A more sensible income eligibility limit policy should accordingly take into account a property's location, and utilize a location-specific income guide, such as Area Median Income. It should also increase according to the number of property owners.

In addition to these useful adjustments, the income eligibility limit should be increased generally: \$50,000 in yearly income is simply too low, and is akin to 70% of AMI for a family of one.

### **Definition of Income is Narrow and Likely to Create Confusion**

Section 11-322.1(a) provides that "income" is defined as the "adjusted gross income for federal tax purposes as reported on an applicant's federal or state income tax return for the applicable year." All applicants, regardless of the type of installment agreement, would be required to demonstrate eligibility based on their federal income tax. However, not all

homeowner applicants may be able to rely on federal income tax returns to demonstrate eligibility. For instance, an applicant seeking relief through the extenuating circumstances installment agreement may have recently lost a job, but that same applicant could be found ineligible if the most recent tax returns are from when the applicant was still employed. Further, calculating income in this way would represent a shift from the Department's current methods, creating potential for confusion and error.

### **Title Search Requirement is Onerous and Unnecessary**

Section 11-322.1(g) sets out the initial application procedure. Subsection (a) provides that a title search identifying all mortgages and other liens on the property must be included as part of the initial application. Although the cost of the title search can be added to the arrears payable by the applicant under the installment plan under Section 11-322.1(j)(3), such cost can still be prohibitive for struggling homeowners. Adding that cost to the homeowner's installment plan balance—which will incur interest—contradicts the goal of the installment plan of relieving the homeowner's financial burden and instead significantly increases the homeowner's balance to be repaid. The cost of the title search should be borne by the Department of Finance, or the requirement for title search should be stricken altogether, especially since the information available through a title search could also be found at no cost on ACRIS (the Automated City Register Information System, which supports the Office of the City Register in maintaining real estate records including deeds and mortgages).

### **Property Owner Signature Requirement is Burdensome and Unrealistic**

Section 11-322.1 (g)(b) states that the consent of all property owners through their signatures is required for an installment plan—even if they do not occupy the property. However, this provision does not account for property owners who may be unavailable or uncooperative. Similarly, this provision fails to provide an alternative for a property owner's heir or successors in the case that an owner is deceased. The definition should therefore include "other eligible person" to indicate heirs and successors may apply.

### **Annual Renewal Requirement is Burdensome and Redundant**

Section 11-322.1(h) provides that property owners already enrolled in an installment plan must file an annual renewal application, or else their current installment agreement will be terminated. The annual renewal application is essentially identical to an initial application, since the homeowner must prove ongoing income eligibility. Further, if the installment plan consists of a portion of the arrears plus ongoing property tax charges, the annual renewal application is counterintuitive to the of a long-term repayment plan. Finally, annual renewal applications could present a hardship to senior citizens while increasing costs to the agency administering the program.

### **Net Equity Requirements are Arbitrary and Unreasonable**

Section 11-322.1 (j) (4)(a) seems to create a requirement that the sum subject to an installment plan may not exceed 25% of the property's "net equity," defined as the property's fair market value minus any liabilities, including mortgages, property taxes, water and sewer charges. Similarly, section 11-322.1 (j)(4)(b) creates a requirement for condominium owners whose liens subject to an installment plan exceed 50% of the property's equity, who would be

required to pay down all liens to reach the 50% threshold. These requirements immediately disqualify distressed homeowners who may have little or no equity, although these homeowners are no less likely to struggle financially and accrue property tax arrears and benefit from an installment plan. Indeed, these may be more vulnerable to financial hardship.

Of greater concern is the impact that the “net equity” threshold requirements may have on senior citizens with reverse mortgages. A reverse mortgage draws from a property’s equity for the benefit of the senior citizen homeowner, and does not usually become due until the homeowner passes away or the property is transferred. A reverse mortgage holder typically only pays the property’s taxes and insurance. However, under this Law, a reverse mortgage holder may be prohibited from applying for an installment plan due to the arbitrary “net equity” requirement.

Section 11-322.1 (j)(5) provides that when the Department of Finance determines that a property’s Fair Market Value (FMV) has increased, an applicant may request a recalculation of the property’s net equity in order to participate in the program. However, the Department’s FMV determination may be inaccurate and erroneously bar an applicant from an installment plan, obligating the homeowner to purchase a private appraisal to dispute the Department’s FMV determination. This represents a cost that the homeowner may not be able to afford, increasing their expenses and potentially exacerbating their financial hardship.

### **Net Equity Requirement is Contrary to Income Eligibility Limit**

Section 11-322.1 (j)(6) provides that if an applicant earns more than \$50,000 for the year preceding a renewal application, the applicant will be obligated to pay all ongoing charges in addition to the payments in the installment agreement.

The Law here has created competing incentives for a struggling homeowner, putting them between a rock and a hard place. On one hand, a homeowner must pay down all liens above the 25% or 50% of net equity in order to enter an installment plan, but the homeowner (or several homeowners) must also maintain an income of \$50,000 or less to remain eligible. If a property's liens increase beyond the 25% or 50% threshold, a homeowner would be ousted from the installment plan, but they could not seek to earn more income to pay down the liens because they would potentially be ousted from the installment plan for earning too much income.

### **Curing Default Becomes an Even Steeper Hill for Struggling Homeowners to Climb**

Section 11-322.1 (k)(3)(a)(1) provides that if an applicant defaults on an installment plan, they may cure the default by paying all current charges and installment payments, including any interest and fees. However, if the intention of the Law is assist struggling homeowners pay property taxes, a sensible policy should waive late fees from the balance to be repaid, not add them to the balance and charge interest on them.

Section 11-322.1 (k)(3)(a)(2) provides that a homeowner who has defaulted on an installment plan may cure their default by paying 20% or more of "all delinquent real property taxes, assessments, sewer rents, sewer surcharges, water rents and other charges that are made a lien subject to the provisions of this chapter, including any outstanding interest and fees." First, the required 20% payment to cure the default presents as a high and arbitrary percentage. Given that a homeowner who has defaulted on an installment agreement is likely experiencing additional hardships, the required 20% down payment to re-enter the installment agreement may be unaffordable. Further, this 20% down payment now includes many other liens that were not

subject to the installment plan to begin with: Section 11-322.1 (b) states that only real property taxes are subject to the installment agreement and specifically excludes sewer charges, surcharges and water rents. Yet here, in order to cure a default in the installment agreement, the homeowner must pay 20% of *all* liens, *including* sewer charges, surcharges, water rents and any other charges resulting in a lien.

### **Five Year Prohibition from Installment Agreements is Punitive**

Section 11-322.1 (k)(3)(a)(3)(b) provides that if a homeowner has not cured a default prior to the date of a tax lien sale, they will be prohibited from entering into another installment plan for five years, unless there is a finding of extenuating circumstances. While a homeowner who is unlikely to cure their default is very likely experiencing hardship that would qualify as extenuating circumstances, the five year bar still seems arbitrary and punitive in nature. If a homeowner has entered into an installment plan, it is because they intend to repay their taxes and need assistance doing so. If they default in that installment plan, they likely did so unintentionally and should not be punished for their efforts.

Section 11-322.1 (k)(3)(a)(3)(c) allows a homeowner who has failed to cure their default before a tax lien sale to enter into a new installment plan for another tax lien even within the 5 year prohibition period so long as they pay 20% of “all delinquent real property taxes, assessments, sewer rents, sewers surcharges, water rents and other charges.” This 20% down payment requirement is an arbitrary and unreasonable requirement for struggling homeowners, and again includes liens that were not a part of the original installment plan.



### **Senior Installment Plan Levels are Arbitrary**

Section 11-322.1 (l)(2) sets out the installment plans available for low-income seniors, who are able to select to pay an amount based on 0%, 25%, 50%, or 75% of the annual taxes and charges that have accrued or will accrue. While these tiers of repayment seem to allow the applicant flexibility in selecting an affordable repayment option, they do not allow enough flexibility.

### **Recording of Agreement with City Register Exposes Homeowners to Harm**

Section 11-322.1 (o) provides that the Department of Finance “shall record the entry of such agreement on the automated city register information access system,” known as ACRIS. By filing the agreement on ACRIS, the Department is exposing homeowners in installment plans to potential harm from scammers who scour public records for potential victims. While property tax records are public, they are not searchable. Filing of installment agreements on ACRIS, however, would allow third parties to search the system specifically for these agreements, pinpoint the struggling homeowners in repayment and target them for unscrupulous schemes purporting to relieve their hardship. For instance, a predatory investor who learns of a recent installment plan through ACRIS can target the apparent, non-resident heirs of a distressed property and persuade them to sell their interests in the property for next to nothing. The investor could then seek a partition action against the homeowner or heir residing in the property. This is a common scheme that LSNYC has encountered multiple times.

At the same time, recording of the agreements on ACRIS serves no purpose and provides no benefit neither for the Department nor the homeowner. As is well known, tax liens are

already in first position, and their priority would not be affected either way by filing the installment plan on ACRIS. However, filing of the installment agreement on ACRIS can harm the homeowner in more ways: mortgage servicers, upon finding the agreement on ACRIS, may choose to pay the arrears in full to protect their interest in the property, and shift the charge to the homeowner in a single installment on their next mortgage bill. Further, the appearance of an installment plan would also be a red flag for potential investors or purchasers and frustrate a homeowner's efforts to sell the property.

### **Swift Two-year Sunset Provision Creates Insecurity**

Section 4 of the Law provides that Intro 1143 will take effect on January 1, 2019, and sunset on December 31, 2020. This gives the Law a brief two-year lifespan, which creates uncertainty for all parties, including homeowners who need security of the program's longevity to enter confidently into a long-term repayment plan.

We thank the City Council for its work to assist struggling homeowners and for giving us this opportunity to testify.

For more information on this testimony, please contact:

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**Testimony before the City Council Committee on Finance:**

**Int. No. 1143: A Local Law to amend the administrative code of the city of New York, in relation to installment agreements for the payment of real property taxes, assessments and other charges**

**November 20, 2018**

Good afternoon. My name is Leo Goldberg, and I am the Policy and Research Manager at the Center for NYC Neighborhoods. I would like to thank Chair Dromm and the members of the Committee on Finance for holding today's hearing regarding installment agreements for New York City homeowners.

**About the Center for NYC Neighborhoods**

The Center promotes and protects affordable homeownership in New York so that middle- and working-class families are able to build strong, thriving communities. Established by public and private partners including the City Council, the Center meets the diverse needs of homeowners throughout New York State by offering free, high quality housing services. Since our founding in 2008, our network has assisted over 74,000 homeowners. We have provided more than \$33 million in direct grants to community-based partners, and we have been able to leverage this funding to oversee another \$30 million in indirect funding support. Major funding sources for this work includes the New York City Council, the New York City Department of Housing Preservation and Development, and the Office of the NYS Attorney General, along with other public and private funders.

Every year, the Center works to keep as many homeowners as possible out of the lien sale by conducting direct outreach to homeowners on the pre-lien sale lists, and by coordinating with our network partners to assist homeowners in obtaining a payment plan or by qualifying for an exemption. We also support homeowners who have had tax liens sold by connecting them to foreclosure prevention services and, in cases where a tax lien foreclosure is imminent, by providing interest-free loans through our New York State Mortgage Assistance Program to pay off liens.

**Property Tax Burdens and New York City's Tax Lien Sale**

Many NYC homeowners struggle to afford property tax, water, and other municipal charges. These charges can be a substantial burden for homeowners trying to keep their properties amidst rising real estate values and maintenance costs. We recently surveyed homeowners in East New York, Brooklyn, a community home to thousands of working- and middle-class homeowners, most of whom are people of color. Only 18% of homeowners surveyed reported that they had income left over each month after paying all their bills, while 58% said they break even, and 24% reported that they have to borrow or use credit cards to cover their regular expenses.<sup>1</sup>

A recent report from the NYC Comptroller demonstrated that property taxes place a disproportionate burden on lower-income homeowners. For homeowners making below \$50,000 per year, their property tax burden is 12.7%, as compared to higher income homeowners, whose burdens are between 2% and 6%. The study also found that property taxes have soared since 2005 for homeowners across the income

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<sup>1</sup> Center for NYC Neighborhoods, East New York: Preserving Affordability in the Face of Uncertainty, Oct. 2017. Available at: <https://cnycn.org/eastnewyork/>

spectrum, while incomes have only risen moderately overall and have actually decreased for the lowest income homeowners.<sup>2</sup>

Rising tax burdens also put more LMI homeowners at risk of having their liens sold through the City's annual tax lien sale. As we have testified at previous hearings, the lien sale causes severe financial hardships for the hundreds of homeowners who have their liens sold each year, and thus presents significant challenges to our mission of promoting and protecting affordable and sustainable homeownership in New York City. In November 2016, the Center joined with our fellow members of the Coalition for Affordable Homes to release an analysis of the tax lien sale's impacts on homeowners of Class 1 properties (properties with 1-3 units).<sup>3</sup>

The analysis confirmed many of the Center's concerns about the lien sale –specifically its disproportionate impact on communities of color, the steep interest and fees charged to homeowners, and the loss of affordable housing in New York:

- **The tax lien sale disproportionately impacts communities of color.** Tax liens that are sold through the City's lien sale are heavily concentrated in communities of color, the same communities that have been hard hit by predatory lending and high rates of foreclosure. For Class 1 liens sold in 2016, the analysis found that the City is six times more likely to sell a lien in a majority African American neighborhood than in a majority white neighborhood. The City is twice as likely to sell a lien in a majority Hispanic neighborhood than in a majority white neighborhood.
- **Once sold to private investors, debts to homeowners mount quickly.** While homeowners may enter into the tax lien sale with relatively little debt, interest rates and fees often double in a relatively short period of time. The Coalition for Affordable Homes analysis of a sample of lien sale payoff statements found that the median debt of \$6,562 increased by 65 percent to \$10,847 once fees and interest rates were included. Homeowners in the sample paid an average of \$2,730 in legal expenses, an excessive amount. These debts can further destabilize homeowners who were already in a precarious financial position.
- **The tax lien sale contributes to property turnover and speculation.** The communities most affected by the sale of Class 1 liens, such as East New York and Jamaica, are already those most impacted by speculative property transactions.<sup>4</sup> For homes that have liens sold, the analysis found that the tax lien sale process may contribute to the displacement of longtime homeowners and their renters: of Class 1 liens sold in Brooklyn in the 2011 lien sale, nearly half

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<sup>2</sup> "Growing Unfairness The Rising Burden of Property Taxes on Low-Income Households", Office of Comptroller Scott Stringer, September 6, 2018. Available at: <https://comptroller.nyc.gov/reports/growing-unfairness-the-rising-burden-of-property-taxes-on-low-income-holds/>

<sup>3</sup> Coalition for Affordable Homes, Compounding Debt: Race, Affordability, and NYC's Tax Lien Sale, Nov. 2016. Available at: <https://cnycn.org/report-compounding-debt-tax-lien/>

<sup>4</sup> Center for NYC Neighborhood, House flipping in NYC: How It Deprives New Yorkers of Affordable Homes, April 2018 Available at: <https://cnycn.org/house-flipping-in-nyc-affordable-homes/>

(42 percent) were sold within five years of the lien sale, compared to 13 percent of all such properties in the borough during that period.

### **The Proposed Legislation Would Help Preserve Homeownership for Low-Income Families**

Given the negative consequences of the lien sale, the Center strongly supports reforms that would provide affordable payment options for lower-income homeowners and allow them to avoid the sale. Intro 1143 would expand financial options for homeowners at risk of default on municipal charges by providing means-based and deferred payment options, providing crucial assistance to low-income NYC families. We commend the de Blasio administration for seeking new options for LMI homeowners struggling with delinquent taxes, as well as the Council Finance committee for its advocacy on this issue. We support the legislation and have several recommendations for its implementation.

#### *Means-based payment plans*

Means-based payment plans allow homeowners to repay their arrears based on a set percentage of their income. They help lower-income families avoid displacement by lowering their payments to what they can afford. While a good fit for some property owners, the current installment plan can be exceedingly burdensome for families dealing with multiple financial strains such as cumbersome mortgage payments, sudden home repair costs, or unexpected medical bills.

By basing payments on a homeowner's ability to pay, a means-based payment option is well suited to meet the needs of the large population of financially precarious homeowners.

#### *Deferred payment options*

The Center has extensive experience with deferred loans through our New York State Mortgage Assistance Program (NYS-MAP). NYS-MAP provides essential interest-free deferred loans for homeowners so they can avoid foreclosure by paying off mortgage arrears or by satisfying tax liens. Unfortunately, the current NYS-MAP program has a limited lifespan and will most likely be fully subscribed by summer of 2019.

Deferred loans are a good option for lower-income senior homeowners, relieving them from the month-to-month strain of making payments and freeing up money to address other critical housing and medical needs. Today, about a third (349,000) of homeowners in New York City are age 65 or older, and this number is likely to grow in the coming years. Of these, nearly two thirds are moderate- or low-income.<sup>5</sup> Easy-to-understand, accessible payment options are crucial in order to allow these lower-income senior homeowners to age in place.

### **Recommendations**

We believe that these new installment plan options represent a significant step forward for the City. Based on our experience working with financially-vulnerable LMI homeowners, we believe that several

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<sup>5</sup> Center for NYC Neighborhoods, *Aftermath: Affordable Homeownership 10 Years After the Crisis*, Oct. 2018. Available at: <https://nycn.org/affordable-homeownership-10-years-after-the-crisis/>

measures can be taken to ensure that these plans are accessible to and utilized by the homeowners who need them most.

#### *Reduce barriers in the application process*

We fear that the bill's current procedures for installment plan applications and renewals may be too onerous for many homeowners who are in need of this assistance, particularly seniors. We recommend the following measures:

- Consider how to implement and communicate the title search and appraisal requirements, as they may confuse applicants or discourage them from applying. The bill currently gives applicants the secondary option of having the title searches and appraisals conducted by the City. However, it may be more straightforward to have the City take on these requirements as the default option.
- The requirement that all owners of the property sign the application will hinder applicants with complicated family situations. We recommend that there be some leeway on this rule at the discretion of the administering agency.
- The requirement that homeowners submit renewal applications every year has the potential to needlessly reduce installment plan uptake by those who need it. We recommend that rather than requiring renewal applications, the agency draws on other data sources to determine the ongoing eligibility of recipients of the senior low-income installment agreement.
- The bill proposes limiting the value of liens subject to a payment plan to 25% of the applicant's net equity in the property for homes and 50% for condos. While this approach has some merit for the deferred senior option, we recommend that it not be part of the criteria for the other installment plans since it would limit their usefulness without added benefit to the city.
- The hospitalization, nursing home, and rehabilitation facility exemption to primary residence requirements for seniors should be administered in an easy-to-understand and minimally burdensome way.

#### *Adjust income eligibility*

- Aligning income eligibility for the senior low-income installment agreement with the Senior Citizen Homeowners' Exemption (SCHE) will allow for eligibility to be cross-referenced between the programs and potentially ease the renewal process for the installment plan. The current proposed upper income limit for the installment plan is \$50,000, while it is \$58,399 for SCHE.
- Among non-senior applicants to the NYS-MAP seeking to pay off tax liens, 42% earned more than \$50,000. This suggests there is a need for more affordable tax payment options at higher incomes. We propose increasing the income limit to at least the SCHE threshold if not higher to accommodate families in need. The installment agreements could be structured with tiered interest rates: higher income applicants (perhaps \$50,000 to \$80,000) could be deemed eligible but subject to higher interest rates than applicants with incomes below \$50,000.

#### *Lien subordination and mortgages*

- Intro 1143 does not provide guidance on what position the installment plan liens will have in relation to other liens on the property. If the installment plans liens are not subordinate to mortgage liens they may trigger defaults by mortgage servicers.

*Beyond installment agreements: Preserving low-income homeownership*

Intro 1143 will help these low-income New Yorkers by providing an opportunity to address their tax arrears, but heavy tax burdens for LMI homeowners may well mean that the number of homeowners in this vulnerable position will increase.

- In addition to new installment agreements, we need to enhance the tax credits, exemptions, and abatements available to low-income homeowners to ensure that they are not unfairly burdened or forced out of gentrifying neighborhoods. Cities around the country have implemented progressive “circuit breaker” measures or homesteading exemptions which aim to preserve the homeownership of vulnerable families in the context of hot housing markets.<sup>6</sup> New York City should do the same as part of a comprehensive property tax reform effort.
- The need for condo owners to submit an appraisal of the fair market value of their home also highlights the problematic nature of the current system for appraising condos and coops. Condos are valued based on the value of nearby rental properties rather than homeownership units, creating frequent inaccuracies. We believe that a comprehensive property tax reform effort should assess and tax these properties in a similar manner as Tax Class 1 properties.

*Program administration should be sensitive to homeowner needs*

- In cases of homeowner default on the new installment programs, thorough notice is key to ensure that families have every opportunity to get back on track. We would be happy to partner with City Council and the de Blasio administration in developing outreach and communication strategies to homeowners.
- We know that more often than not, homeowners struggling to keep up with their municipal charges are also dealing with other financial and legal difficulties. Screening for the installment plans should involve referrals to other essential services.

We welcome the opportunity to work the Department of Finance, Chair Dromm, and the committee to ensure that Intro 1143 fulfills its promise and delivers much-needed assistance to low-income homeowners. Thank you for the opportunity to testify.

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<sup>6</sup> Institute on Taxation and Policy, Property Tax Circuit Breakers in 2017, Sept. 2017. Available at <https://itcp.org/property-tax-circuit-breakers-in-2017/>



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## **Testimony by The Legal Aid Society**

### **Before The New York City Committee on Finance**

**Int. No. 1143: A Local Law to amend the Administrative Code of the City of New York, in relation to installment agreements for the payment of real property taxes, assessments and other charges**

**November 20, 2018**

Founded in 1876, The Legal Aid Society (“the Society”) is the oldest and largest not-for-profit in the nation providing free direct legal services to low-income families and individuals. The Society operates three major practices — Civil, Criminal, and Juvenile Rights -- through a network of borough, neighborhood, and courthouse-based offices in 26 locations in New York City. With more than 2,000 attorneys, paralegals, and support staff, the Society handles more than 300,000 individual cases each year. In the Civil Practice’s 22 specialty areas, the Society provides comprehensive direct legal assistance for families and individuals with legal problems involving housing, homelessness, and foreclosure; family law and domestic violence; employment issues faced by low-wage workers; public assistance; disability-related assistance; health law; HIV/AIDS and chronic diseases; elder law; tax law; consumer law; education law; immigration law; community development legal assistance to enable clients to move out of poverty; and reentry and reintegration matters for clients returning to the community from incarceration.

The Society was one of the first organizations in New York City to recognize the emerging foreclosure crisis, and in 2006 established the Foreclosure Prevention and Home Equity Preservation Project to provide comprehensive legal services to homeowners facing



foreclosure and challenge abusive lending and real estate practices through affirmative litigation. It has been well established that communities of color have been and continue to be targeted with predatory practices. However, our experience in assisting thousands of homeowners has taught us that members of the same communities are struggling with the ever increasing burden of keeping up with their property taxes and far too many – especially seniors – have lost their homes to tax liens and the resulting foreclosure.<sup>1</sup>

We therefore appreciate the opportunity to testify today on the important issue of making the payment of property taxes and arrears more affordable. In particular, we applaud the Mayor and Councilmembers Dromm and Yeger on Intro. 1143 which for the first time would link property tax installment agreements to the ability to pay. We further commend the bill on creating flexible approaches to such installment plans.

Although creating flexible income-based installment plans represents a significant step toward lightening the burden on low-income homeowners, we have several concerns with respect to the bill's proposed procedures for applying and renewing such plans. Based on our experience with representing low-income homeowners, including seniors on fixed income, these procedures appear to be overly burdensome, and may in fact prevent homeowners most in need to avail themselves of such relief.

This includes the requirement for homeowners to perform a title search. First, the purpose of a title search is not entirely clear as the bill is silent on the position of such installment liens in relation to other liens or mortgages. And frankly most homeowners would not know what a title report entails and how to obtain one. Accordingly, if a title search is indeed necessary, it should be conducted by the City.

This also applies to obtaining appraisals for condo units. First, we question the need to link installment plans to the equity a homeowner has in their home or condo unit. But if needed, the City should conduct such appraisals.

Another potential hurdle for the application process is the requirement to have all property owners sign the installment agreement. Ownership structures are often complicated by family relations, incidences of domestic violence and/or the presence of a co-signer (often recruited by brokers or lenders as part of predatory lending practices). We

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<sup>1</sup> See recent report by the Office of Comptroller, "Growing Unfairness: The Rising Burden of Property Taxes on Low-Income Household", finding that homeowners earning less than \$50,000 per year suffer a much higher tax burden than higher income homeowners.

would hope that possibly a more flexible approach could be developed. Similarly, the Council might consider expanding the availability of installment plans beyond surviving spouses to include other successors-in-interest.

The requirement for homeowners to renew their application each year may pose another obstacles for homeowners, especially seniors. We hope the City would consider other ways to determine continued eligibility.

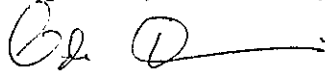
With respect to the income eligibility we suggest that it be aligned with the Senior Citizen Homeowners' Exemption (SCHE) which is currently \$58,399. This would allow for better coordination between the programs as well as the renewal process.

Finally, we propose that the City find ways to expand the program to include liens caused by water and sewer liens in coordination with the Department of Environmental Protection.

Again, we welcome the income-based approach to installment plans, and, recognizing the complexity of this proposal, we hope to continue the dialogue with the City Council toward making the bill a reality for low income homeowners.

We thank you for the opportunity to testify today.

Respectfully submitted by



Oda Friedheim  
Supervising Attorney  
Foreclosure Prevention Unit



**Council of New York Cooperatives & Condominiums**  
INFORMATION, EDUCATION AND ADVOCACY

**FOR THE RECORD**

250 West 57 Street • Suite 730 • New York, NY 10107-0700

**TESTIMONY TO THE COMMITTEE ON FINANCE**

**Tuesday, November 20, 2018**

**IN SUPPORT OF INT. 1143 AND T2018-3275  
PAYMENT PLANS FOR DELINQUENT TAX PAYERS  
OF MODEST MEANS AND LOWER INTEREST RATES  
ONCE PLANS ARE IN PLACE**

The Council of New York Cooperatives & Condominiums (CNYC Inc.) is a membership organization for housing cooperatives and condominiums located throughout the five boroughs of New York City and beyond. More than 170,000 New York families make their homes in our member buildings, which span the full economic spectrum from very modest housing to upscale dwellings.

We write to offer our support for the legislation under consideration today. New Yorkers of modest means often have real trouble meeting the rising costs of living in this city, including property taxes that increase relentlessly. Intro. Int. 1143 will be of great help to home owners in Class One buildings and to those condominiums that qualify for help catching up with arrears through the establishment of payment plans. We would respectfully suggest that qualifying cooperatives should also be included.

We also wholeheartedly support Council Member Dromm's proposal that more affordable interest rates be established for those who have entered into a payment plan. Often it is the City's high interest rates that make it ever more difficult to repay delinquent taxes

Thank you for this opportunity to comment.

Mary Ann Rothman  
Executive Director

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1143 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 11/20

(PLEASE PRINT)

Name: Leo Goldberger

Address: \_\_\_\_\_

I represent: Center for NYC Neighborhoods

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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in favor  in opposition

Date: 11/20/2018

(PLEASE PRINT)

Name: Rabbi Yozzo

Address: \_\_\_\_\_

I represent: Myself

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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in favor  in opposition

Date: 11/20/2018

(PLEASE PRINT)

Name: ARTHUR BURKLE

Address: 379 EAST 149th St, 10th Fl, Bronx, NY 10451

I represent: LEGAL SERVICES NYC

Address: 40 Worth St, Ste. 606, New York, NY 10013

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. 1143 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 11/20/18

(PLEASE PRINT)

Name: Odg Friedheim

Address: 260 E 161 St., Bronx NY

I represent: The Legal Aid Society

Address: 260 E 161 St. Bronx NY

THE COUNCIL  
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Appearance Card

I intend to appear and speak on Int. No. 1143 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 11/20/2018

(PLEASE PRINT)

Name: Jeffrey Shear

Address: 1 Centre St

I represent: NYC DOF

Address: 1 Centre St.

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Appearance Card

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in favor  in opposition

Date: 11/20/2018

(PLEASE PRINT)

Name: JACQUES JIHA

Address: \_\_\_\_\_

I represent: DOF

Address: \_\_\_\_\_