

July 2021

A Civil Defense:

Funding for City-Provided Civil Legal Services Grows

Summary

The city is required to provide a lawyer to New Yorkers charged with a crime who are unable to afford one. In contrast, legal assistance to residents facing civil proceedings in court has historically been limited. Over the past eight years, however, the city has expanded the legal services available to low-income New Yorkers in civil cases, most notably in housing and immigration courts, as well as in other proceedings. In this brief, IBO examines how city spending on civil legal services has risen since fiscal year 2015, as well as increases in the number of cases where assistance is provided. Among our findings:

- Funding for civil legal services has increased by almost 400 percent from \$40 million in fiscal year 2015 to \$197 million in 2021. For fiscal year 2022, the city has budgeted a record \$232 million.
- The biggest driver of this growth is the city's program to assist tenants in housing court. In 2017, the City Council passed and Mayor de Blasio signed a right-to-counsel in housing court law, which provides legal services to tenants in eviction and other housing-related cases. In fiscal year 2022, the city has budgeted \$166 million for this program.
- Until this spring, the city was phasing in the right-to-counsel program, beginning with tenants in high-risk zip codes, with expansion citywide set for 2022. In response to the pandemic, in May the City Council and Mayor amended the law to require immediate implementation citywide.
- The program increased the share of New Yorkers who have access to legal representation in housing court from 1 percent in 2014 to 38 percent in 2020. Evictions conducted by city marshals declined from 21,100 in 2017 to 17,000 in 2019, prior to the pandemic-related eviction moratoriums set by both the federal and state governments in 2020.
- The city has also expanded services available to immigrants experiencing problems with their residency status, and beginning in 2019, implemented a program to assist all low-wage workers regardless of immigration status. The number of immigrant counseling cases increased from 14,700 in 2017, the earliest year with available data, to 28,600 in 2020. The new low-wage worker program provided legal services in 2,200 cases in 2020.

While the funding provided through New York City's various civil legal services has grown substantially in recent years, the largest growth may be yet to come. The federal and state pandemic-related eviction moratoriums are set to expire at the end of July and August, respectively. While the state has created an emergency rental assistance program in an effort to stave off a flood of evictions when that happens, it remains unclear how many New Yorkers will benefit from the program and the need for publicly-funded counsel in housing court may grow dramatically.



While New York City has long provided legal services to city residents who are unable to afford their own attorneys in criminal cases, until recently help for low-income residents in civil cases has been quite limited. However, over the last eight years the City Council and the de Blasio Administration have greatly expanded civil legal services for qualified households in such areas as tenant protection, immigrant rights, and assistance for low-wage workers. In fiscal year 2015, the Administration consolidated nearly all civil legal services within the Human Resources Administration (HRA) and began to rapidly increase funding.

Aside from its general emphasis on issues of inequality, the City Council and the de Blasio Administration have been motivated by the need to deal with some critical policy challenges facing the city. In 2017, the City Council passed and the Mayor signed into law a right to counsel in housing court. This followed a period of rapid growth in the city's homeless shelter population and increasing costs to administer it. Recognizing that many New Yorkers who end up in shelter are evicted from their apartments, the law aims to reduce the number of evictions by providing legal counsel for tenants in negotiating with landlords and, if necessary, in eviction hearings. Prior to this policy, very few tenants facing eviction could afford legal representation; data released by the New York State Unified Court System showed that in calendar year 2014, the rate of legal representation in housing court cases was only 1 percent.

The de Blasio Administration also expanded legal services for immigrants, as the city's immigrant community came under added stress from the hard-line policies of the Trump Administration. These services include comprehensive immigration legal screenings and advice, as well as representation in hearings regarding citizenship, permanent residency, asylum and refugee status, and deportation.

In addition to these programs, the City Council has also added more funding for civil legal services at each Adopted Budget through its own discretionary funding. These City Council allocations are not baselined in the city's budget and instead are each for one year only. Total funding for civil legal services, including both baselined amounts and discretionary funding from the City Council, has increased by almost 400 percent from \$40 million in fiscal year 2015 to \$197 million in 2021. (All references to years are city fiscal years unless otherwise noted.)

Ramping Up Funding. In his first Executive Budget in April 2014, Mayor de Blasio shifted funds for civil legal services from the Department of Homeless Services (DHS), the

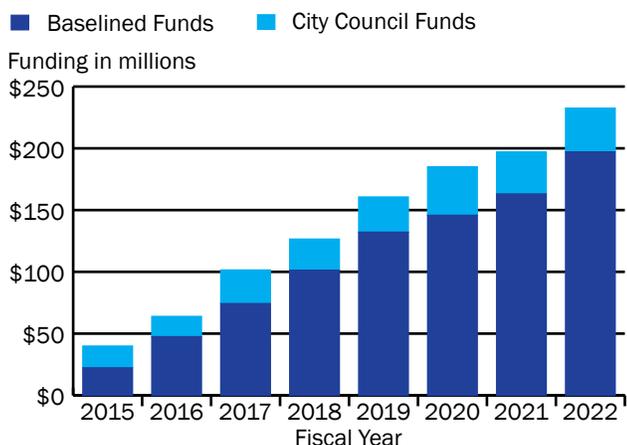
Department of Youth and Community Development (DYCD) and other agencies to HRA, with the shift taking effect in 2015. Prior to this, relatively small amounts of legal services funding were spread out among various agencies. In 2014, before the shift, the largest piece was in DHS, about \$6 million for tenant-related legal services. In total, the de Blasio Administration's Executive Budget for 2015 provided \$15 million to HRA for the provision of legal services. When the 2015 budget was adopted, the City Council added another \$18 million. After more funds were added during the course of the year, total funding for civil legal services in 2015 reached about \$40 million.

From that point on, funding to provide civil legal services to eligible New Yorkers has increased steadily each year, reaching \$161 million in 2019. A key factor driving this increase has been the right-to-counsel in housing court law. The law gives low-income tenants facing eviction the right to free legal representation in housing court. The mandate was to be phased in starting with certain high-need zip codes, and gradually expanded to include the entire city by July 2022. However, faced with the looming threat of evictions due to the pandemic, in May 2021 the Mayor and City Council amended the law to require immediate implementation citywide.

The shutdown of the housing courts in March 2020 due to the onset of the pandemic, as well as federal and state eviction moratoriums, temporarily reduced the need for legal assistance. As a result of the decreased demand and the increasing fiscal challenges facing the city, the April 2020 Executive Budget reduced funding for access to counsel by \$12 million in 2020 and \$9 million in 2021. Similarly, the January 2021 Preliminary Budget reduced funding by an additional \$8 million in 2021. Despite these pandemic-related reductions in funding for legal services in eviction proceedings, the total civil legal services budget continued its upward trajectory, reaching \$185 million in 2020 and \$197 million in 2021.

With passage of the American Rescue Plan Act (ARPA) and an improved city fiscal outlook, the April 2021 Executive Budget added \$23 million in federal funds annually for 2022 through 2025 to increase access to counsel for city residents facing eviction in housing court. (Of the federal funds added, about two-thirds are ARPA funds, which will no longer be available after 2025.) This action increased the annual baseline budget for legal services for tenants to \$166 million, and overall baseline funding for civil legal services to \$197 million. In keeping with recent history, the City Council added another \$35 million for legal services

Increasing Funds for Civil Legal Services



SOURCES: Office of Management and Budget; Financial Management System

NOTES: 2021 and 2022 amounts are as of the 2022 Adopted Budget for the Human Resources Administration. For prior years, the numbers are late-year Human Resources Administration budgets. Excludes administrative costs.

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programs as part of the 2022 Adopted Budget, increasing the total legal services budget to a new high of \$232 million in 2022.

More City Residents Receiving Legal Services. The steady increase in funding for civil legal services has led to a substantial increase in New Yorkers receiving legal assistance. By far the largest share of legal services funds have been allocated for tenant services, accounting for about 80 percent of funds in recent years. As a result, the number of households receiving legal assistance for tenant issues such as eviction, disrepair, and landlord harassment increased from 9,100 in 2015 to 41,100 in 2019. There was a modest decrease to 37,900 in 2020 due to the pandemic-related court shutdown and eviction moratorium. Legal representation rates for tenants appearing in eviction proceedings in housing court increased dramatically, from 1 percent in 2014 to 30 percent in 2018 and 38 percent in 2020.

Legal Services Provided by the Human Resources Administration Have Risen Sharply

Excludes programs funded by the City Council, by fiscal year unless otherwise noted

	2015	2016	2017	2018	2019	2020
Legal Services for Tenants						
Households Receiving Legal Assistance	9,079	14,972	23,638	33,058	41,094	37,919
Legal Representation Rates for Tenants in Housing Court Eviction Proceedings				30%	33%	38%
Eviction Petitions Filed in New York City Housing Court, by calendar year	234,270	233,884	230,071	217,714	171,539	74,833
Residential Evictions Conducted by New York City Marshals, by calendar year	21,988	22,089	21,074	20,013	16,996	3,035
Legal Services for Immigrants, by Type of Service						
Legal Screenings/Legal Advice/Brief Assistance			3,075	3,655	8,041	10,771
Permanent Residency			2,420	3,904	4,211	4,108
Immigrant Workers			2,035	2,033	2,477	2,784
Citizenship			2,544	2,769	2,826	2,594
Removal Defense			216	410	2,098	2,191
Other			1,221	1,155	1,476	1,902
Deferred Action for Childhood Arrivals (DACA)			1,214	1,499	1,226	1,351
Immigrant Youth			487	543	1,067	1,129
Asylum and Refugee Issues			836	963	813	900
Domestic Violence and Trafficking Survivors			650	1,036	1,062	878
Total Immigrant Cases			14,698	17,967	25,297	28,608
Legal Services for Low-Wage Workers, by Type of Service						
Legal Advice/Brief Assistance					842	1,141
Full Legal Representation					958	1,060
Total Low-Wage Worker Cases					1,800	2,201

SOURCES: Human Resources Administration; Office of Civil Justice Annual Reports

NOTES: Legal representation rates are based on 4th quarter of fiscal years 2018 and 2019, and 1st half of fiscal year 2020.

Eviction petitions and evictions are based on calendar years.

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The increase in legal representation in eviction cases appears to be having an impact on the number of city residents being evicted. The availability of legal counsel can help a tenant to head off evictions by negotiating with their landlord or, when necessary, to achieve a favorable outcome in court. The number of eviction petitions filed citywide decreased from 230,100 in calendar year 2017 to 171,500 in 2019, prior to the pandemic shutdowns. Similarly, the number of evictions conducted by city marshals declined from 21,100 in 2017 to 17,000 in 2019.

The city has also been expanding legal services for immigrants experiencing problems related to their residency status. The overall number of immigrant counseling cases increased from 14,700 in 2017, the earliest year with available data, to 28,600 in 2020. A wide variety of services were offered. The number of immigrant families receiving legal screenings or legal advice more than tripled from 3,100 to 10,800 over this period. Perhaps as a reaction to the hard-line immigration policies of the Trump Administration, cases seeking permanent residency increased from 2,400 to 4,100, and the number of removal defense cases rose from about 200 to 2,200. Legal counseling cases involving immigrants experiencing workplace problems increased from 2,000 to 2,800.

In 2019, the city also implemented a separate program to provide legal assistance to all low-wage workers regardless of immigration status. This new program provided legal advice or full legal representation on a range of employment-related issues in 1,800 cases in 2019 and 2,200 in 2020.

Heading Off a Looming Crisis. The sudden loss of hundreds of thousands of jobs due to the pandemic-related shutdown left tens of thousands of New York City residents unable to pay their rent. In an effort to prevent a surge in tenant evictions and homelessness, both the federal

and state governments instituted eviction moratoriums. However, the federal moratorium will end on July 31 and the state moratorium on August 31.

In order to head off a flood of evictions while also providing assistance to struggling landlords, the current state budget established the New York State Emergency Rental Assistance Program (ERAP). Governor Cuomo's office has announced that \$2.7 billion in rental assistance will be available statewide to New Yorkers who are behind on their rent and have suffered financial hardship due to the pandemic. ERAP will pay up to 12 months of past-due rent, 3 months of prospective rent, and 12 months of utility arrears. The program is available to eligible New Yorkers who earn up to 80 percent of area median income regardless of immigration status, and is expected to assist up to 200,000 households statewide, according to the Governor's office, although the program has gotten off to a slow start.

All payments will be made directly to landlords, but those landlords who choose to accept payments for back rent cannot evict the tenant for an additional 12 months. Thus, some landlords might choose not to participate and instead move ahead with eviction proceedings. Depending on how many landlords opt into the state program, a large number of low-income city residents could find themselves facing eviction as the moratoriums expire. In that case many residents might need the assistance of publicly-funded legal counsel when applying for the state rental aid, negotiating with landlords about accepting ERAP funds and, if necessary, defending against evictions in housing court. The coming months are likely to provide the greatest test yet of the effectiveness of the city's right-to-counsel in housing court policy.

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