STATE OF NEW YORK

2742--A

2021-2022 Regular Sessions

IN SENATE

January 25, 2021

Introduced by Sens. KAVANAGH, ADDABBO, BAILEY, BENJAMIN, BIAGGI, BROOKS, GAUGHRAN, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAMINSKY, KAPLAN, KRUEGER, LIU, MAY, MAYER, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SAVINO, SEPULVEDA, SERRANO, SKOUFIS, STAVISKY, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public housing law and the social services law, in relation to establishing a COVID-19 emergency rental assistance program; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "COVID-19 emergency rental assistance program of 2021".

§ 2. The public housing law is amended by adding a new article 14 to read as follows:

ARTICLE XIV

COVID-19 EMERGENCY RENTAL ASSISTANCE PROGRAM

Section 600. Legislative findings.
601. Definitions.
602. Authority to implement emergency rental and utility assistance.
603. Allocation among the city of New York and the respective counties of the state.
604. Eligibility.
605. Application.
606. Documentation.
607. Restrictions on eviction.
608. Payments.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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609. No repayment and assistance not considered income.
610. Notice to tenants in eviction proceedings.
611. Notice to tenants receiving rent demands.
612. Notice to applicants for assistance under the emergency rent relief act of 2020.
613. Outreach.
614. Fair housing obligations.
615. Reports by the commissioner.

§ 600. Legislative findings. The legislature finds that it is in the public interest to ensure that New Yorkers are not rendered homeless or severely financially burdened because of an inability to pay the cost of housing and other necessities due to loss of income, increased necessary out-of-pocket expenses, or difficulty in securing alternative housing related to the widespread outbreak of the coronavirus commonly known as COVID-19. The legislature further finds that providing funding for households to pay rent and utility costs that they would otherwise have difficulty paying will promote the stability and proper maintenance of the rental housing stock and assist communities in recovering from the adverse social and economic effects of the COVID-19 outbreak.

§ 601. Definitions. For the purposes of this article:

1. "Commissioner" shall mean the state commissioner of social services as defined in section two of the social services law.

2. "E-payment application transaction" shall mean a financial transaction conducted on an online payment application. Such applications include but are not limited to: Zelle, Cash App, Paypal, Venmo, Xoom, Circle Pay, Google Pay, Facebook Messenger, Apple Pay, WeChat Pay, AliPay, and KakaoPay.

3. "Fair market rent" shall mean the fair market rent for each rental area as promulgated annually by the United States department of housing and urban development's office of policy development and research pursuant to 42 USC 1437f.

4. "Federal emergency rental assistance program" shall mean the emergency rental assistance funding issued pursuant to section 501 of the Consolidated Appropriations Act of 2021, Pub L. No. 116-260 §501, 888-97 (2021).

5. "Income" shall mean income from all sources of each member of the household, including all wages, tips, overtime, salary, recurring gifts, returns on investments, welfare assistance, social security payments, child support payments, unemployment benefits, any benefit, payment or cash grant whose purpose is to assist with rental payments, any payments whose purpose is to replace lost income, and any other government benefit or cash grant. The term "income" shall not include: employment income from children under eighteen years of age, employment income from children eighteen years of age or older who are full-time students, foster care payments, sporadic gifts, groceries provided by persons not living in the household, supplemental nutrition assistance program benefits, or the earned income tax credit.

6. "Manufactured home tenant" shall have the same meaning as defined by section two hundred thirty-three of the real property law.

7. "Occupant" shall have the same meaning as defined in section two hundred thirty-five-f of the real property law.

8. "Rent" shall mean rent as defined by section seven hundred two of the real property actions and proceedings law and subject to proceedings under article seven of the real property actions and proceedings law, including statutory rents and maintenance fees paid pursuant to a proprietary lease on a co-operative dwelling unit.

9. "Rental arrears" shall mean unpaid rent owed to the landlord that accrued on or after March thirteenth, two thousand twenty, the date of the emergency declaration pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5191(b).

10. "Utility arrears" shall mean unpaid payments to providers of utility services accrued on or after March thirteenth, two thousand twenty, the date of the emergency declaration pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5191(b), for separately-stated electricity, gas, water, sewer, trash removal and energy costs, such as fuel oil.

§ 602. Authority to implement emergency rental and utility assistance. 1. The commissioner is hereby authorized and directed to implement, as soon as practicable, a program of rental and utility assistance for those eligible pursuant to section six hundred four of this article.

2. Such program shall be funded with: (a) all funds received by the state from the federal Emergency Assistance Program; (b) any funds remaining that were allocated from the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 (P.L. 116-136) for the Emergency Rent Relief Act of 2020, pursuant to chapter one hundred twenty-five of the laws of two thousand twenty, such that the sum of such funds actually expended pursuant to such chapter and that such funds reallocated and expended pursuant to this article shall equal one hundred million dollars; and (c) any additional funds allocated by the federal government to the state of New York for emergency rental or utility assistance related to the COVID-19 pandemic.

3. The commissioner shall work with localities throughout the state that have received funds directly from the federal Emergency Rental Assistance Program so that one central point of application shall be made available for any and all federal Emergency Rental Assistance Program funds in the state of New York.

4. The commissioner shall adopt, on an emergency basis pursuant to subdivision six of section two hundred two of the state administrative procedure act, any rules necessary to carry out the provisions of this article.

§ 603. Allocation among the city of New York and the respective counties of the state. The commissioner and each locality in receipt of funds from the federal Emergency Rental Assistance Program shall work jointly to ensure that, in total, the allocation of funds from this program for households within the city of New York or within each county outside the city of New York, whether granted to the state or directly to such localities is no less than ninety percent of the proportional share of all renter households in the state that reside in such city or county, and no more than one hundred ten percent of such proportional share.

§ 604. Eligibility. The commissioner shall promulgate standards for determining eligibility for this program.

1. All households, regardless of immigration status, shall be eligible for rental assistance, utility assistance, or both if the household:

(a) is a tenant or occupant in their primary residence in the state of New York, including both tenants and occupants of dwelling units and manufactured home tenants;

(b) includes an individual who qualifies for unemployment or experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due, directly or indirectly, to the COVID-19 outbreak;

(c) demonstrate a risk of experiencing homelessness or housing instability; and

(d) has a household income at or below eighty percent of the area median, adjusted for household size.

2. For the purposes of this program, income may be considered:

(a) the household's total income for calendar year two thousand twenty; or

(b) the household's current monthly income at the time of application for such assistance. If a household is applying for assistance using current monthly income, the household shall only be eligible for assistance for the months during which they meet the criteria in subdivision one of this section.

3. In addition to the eligibility criteria in subdivision one of this section, the commissioner may promulgate limits on assets as part of any determination of eligibility for this program. The commissioner shall exclude at least one vehicle up to fifteen thousand dollars in value from any calculation made pursuant to this section.

4. The commissioner shall establish preferences in processing applications and allocating funds under this program. Such preferences shall at a minimum prioritize:

(a) households whose income does not exceed fifty percent of the area median income adjusted for household size; and

(b) households within which one or more individuals are unemployed as of the date of the application for assistance and have not been employed for the ninety days preceding such date.

5. The commissioner may also grant preferences for households who meet one of the criteria in subdivision four of this section and:

(a) are tenants of mobile homes or mobile home parks whose arrears have accrued for the land on which the mobile home is located;

(b) include one or more individuals who are victims of domestic violence;

(c) apply jointly with their landlord; or

(d) have eviction cases that are pending on or before February first, two thousand twenty-one.

6. A household may apply for utility assistance, rental assistance, or both.

7. Nothing in this article shall be construed to disqualify applications from tenants of state-funded public housing agencies.

8. No rental assistance provided pursuant to this article shall be duplicative of assistance for rent or rental arrears previously received by the household.

9. Any ambiguity in eligibility criteria promulgated by the commissioner shall be resolved in favor of the applicant when determining eligibility.

10. Any information collected about a household in the process of determining eligibility shall solely be used for the purposes of determining eligibility and shall not be shared with any other governmental agency.

11. An individual full-time college student or a household consisting exclusively of full-time college students is ineligible for this program unless each individual in the household satisfies the following conditions:

(a) the individual shall have established a household separate from his or her parents or legal guardians for at least one year prior to application for admission or shall meet the United States department of education's definition of independent student; and

(b) the individual shall not be claimed as a dependent by his or her parents or legal guardians pursuant to internal revenue service (IRS) regulations.

§ 605. Application. 1. As soon as practicable and no later than March first, two thousand twenty-one, the commissioner shall make an application for the program available on its website. The application shall be available online in English, Spanish, Chinese, Russian, Yiddish, Haitian (French Creole), Bengali, and Italian. The commissioner shall enable applications to be accepted via telephone. The application period shall remain open for a minimum of one hundred eighty days unless all available funding has been allocated prior to the expiration of one hundred eighty days.

2. The commissioner shall designate non-for-profit organizations that shall be permitted to assist households in applying for assistance and such organizations shall be permitted to file applications on behalf of such households.

3. The commissioner shall provide for procedures under which a landlord or owner of a residential dwelling shall be permitted to submit an application for assistance on behalf of a tenant or occupant of such dwelling. Such landlord or owner shall be required to:

(a) obtain the signature of the tenant on such application, which may be documented electronically;

(b) provide the tenant with documentation of such application;

(c) use any payments received pursuant to this article solely to satisfy the tenant's rental obligations to the landlord or owner; and

(d) keep confidential any information or documentation from or about the tenant acquired pursuant to this application process.

§ 606. Documentation. The commissioner shall establish procedures that are appropriate and necessary to assure that information necessary to determine eligibility provided by households applying for or receiving assistance under this article is complete and accurate. Documentation may include but is not limited to: a signed lease, paycheck stubs, earning statements, bank statements, tax records, W-2 or 1099 forms, e-payment application transaction history, written statements from a former or current employer, telephone or in-person contact with a former or current employer, self-attestation by the applicant, or other methods approved by the commissioner. When self-attestation is used as documentation, the applicant shall also attest that the applicant has no other documentation available.

§ 607. Restrictions on eviction. Eviction proceedings for rental arrears that would be eligible for coverage under this program shall not be commenced against a household who has applied for this program unless or until a determination of ineligibility is made. If eviction proceedings are commenced against a household who subsequently applies for benefits under this program, all proceedings for missed rent payments during the covered period shall be stayed until a determination of ineligibility has been made.

§ 608. Payments. 1. Payments shall be made for rental and/or utility arrears accrued on or after March thirteenth, two thousand twenty. No more than twelve months of rental and/or utility assistance, both arrears or prospective, may be paid on behalf of or to any household. No prospective rent may be paid unless or until all rental arrears payments have been made to or on behalf of households who are eligible for this program pursuant to section six hundred four of this article.

2. If all eligible households whose applications are received within sixty days of the start of the application period receive assistance,

the commissioner may pay an additional three months of rental and/or utility assistance for rental or utility arrears accrued after the date of application or prospective rent. No household may receive more than fifteen months of total rental and/or utility assistance. Eligibility for assistance shall be reassessed for each household before rental assistance is issued pursuant to this subdivision.

3. Payments for rental arrears or prospective rent shall be the lesser of the monthly rent for the household or one hundred fifty percent of the fair market rent for the dwelling unit. The rental assistance shall be paid directly to the landlord of the dwelling unit or manufactured home park occupied by the household for the total amount of qualified rental arrears and prospective rental assistance pursuant to subdivision one of this section. Utility assistance shall be paid directly to the utility. The commissioner shall make reasonable efforts to obtain the cooperation of landlords and utility providers to accept payments from this program. Outreach shall be considered complete if a request for participation is sent in writing, by certified mail, to the landlord or utility provider, and the addressee does not respond to the request within twenty-one calendar days after mailing; or, if at least three attempts have been made by phone or email over a twenty-one calendar-day period to request the landlord or utility provider's participation. All such outreach efforts shall be documented.

4. If the landlord or utility provider is uncooperative or unresponsive after outreach efforts are made pursuant to subdivision three of this section, the commissioner may make payments directly to the eligible household for the purpose of enabling the household to make payments to the landlord or utility provider. The commissioner may require documentation from any households receiving such payments that monies received were used in compliance with this program.

5. Acceptance of payment for rental arrears from this program shall constitute agreement by the recipient landlord or property owner:

(a) to waive any late fees due on any rental arrears;

(b) to keep constant the monthly rent due for the dwelling unit such that it shall remain the same as the amount that was due at the time of application to the program for any and all months for which rental assistance is received and for one year after the first rental assistance payment is received; and

(c) not to evict for reason of expired lease or holdover tenancy any household on behalf of whom rental assistance is received for one year after the first rental assistance payment is received. Where the dwelling unit that is the subject of the lease or rental agreement is located in a building that contains four or fewer units, the landlord may decline to extend the lease or tenancy if the landlord intends to immediately occupy the unit for the landlord's personal use as a primary residence or the use of an immediate family member as a primary residence.

§ 609. No repayment and assistance not considered income. Eligible households shall not be expected or required to repay any assistance granted through this program. Assistance granted through this program shall not be considered income for purposes of eligibility for public benefits or other public assistance, but shall be considered a "source of income" for purposes of the protections against housing discrimination provided under section two hundred ninety-six of the human rights law. There shall be no requirement for applicants to seek assistance from other sources, including charitable contributions, in order to be eligible for assistance under this program.

§ 610. Notice to tenants in eviction proceedings. In any eviction proceeding pending as of the effective date of this article and any eviction proceeding filed while applications are being accepted for assistance pursuant to this article, the court shall promptly mail the respondent information regarding how the respondent may apply for such assistance in English, and, to the extent practicable, in the respondent's primary language, if other than English.

§ 611. Notice to tenants receiving rent demands. With every written demand for rent made pursuant to subdivision two of section seven hundred eleven of the real property actions and proceedings law, with any other written notice required by the lease or tenancy agreement, law or rule to be provided prior to the commencement of an eviction proceeding, and with every notice of petition served on a tenant after the effective date of this article and while applications are being accepted for assistance pursuant to this article, the landlord shall provide information regarding how a tenant may apply for such assistance, in a form approved by the commissioner or the office of court administration, in English, and, to the extent practicable, in the tenant's primary language, if other than English.

§ 612. Notice to applicants for assistance under the emergency rent relief act of 2020. The commissioner, in consultation with the commissioner of the division of housing and community development, shall provide notice of how to apply for assistance pursuant to this article to each tenant who applied for assistance under the emergency rent relief act of 2020, pursuant to chapter one hundred twenty-five of the laws of two thousand twenty. Such notice shall be provided in English, and, to the extent practicable, in the tenant's primary language, if other than English.

§ 613. Outreach. The commissioner shall ensure that extensive outreach is conducted to increase awareness of this program among tenants and landlords. The commissioner shall prioritize for outreach communities where the median income of residents is less than eighty percent of the area median income for the region, communities with the highest unemployment rates, and communities that experienced the highest rates of COVID-19 infections during the pandemic, and to the extent practicable, communities with high rates of ownership of rental housing by small landlords. The commissioner shall ensure that such outreach is conducted with materials written in the languages listed in subdivision one of section six hundred five of this article, and to the extent practicable in other languages commonly spoken by residents of those communities required to be prioritized pursuant to this section, as per the most recent American Community Survey from the United States Census Bureau.

§ 614. Fair housing obligations. Nothing in this article shall lessen or abridge any fair housing obligations promulgated by the federal government, state, municipalities, localities, or any other applicable jurisdiction.

§ 615. Reports by the commissioner. The commissioner shall, on or before April twentieth, two thousand twenty-one, and on or before the twentieth of each month thereafter for the duration of the program, submit and make publicly available on its website a report to the governor, the temporary president of the senate, and the speaker of the assembly, indicating the number of households that have applied for rental assistance only, the number of households that have applied for utility assistance only, the number of households that have applied for both rental and utility assistance, the number of applications for each type of assistance approved, the number of applications for each type of

assistance rejected, the status of any pending applications, and the monthly expenditures made pursuant to this article for each type of assistance. Each number required to be included in the report shall be reported as a statewide total from the start of the program though the end of the preceding calendar month and as a subtotal for each county, based on the location of the premises for which the applicant has sought assistance.

§ 3. The social services law is amended by adding a new section 131-bb to read as follows:

§ 131-bb. Proof of eligibility for rental assistance. Under no circumstances shall a local social services district require proof that a court proceeding has been initiated against a tenant as a condition of eligibility for a rent arrears grant or ongoing rental assistance including rental assistance provided pursuant to this article.

§ 4.Section 131-w of the social services law, as added by chapter 41 of the laws of 1992, is amended to read as follows:

§ 131-w. Limitations in the payment of rent arrears. 1. Districts shall not provide assistance to pay rent arrears, property taxes or mortgage arrears for persons not eligible for home relief, aid to dependent children, emergency assistance to needy families with children or emergency assistance for aged, blind and disabled persons, except to persons who are without income or resources immediately available to meet the emergency need, whose gross household income does not exceed one hundred twenty-five percent of the federal income official poverty line and who sign a repayment agreement agreeing to repay the assistance in a period not to exceed twelve months. The districts shall enforce the repayment agreements by any legal method available to a creditor, in addition to any rights it has pursuant to this chapter. The department shall promulgate regulations to implement this section which shall, among other things, establish standards for the contents of repayment agreements and establish standards to ensure that assistance is provided only in emergency circumstances.

2. Notwithstanding the provisions of subdivision one of this section, no repayment agreement shall be required for assistance provided between March seventh, two thousand twenty until the later of December thirty-first, two thousand twenty-one or the date on which none of the provisions that closed or otherwise restricted public or private businesses or places of public accommodation, or required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason in executive order numbers 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13 or 202.14 of two thousand twenty, as extended by executive order numbers 202.28 and 202.31 of two thousand twenty and as further extended by any future executive order, issued in response to the COVID-19 pandemic continue to apply in the service district. Any payment due and owing under this section shall be suspended until the later of December thirty-first, two thousand twenty-one or the date on which none of the provisions that closed or otherwise restricted public or private businesses or places of public accommodation, or required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason in executive order numbers 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13 or 202.14 of two thousand twenty, as extended by executive order numbers 202.28 and 202.31 of two thousand twenty and as further extended by any future executive order, issued in response to the COVID-19 pandemic continue to apply to the service district.

§ 5. Subdivision 1 of section 131-s of the social services law, as amended by chapter 318 of the laws of 2009, is amended to read as follows:

1. **(a)** In the case of a person applying for public assistance, supplemental security income benefits or additional state payments pursuant to this chapter, the social services official of the social services district in which such person resides shall, unless alternative payment or living arrangements can be made, make a payment to a gas corporation, electric corporation or municipality for services provided to such person during a period of up to, but not exceeding, four months immediately preceding the month of application for such assistance or benefits if such payment is needed to prevent shut-off or to restore service. Persons whose gross household income exceeds the public assistance standard of need for the same size household must sign a repayment agreement to repay the assistance within two years of the date of payment as a condition of receiving assistance, in accordance with regulations established by the department. Such repayment agreement may be enforced in any manner available to a creditor, in addition to any rights the district may have pursuant to this chapter.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, no repayment agreement shall be required for assistance provided between March seventh, two thousand twenty until the later of December thirty-first, two thousand twenty-one or the date on which none of the provisions that closed or otherwise restricted public or private businesses or places of public accommodation, or required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason in executive order numbers 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13 or 202.14 of two thousand twenty, as extended by executive order numbers 202.28 and 202.31 of two thousand twenty and as further extended by any future executive order, issued in response to the COVID-19 pandemic continue to apply in the service district.

§ 6. Section 106-b of the social services law, as amended by chapter 81 of the laws of 1995, is amended to read as follows:

§ 106-b. Adjustment for incorrect payments. **1.** Any inconsistent provision of law notwithstanding, a social services official shall, in accordance with the regulations of the department and consistent with federal law and regulations, take all necessary steps to correct any overpayment or underpayment to a public assistance recipient; provided, however, that a social services official may waive recovery of a past overpayment, in the case of an individual who is not currently a recipient of public assistance, where the cost of recovery is greater than the cost of collections as determined in accordance with department regulations consistent with federal law and regulations. For purposes of this section, overpayment shall include payments made to an eligible person in excess of his needs as defined in this chapter and payments made to ineligible persons (including payments made to such persons pending a fair hearings decision). The commissioner shall promulgate regulations to implement procedures for correcting overpayments and underpayments. The procedures for correcting overpayments shall be designed to minimize adverse impact on the recipient, and to the extent possible avoid undue hardship. Notwithstanding any other provision of law to the contrary, no underpayment shall be corrected with respect to a person who is currently not eligible for or in receipt of home relief or aid to dependent children, except that corrective payments may be made with respect to persons formerly eligible for or in receipt of aid

to dependent children to the extent that federal law and regulations require.

2. Notwithstanding the provisions of subdivision one of this section, no collection of overpayments shall be conducted, regardless of when the overpayment accrued, until the later of December thirty-first, two thousand twenty-one or the date on which none of the provisions that closed or otherwise restricted public or private businesses or places of public accommodation, or required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason in executive order numbers 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13 or 202.14 of two thousand twenty, as extended by executive order numbers 202.28 and 202.31 of two thousand twenty-one and as further extended by any future executive order, issued in response to the COVID-19 pandemic continue to apply in the service district.

§ 7. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this act directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid clause, sentence, paragraph, subdivision, section or part had not been included herein.

§ 8. This act shall take effect immediately and shall expire on the later of December 31, 2021 or the date on which none of the provisions that closed or otherwise restricted public or private businesses or places of public accommodation, or required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason in executive order numbers 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13 or 202.14 of two thousand twenty, as extended by executive order numbers 202.28 and 202.31 of two thousand twenty and as further extended by any future executive order, issued in response to the COVID-19 pandemic continue to apply anywhere in the state, when upon such date the provisions of this act shall be deemed repealed; provided that the state commissioner of social services shall notify the legislative bill drafting commission upon the date on which none of the provisions that closed or otherwise restricted public or private businesses or places of public accommodation, or required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason in executive order numbers 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13 or 202.14 of two thousand twenty, as extended by executive order numbers 202.28 and 202.31 of two thousand twenty and as further extended by any future executive order, issued in response to the COVID-19 pandemic continue to apply anywhere in the state, in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.