

**Under the Table:
Illegal Rent Gouging in the Advantage
Program**



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OFFICE OF THE NEW YORK CITY PUBLIC ADVOCATE

Bill de Blasio

Public Advocate for the City of New York

Prepared By:

DeNora M. Getachew, Esq.

Policy Director

Jacqueline Sherman, Esq.

General Counsel

Ursulina Ramirez

Senior Policy Associate

Irum Taqi, Esq.

Deputy General Counsel

Wiley Norvell

Press Secretary

Jeremy Buchalski

Brooklyn Law Fellow with the Office

EXECUTIVE SUMMARY

The Department of Homeless Services' Advantage program is a City-funded subsidy program that assists many homeless New Yorkers in their transition from shelter to permanent and independent housing. In recent months, tenants enrolled in Advantage have contacted the Office of the Public Advocate to report being pressured by their landlords to pay additional rent, beyond what is required under the terms of the program. This practice is colloquially referred to as a "side-deal," and may in some instances even rise to the level of rent gouging, a crime under state law which prohibits payments in excess of the contracted rent.

Many of the individuals who contacted the Public Advocate had also alerted the Department of Homeless Services that they were being pressured to pay additional rent, but found no recourse with the agency to stop the practice. Fear of eviction and returning to a shelter compelled many Advantage recipients to pay exorbitant amounts under the table.

The Advantage program is currently the City's principal tool for helping homeless families and individuals get back on their feet. The Department of Homeless Services' budget for Fiscal Year 2011 includes more than \$130 million for rental assistance and housing placement. Such a substantial investment requires strong oversight to ensure side-deals do not undercut the effectiveness of programs like Advantage. Currently, 14,000 individuals participate in Advantage; once they have passed through the program, they are responsible for paying their full rent without the Advantage subsidy. This is their singular chance at independence, which may be undermined when landlords exact additional payments from tenants and diminish their ability to save their earnings.

The Office of the Public Advocate has investigated the prevalence of side-deals by interviewing a sample of Advantage program participants. The key findings of the Office's investigation are:

- 28% (19 individuals) of respondents stated they have been pressured by their landlord to make payments beyond their contracted rent (also known as side-deals);
- In 89% (17 respondents) of cases where a landlord pressured a program participant for a side-deal, the individual paid the additional amount;
- Respondents reported paying between \$30 to \$500 per month more than the rent specified in their Advantage leases;
- If the Advantage recipients were able to save the additional monthly payments over the course of the maximum two years of the Advantage subsidy, on average these individuals could have saved approximately \$4,272, in addition to accrued interest, to help them afford permanent housing when the subsidy expires;
- 35% (6 respondents) of individuals who were pressured to enter side-deals stated that they were also pressured for additional payments prior to moving in. These payments reportedly ranged from \$30-\$2,400; and

- 35% (6 respondents) of individuals who paid side-deals reported having spoken with someone at the Department of Homeless Services or another person about the landlord pressuring them to make additional payments. All of them continued to pay after notifying the Department.

These findings indicate a pattern of abuse that may make it harder for Advantage participants when they exit the program to have substantial savings and increases the likelihood that they will return to the shelter system. The Public Advocate recommends that the Department undertake the following steps to reduce the frequency and impact of side-deals:

Educate Participants

- The Department should disseminate a one page-information sheet during the lease signing process detailing what constitutes a side-deal, tenants’ legal rights in the face of side-deals, and steps tenants can take if they are confronted with an illegal side-deal.

Participants Must Report Side-deals

- The Department should develop a side-deals complaint form, which should be provided to participants by posting it on the Department’s website and should be distributed by Homebase providers.
- The Department should create a hotline to allow participants to report the circumstances that led them to believe their landlord was requesting an illegal side-deal.

Inform Tenants about Legal Options

- The Department should inform participants about their right to take appropriate legal action against landlords who coerce participants to enter into side-deals and the documentation necessary to substantiate such claims.

Department Must Document Reports

- The Department should develop internal protocols to document the incidence of side-deals in the Advantage program.

Punish Bad Landlords

- The Department must enforce its existing policy banning landlords who solicit side-deals from participating in Advantage in the future. The Department should also inform the New York City Housing Authority, the Department of Housing Preservation and Development, and any other relevant agencies, about such landlords to ensure that the landlords are not allowed to participate in the Section 8 program or any other City, State, or federal housing subsidy program.
- The Department should consider initiating affirmative litigation against landlords to hold them accountable for their actions. This would deter landlords from trying to coerce tenants to enter into side-deals in the future.

Department Should Initiate a Full-Scale Internal Review of the Advantage Program

- The Department should initiate a full-scale review of Advantage, which would allow the agency to identify and address the legal and programmatic gaps in the Advantage program that lead to the incidence of side-deals.

Introduction

Every New Yorker deserves access to a home that is safe, secure and affordable. This is especially true for New York City's ("City") previously homeless individuals and families. The Department of Homeless Services' ("Department") Advantage Program ("Advantage" or the "Program") is a City-funded subsidy program, ranging from one to two years in duration, that assists many homeless New Yorkers in their transition from shelter to permanent and independent housing. Over the past three years, the Advantage program has become the City's primary strategy for moving homeless families out of shelter and into permanent housing by helping move approximately 18,000 families out of the shelter system.¹

The Department's failure to track Program participants and report about the Program and its capacity to lead low-income individuals and families on a route to stable permanent housing once the subsidy expires raises many questions about its overall success. Additionally, recent changes to Advantage which require a higher income contribution and stricter work requirements reveal a disconnect between the Program's policy and the current economic climate.

In recent months, the Office of the Public Advocate ("Office") has been notified about the rising prevalence of landlords that participate in the Advantage program pressuring Advantage recipients to make additional payments in excess of the contracted rent amount. This practice is colloquially referred to as "side-deals," and may in some instances rise to the level of rent gouging, a crime under state law which prohibits payments in excess of the contracted rent.

The Office initially became aware of the issue of side-deals through its constituent services helpline. Side-deals were later discussed in the New York City Council's legislative briefing document prepared for a hearing on Advantage before the General Welfare Committee on April 15, 2010.²

Most recently, New York City Comptroller John Liu audited Advantage, which, among other identified issues with the Program, raised additional concerns about side-deals and outlined recommendations for how to reduce their occurrence.³ The Department responded to the Comptroller's audit by stating that "DHS informs the tenant not to pay the side deal and connects the family with their Homebase provider for assistance." Further, the Department stated that "[n]evertheless, to ensure that all parties are aware of the prohibition on side deals and the control measures to combat them, DHS will reinforce this prohibition prior to lease signing by including it with the certification letter that shelter clients will receive notifying them of their eligibility under the new program. DHS also will consider ways to increase clients' awareness of Homebase services prior to and at the lease signing."⁴

¹ Robert Hess, "Oversight: Update on DHS' Advantage and Homebase Programs," City Council Hearing, General Welfare Committee (Apr. 15, 2009), *available at* <http://www.nyc.gov/html/dhs/downloads/pdf/testimony/ty041510.pdf>, *hereinafter* ["*Hess Testimony*"].

² See "Oversight: Update on DHS' Advantage and Homebase Programs," Briefing Paper of the Legislative Division, New York City Council, *hereinafter* ["*Legislative Division Briefing Paper*"].

³ H. Tina Kim, "Audit Report on the Monitoring of the Work Advantage Program by the Department of Homeless Services," City of New York Office of the Comptroller, July 15, 2010, *hereinafter* ["*DHS Comptroller Audit*"]

⁴ *DHS Comptroller Audit at 18.*

With this as a backdrop, the Public Advocate’s Office conducted a further investigation into the prevalence of side-deals and the detrimental impact they have on Advantage participants and their ability to successfully transition to long-term, independent housing once the subsidy expires. This policy brief analyzes the frequency and effect of side-deals based on interviews with a sample of Advantage participants and provides recommendations to the Department about how to better address this issue in the long-term.

Understanding the Advantage Program

Homelessness among New York City families has steadily increased over the past four years, its disproportionate effect on those at the lowest income levels has been exacerbated by the recent economic downturn.⁵ The Department, using Advantage (and its predecessor Housing Stability Plus), has worked to move homeless families and individuals from shelters to stable housing as quickly as possible.

Several studies have shown that providing subsidized housing to those individuals exiting shelters, as opposed to requiring them to secure housing without support, results in lower shelter return rates.⁶ In addition, housing subsidies are often more cost-efficient than providing shelter. For example, in New York City, housing subsidy programs cost, on average, less than \$1,000 per month, in contrast to \$3,000 per month for shelter rooms for homeless families with children.⁷

Several cities around the country have successfully used short-term subsidy programs to help homeless families transition from shelter to permanent housing and reduce their homeless populations.⁸ After San Francisco, California and Hennepin County, Minnesota, two of the first jurisdictions to use the short-term subsidy model, experienced decreases in their homeless populations, cities like Portland, Oregon, Denver, Colorado, and Norfolk, Virginia established programs which adopted similar guidelines.⁹

In 2004, New York City developed a short-term housing subsidy program using a model similar to the programs mentioned above.¹⁰ Originally called Housing Stability Plus (“HSP”), HSP was later changed, and renamed Advantage. Soon after the implementation of HSP, several flaws in the program became apparent. In particular, HSP required participants to receive public

⁵ See Mayor’s Management Report (Sept. 2010), *available at* http://www.nyc.gov/html/ops/downloads/pdf/_mmr/dhs.pdf

⁶ See Coalition for the Homeless, “Reforming New York City’s Rent Subsidy Program for Homeless Families” (Feb. 7, 2007), *available at* http://coalhome.3cdn.net/8ac2834ec1d27742c9_pfm6b5aq8.pdf.

⁷ See Mayor’s Management Report (Sept. 2010), *available at* http://www.nyc.gov/html/ops/downloads/pdf/2070_mmr/0910_mmr.pdf.

⁸ Mary Cunningham, “Preventing and Ending Homelessness – Next Steps,” Urban Institute, Metropolitan Housing and Communities Center (Feb. 2009), *available at* http://www.urban.org/UploadedPDF/411837_ending_homelessness.pdf.

⁹ *Id.* “Community Snapshot – Hennepin County,” The National Alliance to End Homelessness (July 2005), *available at* <http://www.endhomelessness.org/content/article/detail/945>; “Community Snapshot – San Francisco,” The National Alliance to End Homelessness (July 2005), *available at* <http://www.endhomelessness.org/content/article/detail/942>.

¹⁰ See 2008 Income and Affordability Study, New York City Rent Guidelines Board, *available at* http://www.housingnyc.com/downloads/research/pdf_reports/ia08.pdf; *see also* “Evaluating the Fiscal Impact of the Housing Stability Plus Program,” New York City Independent Budget Office (Mar. 2005), *available at* http://www.nyc.gov/html/records/pdf/govpub/1672hsp_fbmar2005.pdf, *hereinafter* [“*IBO Report*”].

assistance, which meant that they could no longer receive the subsidy if their income level increased beyond eligibility levels for public assistance.¹¹ In addition, because the rent contribution increased by 20% each year during the five-year subsidy, if participants did obtain employment, the reduction in their public assistance grants as a result of their increased earnings, coupled with the increase in rent sometimes left them paying as much as 50% of their income toward rent.¹²

In 2007, the Department changed HSP to Advantage which improved upon the underlying policies of HSP by eliminating the disincentive to work and save money. Unlike HSP, Advantage allowed low-income families who were not receiving public assistance to participate. The program also required participants to secure employment, ensuring that participants were progressing toward self-sufficiency.¹³ In addition, the five-year subsidy was reduced to a maximum of two years and the program required a \$50 monthly contribution toward rent.¹⁴ Although there have been no studies directly targeted at determining the efficacy of Advantage, similar initiatives in Denver and Portland helped those cities reduce their homeless populations.¹⁵

Currently over 14,000 individuals participate in the Advantage program.¹⁶ Until August 1, 2010, Advantage was subdivided into Work Advantage, Children's Advantage, and Fixed-Income Advantage, the latter two of which provided one-year subsidies and then clients were prioritized for Section 8.¹⁷ Both Children's Advantage and Fixed-Income Advantage provided a full rental subsidy for one year for those in shelters. Fixed-Income Advantage applied to those who were on a fixed income, such as Social Security Disability Insurance ("SSDI") and Children's Advantage was for ACS-designated families.¹⁸ The Department recently secured approval from the New York State Office of Temporary and Disability Assistance, the state agency that oversees Advantage, to increase the rent contribution and work requirements, and eliminated all subdivisions of Advantage except Work Advantage.

In the current configuration of the Program, families and individuals must reside in shelter for at least sixty days. In addition eligible participants must either be in receipt of public assistance¹⁹ or

¹¹ See *supra* note 10 at 10.

¹² See "Evaluating the Fiscal Impact of the Housing Stability Plus Program," New York City Independent Budget Office (Mar. 2005), available at http://www.nyc.gov/html/records/pdf/govpub/1672hsp_fbmar2005.pdf, hereinafter ["*IBO Report*"].

¹³ See "Advantage – Program Overview," New York City Department of Homeless Services, available at http://www.nyc.gov/html/dhs/html/rent/advntNY_about.shtml.

¹⁴ See "DHS Unveils Reform Package Centering on Work and Self-Sufficiency," New York City Department of Homeless Services, available at <http://www.nyc.gov/html/dhs/html/press/pr042507.shtml>.

¹⁵ Denver and Portland both experienced a 13% decrease in homelessness (13%) from 2005 to 2007, while chronic homelessness in Denver decreased by 36% during the same period. "Community Snapshot – Denver," The National Alliance to End Homelessness (August 2007), available at <http://www.endhomelessness.org/content/article/detail/1769>; "Community Snapshot – Portland," The National Alliance to End Homelessness (June 2007), available at <http://www.endhomelessness.org/content/article/detail/1785>.

¹⁶ See *Hess Testimony*.

¹⁷ *Legislative Division Briefing Paper* at pg. 3.

¹⁸ *Id.*

¹⁹ Public Assistance, commonly known as "welfare," is funded through the federal Temporary Aid to Needy Families ("TANF") program. See "HRA – Temporary Cash Assistance," available at <http://www.nyc.gov/html/hra/html/directory/cash.shtml>.

have income levels at or below 200% of the federal poverty level.²⁰ Eligibility for the first year of the Program requires participants to work at least twenty hours per week and participate in an additional fifteen hours of housing search (prior to signing the initial Program lease) or other work activities approved by the Human Resources Administration.²¹ In addition, in the first year participants must contribute 30% of their gross household income to rent,²² a steep increase from the previous Advantage program.²³ Participants who abide by these conditions in the first year (or at least ten months) of the Program are eligible to apply for a second year of the subsidy. During the second year participants are required to work at least thirty-five hours per week and pay 40% of their gross household income towards rent.²⁴

Once an individual meets the eligibility requirements for Advantage, he or she must find a landlord who is participating in the Program. Once the participant finds an eligible apartment, the landlord or broker must provide the Department with a completed “linking information fact sheet.”²⁵ The Department then verifies the apartment has been inspected, and once this is complete, the Department schedules a lease signing at a Department site.²⁶ During the lease signing, participants, landlords and brokers are explicitly instructed by a Department representative that side-deals are prohibited.²⁷

The Department coordinates its efforts with several community partners to provide Homebase services, which include financial assistance and budgeting advice, job search and placement assistance, as well as assistance in obtaining public benefits.²⁸ Homebase was designed to prevent homelessness at the community level, but in 2007 the Department modified the program to help divert households from the shelter system at shelter intake.²⁹ This transition, in conjunction with changes to Advantage, refocused a major part of Homebase to provide Advantage participants with assistance in obtaining housing.

Problems with Advantage – “Side-deals”

Despite the Program’s ability to help formerly homeless individuals transition out of the City’s shelter system, several concerns regarding the Advantage program have been raised over the past few years. In particular, issues have been raised about the habitability of apartments leased through the Program, including accounts of Program participants living in foreclosed homes, illegally converted apartments, and buildings with multiple housing code violations.³⁰

²⁰ See “Advantage – Program Overview,” *supra* note 8.

²¹ See *Hess Testimony*.

²² See “Advantage – Program Overview,” *supra* note 8.

²³ See 2008 Income and Affordability Study, *supra* note 5 at 10.

²⁴ See “Advantage – Program Overview,” *supra* note 8.

²⁵ See “Field Guide: Rapid Rehousing” New York City Department of Homeless Services, HomeBase, *available at* http://www.nccch.org/attachments/articles/391/Homebase_Rapid_Re-Housing_Field_Guide.pdf

²⁶ *Id.*

²⁷ *Id.*

²⁸ See “Homebase,” New York City Department of Homeless Services, *available at* <http://www.nyc.gov/html/dhs/html/atrisk/homebase.shtml>.

²⁹ *Legislative Division Briefing Paper*, *supra* note 13.

³⁰ Robert Gearty and Tina Moore, “City put homeless into foreclosed homes and illegally converted apartments,” N.Y. Daily News, Jan. 31, 2010, *available at* http://www.nydailynews.com/ny_local/2010/01/31/2010-01-31_city_put_homeless_into_foreclosed_homes_and_illegally_converted_apartments.html.

A particularly disturbing issue is the incidence of side-deals occurring within the Program. Comptroller John Liu's recent audit cited six reported cases of side-deals,³¹ but additional evidence suggests that the problem is more widespread. For example, recent testimony by the Legal Aid Society before the City Council³² and findings from a recent report by the Coalition for the Homeless cited anecdotal accounts of additional incidents of side-deals.³³

Comptroller Liu's audit cites several reasons why tenants are vulnerable to side-deals and why reported instances are not addressed effectively. First, while homeless shelters are required to assist clients in finding suitable housing, the shelters "have a vested financial interest in getting clients to leave as quickly as possible, since they lose money if a client remains in the shelter after a certain period."³⁴ This is commonly known as the Performance Incentive Program, which rewards providers for high placement rates in permanent housing and reduces the budgets of those that fail to meet expectations.³⁵ In addition, Comptroller Liu's audit indicates that shelters encourage clients to enter into side-deals, stating that side-deals occur because apartments cannot be found for the allocated voucher amounts. This finding reiterates testimony by the Legal Aid Society and statements made to Homebase providers.³⁶

Advantage Landlords' and Participants' Obligations

In order to take advantage of the Program's rental assistance, landlords must sign a lease that requires them not to "demand, request or receive" any payments in addition to the authorized rental amount in the lease.³⁷ In addition, landlords must sign a separate agreement with the Department, which "expressly prohibit[s]" landlords "from charging [participants] any amount above the rent or fees stipulated... for the entire period of the Lease," and explicitly states that "'side-deals' are specifically prohibited."³⁸ Participants sign a similar agreement with the Department, which instructs them not to pay "additional monies" to their landlords beyond their rent contribution, and to report any such requests to the City, but provides no specific instructions on how to report them.³⁹

³¹ *DHS Comptroller Audit at 14*

³² Steven Banks, "The City's Advantage, Home Base, and Shelter Rent Programs," The Legal Aid Society (April 15, 2010), *hereinafter* ["*Legal Aid Testimony*"].

³³ Giselle Routhier, "Revolving Door: How the Bloomberg Administration is Putting Families at Risk of Returning to Shelter," Coalition of the Homeless (July 20, 2010), *available at* <http://www.coalitionforthehomeless.org/pages/revolving-door>.

³⁴ *DHS Comptroller Audit at 12*.

³⁵ See Robert Hess, "Update: Uniting for Solutions Beyond Shelter," New York City Department of Homeless Services (Sept. 9, 2009), *available at* <http://www.nyc.gov/html/dhs/downloads/pdf/testimony/ty090908.pdf>; *see also* "Commissioner Gibbs Outlines Steps to Prepare for Summer Increases in Family Homelessness," New York City Department of Homeless Services (April 30, 2003), *available at* <http://www.nyc.gov/html/dhs/html/press/pr043003.shtml>.

³⁶ *Legal Aid Testimony, supra* note 26.

³⁷ "Advantage Program Rider to Apartment Lease," New York City Department of Homeless Services, *available at* http://www.nyc.gov/html/dhs/downloads/pdf/advnt_LeaseRider.pdf, *hereinafter* ["*Advantage Program Lease Rider*"].

³⁸ "Advantage Program Landlord Statement of Understanding," New York City Department of Homeless Services, *available at* http://www.nyc.gov/html/dhs/downloads/pdf/landlords_Understanding.pdf.

³⁹ "Advantage Program Participant Statement of Understanding," New York City Department of Homeless Services, *available at* http://www.nyc.gov/html/dhs/downloads/pdf/participants_%20Understanding.pdf.

Legal Rights of Tenants Facing Side-Deals

Side-deals may violate civil and criminal laws.⁴⁰ A tenant who has been pressured to enter into a side-deal may have a defense to an eviction action. The Department has stated that it refers tenants to its anti-eviction legal service providers and has helped tenants “successfully defen[d] against nonpayment or eviction proceedings *based on* (emphasis in the original) the prohibition against side-deals in the lease and related documents.”⁴¹ In a recent eviction case in Bronx County a tenant successfully recovered side deal payments she was pressured to make as well as additional monetary damages. The case involved a domestic violence victim with two young children who obtained rental assistance under HSP, the predecessor program to Advantage.⁴² After she signed a lease to move into the subsidized apartment, the landlord refused to give her the keys to the apartment unless she signed a second lease reflecting a higher rent payment.⁴³ Rather than return to a shelter, she signed the lease, rendering her an unwilling participant in a side deal. Ironically, the case only made it to court because the landlord sought to recover rent arrears based on the “side-deal” lease. The second lease was ultimately the only proof she had to recover the additional payments she made.

A side may also subject the offending landlord to criminal liability for rent gouging. State criminal law prohibits landlords from soliciting or accepting “under the table” payments beyond the rental amount with the understanding that such payments would impact the tenant’s likelihood of obtaining or remaining in the apartment.⁴⁴ While there are few reported cases of rent gouging, the law could apply to landlords who pressure tenants to pay side-deals.

However, Advantage participants may face difficulties in obtaining legal protections as most side-deals are paid in cash and result from an extreme imbalance in bargaining power between landlords and participants. Many participants appear to see these payments as their only alternative to returning to the shelter system. Further, many participants do not possess the awareness or the resources necessary to pursue legal remedies on their own.

Public Advocate’s Advantage Questionnaire

In light of the foregoing, the Office conducted further investigation this to better understand the circumstances that lead to side-deals and why they persist. The findings of this investigation

⁴⁰ The New York City Rent Stabilization Law and Code prohibits property owners from charging rents in excess of the legally regulated rent of rent stabilized apartments. NYC R.S.L. § 26-512(a). Landlords that engage in side-deals may be liable for treble damages as a result of overcharging participants, imposing a penalty of three times the amount of the rent overcharge. NYC R.S.L. § 26-516(a). Moreover, tenants may be able to initiate an affirmative civil claim against the landlord for breach of contract.

⁴¹ *DHS Comptroller Audit* at 14.

⁴² *Assoc. v. CW*, 2009 NY Slip Op 51617(U) (Civ Ct, Bronx County 2009)

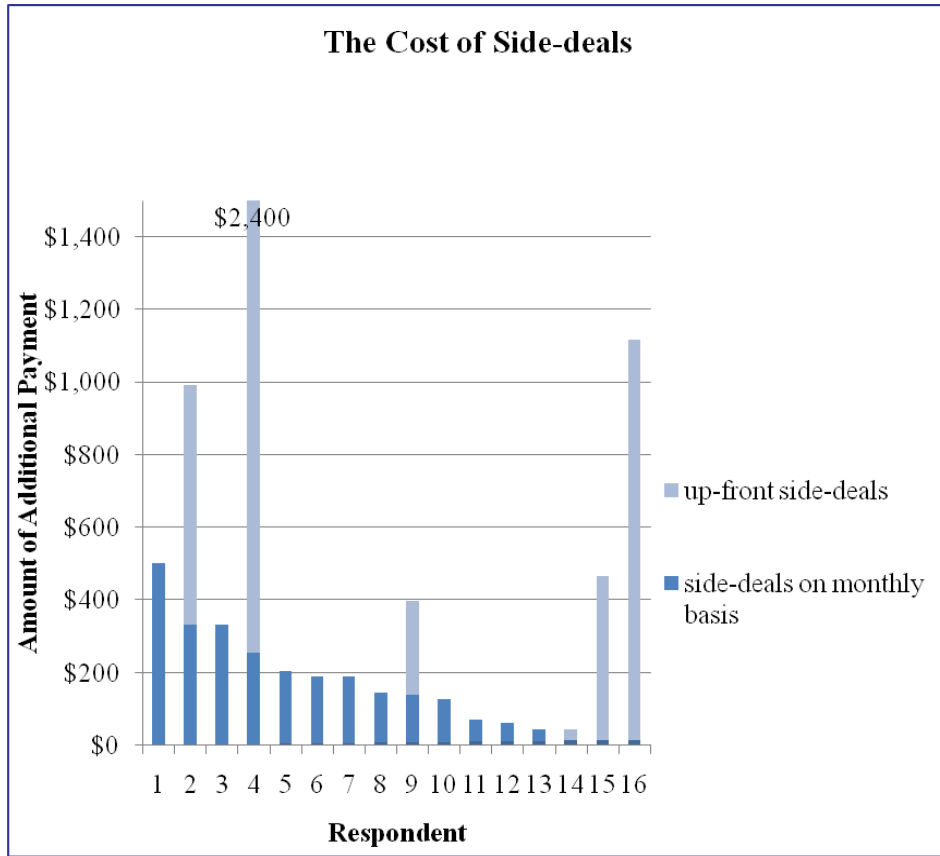
⁴³ *Id.*

⁴⁴ Rent gouging occurs when a person solicits, accepts, or agrees to accept consideration, “in addition to lawful rental and other lawful charges, upon an agreement or understanding that the furnishing of such consideration will increase the possibility that any person may obtain or renew the lease, rental or use of such property, or that a failure to furnish it will decrease the possibility that any person may obtain or renew the same.” N.Y. Penal Law § 180.55-57. Depending on the amount of the requested payment, rent gouging may be classified as a Class B or Class A misdemeanor, N.Y. Penal Law § 180.55-56, which carry potential sentences of up to three months and one year in prison, respectively, N.Y. Penal Law § 70.15, or even a Class E felony, N.Y. Penal Law § 180.57, which carries a potential sentence of up to four years in prison, N.Y. Penal Law § 70.00.

provided additional evidence of the need for constructive strategies to approach the problem of side-deals beyond individual legal remedies.

Findings and Analysis

To better understand the prevalence and impact of side-deals, the Office conducted short



interviews with a sample of Advantage participants.⁴⁵ Interviewers asked a series of questions about the participants’ rent requirements and their experience, if any, with side-deals. Full copies of the questionnaire and interview script are included in the appendix.

The financial burden of side-deals
Of the 181 individuals contacted by the Office, sixty-nine (69) individuals completed the questionnaire, which equates to a return rate of approximately 38%.

Of the completed questionnaires 28% (19 respondents) replied “yes” to the question “has your landlord ever pressured you for additional payments outside your lease agreement (also referred to as a ‘side-deal’)?” In 89% of these cases (or 17 respondents), when the landlord pressured an individual for a side-deal, the individual paid the additional fee.⁴⁶

Respondents to the questionnaire reported paying between \$30 and \$500 per month more than the rent specified in the Advantage leases. This payment equates to an average of an additional

⁴⁵ Over the course of one and half weeks beginning August 24, 2010, the Office contacted 181 individuals who self-identified as Advantage program participants. These individuals came from one of two sources: they were either individuals who contacted the Office’s constituent services helpline, or their names and telephone numbers were provided to the Office by New York Communities for Change (NYCC). NYCC collected these names at various community events; many of the individuals were on a Section 8 waiting list. The Office recognizes the limits of the sample size, and does not guarantee that the sample or the findings can be generalized to the entire Advantage population.

⁴⁶ The questionnaire made the assumption that because a landlord was pressuring an individual for a side-deal the participant was paying these additional payments. This assumption was incorrect and was not discovered until post-data collection.

\$178 per month, as detailed in the graph on page 10. If these additional monthly payments were saved over the maximum two-years of the Advantage program, on average these individuals could have saved approximately \$4,272, in addition to accrued interest, to help them afford permanent housing once the subsidy expires.

Although not explicitly asked, some participants stated that their landlord pressured them for additional money at different points during their tenancy. Some participants reported that their landlords pressured them to pay an additional monthly fee, while others stated that landlords pressured them for additional payments before they moved into the apartment.⁴⁷ In 35% of the cases (6 respondents) participants who paid side-deals stated that they were pressured for additional payments prior to moving in. These payments reportedly ranged from \$30 to \$2,400. Three individuals, who paid additional fees prior to moving into the apartment, also paid additional monthly fees. The graph on page 10 shows the amount of additional payments Advantage participants reported that they paid monthly and prior to moving in.⁴⁸

“I know a lot of people going through the same thing”-
response to “Why haven’t you reported the additional payments?”

“I actually have nothing in my savings account”- response to “How have these additional payments affected your ability to save money?”

Fifty-nine percent of the individuals (10 respondents) who were pressured to pay side-deals stated that they believed that they had no option other than to pay the additional fee. Thirty-five percent of the individuals (6 respondents) who paid side-deals reported having spoken with someone at the Department or someone else about pressure they received from their landlord to make additional payments.⁴⁹

Respondents to our questionnaire indicated that side-deals negatively affected their ability to save money and cover other essential costs, such as utilities. Fifty-nine percent of the individuals (10 respondents) who reported entering into a side-deal stated that it affected their ability to save money, and similarly, 65% of the individuals (11 respondents) who reported entering a side-deal stated that the pressure for additional payments affected their ability to pay utilities.

Conclusions and Recommendations

These findings suggest that illegal side-deals are occurring and participants either do not know how to report them or do not feel comfortable reporting them. Although landlords must agree in writing not to pressure participants to make side payments, relatively few participants faced with side-deals seem to hold landlords to this commitment. Worse, side-deals are rarely documented and mainly are paid in cash. Participants are sometimes forced to make these payments in

⁴⁷ Advantage participants did not state if this was during or after the lease signing but stated “landlord asked for money upfront” or “before I moved into the apartment.”

⁴⁸ The “Cost of Side-deals” graph shows sixteen respondents because one respondent did not state how much he/she pays.

⁴⁹ Respondents who stated they had reported to the side-deal to the Department or anyone else were not explicitly asked about what they told the Department and what the Department response was or who they spoke to explicitly. Unprompted, a couple individuals stated that the Department told them “not to pay” the additional payments.

exchange for necessary repairs, or even to simply gain access to the apartments they plan to lease under the Program.⁵⁰

Side-deals undermine the goals of the Advantage program. If participants are forced to spend money that they earn, averaging approximately \$1,140 per month,⁵¹ on illegal payments to landlords, it leaves less to pay for necessities, like food, clothing, and utilities, and less to save to support themselves after their rental assistance expires. Without an appropriate mechanism to track landlords that engage in side-deals and a commitment to hold them accountable,⁵² landlords will continue to pressure participants to make these payments.

There are several steps that the Public Advocate recommends the Department undertake to reduce the number and impact of side-deals. These recommendations enhance some of the recommendations introduced in Comptroller Liu's recent audit of the Advantage program:

Educate Participants

The first step towards preventing side-deals is to ensure that Program participants understand what constitutes an illegal side-deal. While Advantage documents mention the prohibition against side-deals, participants who are pressured to make additional payments may not be able to identify the situation as a side-deal. Additionally, participants may be coerced into paying extra because it is a better option than returning to a shelter.

Providing Program participants with additional information about side-deals can be quickly and easily incorporated into the Advantage lease signing process. The Department should disseminate a one page-information sheet during the lease signing process detailing what constitutes a side-deal, tenants' legal rights, and steps tenants can take if they are confronted with an illegal side-deal. Since side-deals may be very difficult to prove without documentary evidence, participants should be encouraged to document any payments they are requested to make and, where possible, to make payments with money orders and/or obtain and preserve receipts.

Participants Must Report Side-deals

There is a disconnect between what seems to be the prevalence of side-deals and the number of reported cases. Although the Program documents instruct participants to report side-deals to the Department, Homebase providers have been one of the primary contact points for participants.⁵³ The Department should foster an environment of open communication between the agency and Program participants.

To this end, the Department should develop a side-deals complaint form, which should be provided to participants by posting it on the Department's website and should be distributed by

⁵⁰ These instances were noted in the interviews with some Advantage participants.

⁵¹ Giselle Routhier, "Revolving Door: How the Bloomberg Administration is Putting Families at Risk of Returning to Shelter," Coalition of the Homeless (July 20, 2010), *available at* <http://www.coalitionforthehomeless.org/pages/revolving-door>.

⁵² *DHS Comptroller Audit* at 13.

⁵³ *DHS Comptroller Audit* at 14

Homebase providers. The Department should create a hotline to allow participants to report the circumstances that led them to believe their landlord was requesting an illegal side-deal.

Inform Tenants about Legal Options

The Department should also inform participants about their right to take legal action against landlords who coerce participants to enter in to side-deals and the documentation they will need to prove their allegations.

The Department Must Document Reports

The Department must document the incidence of side-deals in the Advantage program. The reports generated by the complaint form and hotline should be tracked by an investigative team, creating an internal system to review and respond to this issue in a systematic and comprehensive way.

Punish Bad Landlords

The Department must enforce its policy, which clearly states that landlords who engage in side-deals should be banned from “further participation in any of the City’s rental assistance programs.”⁵⁴ Instituting a system to track reports of side-deals will provide the Department with documented evidence of side-deals and will facilitate investigation of landlord misconduct. By shifting the reporting system from the subcontracted Homebase providers to the Department, the agency will be in the best position to control the flow of information and the actions taken in response to reports of side-deals. The Department will be able to assess the credibility of the reports, determine whether particular landlords have been reported for side-deals multiple times, and respond appropriately.

The Department should also report this information to the New York City Housing Authority, the Department of Housing Preservation and Development, and any other relevant agencies to ensure that the landlords are not allowed to participate in Section 8 or any other City, State, or federal subsidy programs. The Department should consider initiating affirmative litigation against landlords to hold them accountable for their actions. This would deter landlords from trying to coerce tenants to enter into side-deals in the future.

The Department Should Initiate a Full-Scale Internal Review of the Advantage Program

While the Office’s findings highlight the need to address the problem of side-deals and the recommendations should aid in combating the problem, it is difficult to determine the most effective strategy to eliminate it without knowing the full extent of the practice. Therefore, the Department should initiate a full-scale review of Advantage, which will allow it to address the legal and programmatic gaps in Advantage that led to the incidence of side-deals.

⁵⁴ See *Advantage Program Lease Rider*.

Advantage Questionnaire Script

Hi, this is _____ (first name and/or title); may I speak with _____.
I am calling from the Office of the Public Advocate - Bill de Blasio. We're calling tenants to ask about their experience with the Department of Homeless Services and their Advantage subsidy program. I am just asking for 10 minutes of your time to run through a brief questionnaire with you about your experience with the program and your current rental agreement.

Before we start, I want to make sure that you know that this is a voluntary and confidential survey. Also, unfortunately we cannot change your individual circumstances but hope that your input will help us recommend improvements to the program going forward.

Do you have any questions before we begin the questionnaire?

Begin questionnaire...

End questionnaire - thank you for participating.

Surveyor Notes:

Note: If not home but someone answers, ask for a good time to call back and indicate on call log of survey.

Note: Please log what time you called and what occurred on the call in the log. As noted in the call log, please call the individual 3 times at different points in the day/throughout the week.

CALL LOG: NA (No Answer); LM (Left Message); WN (Wrong Number); D (Disconnected); RP (Refuse to Participate); B (Busy); CS (Completed Survey)

Example voicemail: Hi my name is _____, from the Office of the Public Advocate. This message is for _____. The Office of the Public Advocate would appreciate your participation in a short questionnaire on your experience with the Department of Homeless Services- Advantage subsidy program. Please call our office at **212 669-2115** if you are interested in participating, with your name, telephone number and the best time to reach you.

FAQs

Who is the Public Advocate?

The Public Advocate is a citywide elected official who serves as a watchdog for New Yorkers and ensures access to City services for residents and help shape the policies of their government. The current Public Advocate is Bill de Blasio.

How long will the survey take?

The survey should take about five-ten minutes, depending on how much you would like to share and how quickly you answer these questions.

What specifically will you be asking me?

The Public Advocate's Office is interested in learning more about how often landlords demand additional fees outside normal (or already agreed upon) rent payments; these are often referred to as side-deals, so I will be asking you questions about your Advantage subsidy and your relationship with your current landlord. The information you provide to us will allow the Public Advocate's Office to evaluate the Advantage program and the findings will help our office make recommendations about how to improve the program going forward.

What is a side-deal?

A side-deal is when your landlord asks you to pay him or her additional money outside of your normal (agreed upon) rent payments.

How did you get my information?

There are two ways that we could have received your information:

1. You may have called the Public Advocate's Office to seek the office's help and by consulting our tracking database, we monitor constituent calls and believed that you would be a valuable resource for this survey; or
2. You may have contacted or worked with New York Communities for Change, who is partnering with the Public Advocates Office in conducting this research.

What if I don't want to answer a question?

This questionnaire is completely voluntary and if you do not want to answer a question you can just tell me and we can skip to the next question.

Work Advantage -Side-deals Questionnaire

1. Name: _____

2. What is your address?

3. If you have your lease available, can you please tell me how much does the Department of Homeless Services pay? How much are you responsible for paying?

4. Has your landlord ever pressured you for additional rent payments outside your lease agreement (also referred to as a 'side-deal')? **YES / NO** (*if yes, continue with survey, if no, this concludes the survey*)
5. If yes, please describe what your landlord said to you about additional payments?

6. When did the landlord begin asking for the additional payments?

7. How much did he or she demand?

8. What made you agree to pay the additional payments?

9. If you make additional payment to your landlord, how do you make those payments? (ex. cash, check, money order). If you paid with a money order, do you have a receipt?

10. Prior to signing your lease, did the shelter talk about the existence of additional payments to landlords (or ‘side-deals’)? **YES /NO**

11. If yes, what did the shelter staff say?

12. If your landlord has demanded that you pay additional payments, have you ever spoken to anyone at the Department of Homeless services or anyone else about the demand from your landlord? **YES / NO**

13. If yes, have you filed a complaint or formally opened a case with the Department of Homeless Services or any other city agency regarding your additional payments? **YES / NO**

14. If no, why haven’t you reported the demand of additional payments?

15. Has the amount of your additional payment demanded by your landlord changed over time? **YES/ NO** If yes, please explain.

16. How have these additional payments to the landlord affected your ability to cover other costs?

a. The rent on your lease? _____

b. Your utilities (ex. gas, electricity, water, heat, phone bill, transportation)?

c. Food or other household expenses?

17. How have these additional payments affected your ability to save money?

18. Do you have any other comments or concerns?

19. OPTIONAL:

a. Race/Ethnicity: **Non- Hispanic White/ Latino / African- American/ Asian / Pacific Islander/ American Indian /Other**

b. Age: _____

c. Sex: **Female / Male / Other**