

NYC MUNICIPAL ID COALITION

October 7, 2014

VIA EMAIL: MunicipalIDRule@cityhall.nyc.gov

Attn: Mayor's Office of Immigrant Affairs
253 Broadway, 14th Fl.
New York, NY 10007

**Re: Proposed Rule Implementing NYC ID Program
Chapter 8, Title 68 of the Rules of the City of New York**

The NYC Municipal ID coalition appreciates the opportunity to comment on the proposed rule implementing New York City's municipal ID card program. We are excited about this important initiative and look forward to continuing to work with the administration to ensure that the NYC ID card program is appealing, accessible, and safe for all New Yorkers.

The NYC Municipal ID Coalition¹ includes more than 20 organizations that collectively represent and serve immigrant, youth, homeless, and transgender New Yorkers, among other populations. Our constituents include many of the individuals who most need the NYC ID. We are confident that the NYC ID program will benefit New Yorkers by promoting public safety, expanding access to City services and institutions, and fostering economic and social inclusion among populations that frequently face barriers due, in part, to a lack of access to government-issued photo ID. To ensure maximum benefit and to minimize any potential risks to ID applicants, our groups urge HRA and the administration to:

1. EXPAND THE LIST OF DOCUMENTS HRA WILL ACCEPT TO VERIFY IDENTITY. We appreciate the City's efforts to ensure that the NYC ID is reliable, secure, and accessible to New Yorkers who face challenges obtaining other forms of government-issued ID. Toward these goals, we encourage HRA to:

- Add "Foreign National Voter Registration ID Card" to its list of identity documents that receive two points toward the three points needed to prove identity.
- Assign the following documents one point toward proof of identity:
 - Pay stub with name*
 - Bank or credit union account statement*
 - ATM or credit card*
 - Canceled check*
 - Utility bill*
 - Health insurance or prescription card*
 - Life insurance policy*

¹ The NYC Municipal ID Coalition includes Arab American Association of New York, The Black Institute, Center for Popular Democracy, El Centro del Inmigrante, Faith in New York, The Fortune Society, Hispanic Federation, Immigrant Defense Project, Legal Action Center, La Fuente, Osborne Association, Make the Road New York, Minkwon Center for Community Action, New Economy Project, New Immigrant Community Empowerment, New Sanctuary Coalition, New York Immigration Coalition, New York Legal Assistance Group, Northern Manhattan Coalition for Immigrant Rights, Peter Cicchino Youth Project at the Urban Justice Center, Picture the Homeless, Urban Youth Collaborative, SEIU 32BJ, Streetwise and Safe, Sex Workers Project at the Urban Justice Center, Sylvia Rivera Law Project, and Voices Unbroken.

- Check casher card with signature*
- MTA Reduced-fare Metro Cards (photo)
- NYC Parks ID (photo)
- DFTA ID/Barcode Cards (photo)
- Medicare and SSA Cards (though no picture)
- Library cards

**NYS DMV currently assigns these documents one point towards proof of identity needed to obtain a NYS driver's license or NYS non-driver's ID.*

2. ACCEPT EXPIRED GOVERNMENT-ISSUED ID, WITHIN REASONABLE TIMEFRAME, TO VERIFY IDENTITY.

The proposed rule states that no expired documentation will be accepted for the purpose of issuing NYC IDs, with the exception that someone may present a NYC ID within 60 days of expiration. We urge the City to adopt a final rule that allows NYC ID applicants to present expired U.S. or foreign government-issued ID within a reasonable time frame, such as within 5 years of expiration.

- **There is strong precedent for the City to accept expired ID toward proof of identity.** DMVs in states throughout the country, for example, have long accepted expired documents toward proof of identity, for the purposes of issuing driver's licenses and non-driver's license IDs. For example, the NYS DMV accepts ID from other states, jurisdictions, and Canada within one year of expiration, as well as NYS driver's licenses expired within two years. Washington State DMV accepts foreign and U.S. passports and foreign and U.S. driver's licenses, for example, within five years of expiration. Colorado and Georgia DMVs accept certain expired documents within 10 years of expiration. are numerous additional examples and contexts in which local, state and federal government accept expired documents to verify an individual's identity.
- **Accepting documents within a reasonable timeframe of expiration is vital to the program's success.** Many NYC ID card applicants will be relying on consular IDs or passports from countries that do not maintain an active local consulate or that charge high fees for document renewal. Renewing foreign ID typically requires people to obtain copies of other documents (such as birth certificates or school records), which may be impossible or very costly to get. This could put the real cost of getting the NYC ID at hundreds of dollars and discourage people from applying.
- **Requiring that identity documents be current will impose a particular burden on refugees and asylum seekers who cannot seek assistance from their home country governments, as well as Arab and Muslim American communities.** For a variety of reasons, such as conflicts raging across the Middle East and lack of consular offices for countries like Syria and Palestine, it is an extremely onerous process for many to obtain or renew home country documents.
- **Acceptance of expired government-issued documents will not undermine the integrity of the NYC ID, and must not affect acceptance of the NYC ID among financial institutions, city agencies or other institutions.** As noted above, countless New Yorkers already use identification – from driver's licenses to passports and consular IDs – that may have been issued based on expired ID, in order to open bank accounts, obtain city services and interact with police. There is no reason why NYC should adopt more stringent requirements for the NYC ID than other governments have adopted for other types of widely-accepted ID.

3. EXPAND THE LIST OF DOCUMENTS HRA WILL ACCEPT TO VERIFY SOMEONE'S RESIDENCY. Proving residency is a challenge for many individuals, including homeless New Yorkers and others without a stable address, and individuals who are not listed on their apartment leases, pay their rent in cash, or

share an address with multiple people. We appreciate the City's efforts to address the concerns of domestic violence survivors and homeless New Yorkers, for example. However, we urge greater flexibility to ensure that many individuals who most need the NYC ID are not left out. We recommend that HRA expand its list of acceptable documents to prove NYC residency to include, for example:

- Mail received at an address with the stamp of the USPS
- Letter from landlord or lease-holder affirming the individual's home address
- Letter from employer affirming that worker is a NYC resident
- Letter from a city agency, nonprofit organization or religious institution attesting to an individual's residency in NYC (and home address, if known to the organization), issued within 90 days of application for the NYC ID
 - Individuals without stable addresses could have the address where they receive mail (often next of kin, a friend, or a community organization) listed on their NYC ID.

4. STRENGTHEN PRIVACY PROTECTIONS FOR NYC ID CARD APPLICANTS. Although the legislation authorizing the creation of a NYC ID incorporated some privacy protections, we remain concerned about the risks some in our communities may face as a result of the City's decision to retain underlying documents presented by NYC ID applicants to obtain the card, and the potential deterrent effect that such data retention will have for potential NYC ID applicants. The administration should strengthen privacy protections by adopting the following provisions in its final rule:

- **Notice:** HRA should provide notice to a NYC ID cardholder whose information is requested by an entity outside of HRA. A similar provision already exists in the regulations governing the Department of Social Services with respect to requests for public assistance records. The department must seek the permission of the individual whose records are being requested, even when the information is being subpoenaed by a court.² The provision also directs the department to plead confidentiality in response to any subpoena for records where the purpose is not directly related to the administration of public assistance or the welfare of a child.

An analogous provision in the final NYC ID program rule could direct HRA to:

1. Notify and request permission for disclosure from cardholders whose records are requested
 2. Direct HRA to plead confidentiality in any case where:
 - i. The individual cardholder does not grant permission for disclosure; and
 - ii. The request is not related to suspected fraud by or against the individual cardholder
- **Redaction:** Regulations could require the City to redact all information not necessary for the verification of identity or residency in documents it retains through the NYC ID program.
 - **Exemption from FOIL:** The final rule should stipulate that records retained by the City through the NYC ID program are not public documents and should not be treated as such by any city agency; and that such disclosure would be an unwarranted invasion of personal privacy.³
 - **Facial Recognition/Duplicate Image Search:** We understand that NYC will conduct a "duplicate image search" to ensure that an individual is not issued multiple NYC IDs. We urge HRA to explicitly include regulation of this duplicate image search/facial recognition system in its final

² Dept of Social Services Rules, 18 NYCRR § 357.3(f)(1)-(3)

³ Public Officers Law, Article 6, Section 89 [2](a)

rule, to ensure that this information – like other information submitted by card applicants – is protected to the maximum extent possible. Facial recognition data, even if used by the City solely for duplicate image search, is of increasing interest to law enforcement agencies as a form of biometric identification.⁴ Given that this information will be collected and stored along with biographical documents and information, it is critical that this data be as secure as possible.

- **Disclosure of data collection:** NYC should provide notice to NYC ID applicants about its data collection and retention practices, including how it will use facial recognition data, names of vendors used, and parties with whom data may be shared. The City should state clearly what protections exist to guard against access to and/or sharing of data collected for this program with law enforcement agencies; other local, state and federal government agencies or databases; and from public records requests. It is critical that applicants are aware of the data collection, as many people will be submitting sensitive documents as well as their facial recognition data. The requirement that the city provide disclosure of data collection and guidelines for protection of data should be stated explicitly in the final rule.

5. ADOPT AN INTERNAL POLICY PROHIBITING ARRESTS BASED ON ADMINISTRATIVE WARRANTS

Our coalition continues to have concerns about the way that NYC ID cards may affect interactions with the NYPD for certain members of our communities. Immigrants with prior orders of deportation are a particularly vulnerable group when it comes to interaction with law enforcement, because a warrant check may reveal that Immigration and Customs Enforcement (ICE) has issued an administrative warrant. In order to be able to assure those individuals that it is safe for them to present identification (whether it be the NYC ID or any other form of ID) to NYPD officers, we request that the City enact a policy or issue a directive ensuring that NYPD will not arrest individuals on the basis of an outstanding administrative warrant. Since the NYPD has agreed to accept the municipal ID as proof of identity sufficient to issue a summons in lieu of arrest, it would be critical for immigrant communities to be protected from being brought into the precinct in cases where an ICE administrative warrant appears during a warrant check.

Numerous municipalities and states, including DC, Chicago, New Haven, Fairfax County, and Chapel Hill have passed policies that prohibit police from arresting or detaining individuals based on administrative warrants of removal or arrest entered by ICE into shared databases. Below is sample language.

No person shall be detained solely on the belief that he or she is not present legally in the United States or that he or she has committed a civil immigration violation.

Law enforcement officers shall not make arrests or detain people based on administrative warrants for arrest, removal or immigration violations regardless of whether they appear in the National Crime Information Center database of the Federal Bureau of Investigation or other databases. This includes but is not limited to administrative immigration warrants for persons with outstanding removal, deportation, or exclusion orders. The Commissioner shall direct officers not to consider administrative warrants in discretionary decisions related to custodial arrests. Enforcement of the civil provisions of United States immigration law is the responsibility of federal immigration officials.

⁴ The vendor with which the City has contracted for the NYC ID program, MorphoTrust, is used by the FBI, the State Department, and the Department of Defense, raising concerns about the potential ease of interoperability between the City's data and other federal databases.