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**Chairman**  
Walter L. Harris

March 1, 2021

**Vice Chairs**  
Jacob Elghanayan  
William Floyd  
Marissa Shoreinstein

Dear Legislator:

I write to convey the Citizens Budget Commission's (CBC's) recommendations for legislative action on the New York State Executive Budget for Fiscal Year 2022.

**Treasurer**  
David Javdan  
**Secretary**  
Melissa Román Burch

The budget continues the Governor's call for unrestricted federal aid, asserting that \$15 billion would be "fair" and allow the State to avoid new tax increases or spending reductions. As an alternative, the Executive Budget assumes a "worst case" scenario of \$6 billion in forthcoming unrestricted federal aid.<sup>1</sup> Both scenarios include proposals that close the gaps in fiscal years 2021 and 2022. However, both also leave significant gaps in the future.

**General Counsel**  
Edward Wallace

CBC recently issued a [report](#) identifying alternative actions that would close the budget gap and forego the tax increases, even if the State receives only \$6 billion in federal aid. Yet, it appears likely that the State will receive significant federal aid, perhaps far in excess of \$6 billion. Combined with the significantly favorable tax receipt projections contained in the 30-day amendments and alternative gap-closing options CBC outlined in "[Hard Choices](#)," prudent use of federal aid would allow the State not only to close the near-term gaps, but stave off the most serious cuts and improve the State's long run fiscal stability.<sup>2</sup>

**Executive Committee**  
Paula Dagen  
Kent Hiteshew  
Robert Hoglund  
Cas Holloway  
Anthony Mannarino  
Richard Roberts  
Carol Rosenthal  
Jamie Rubin  
Merryl Tisch  
Alair Townsend

As the Legislature and Governor negotiate the fiscal year 2022 budget, CBC recommends the following 11 Legislative actions:

**Honorary Chairs**  
Lawrence Buttenwieser  
Kenneth Gibbs  
H. Dale Hemmerdinger  
Lawrence Huntington  
Eugene Keilin  
Richard Levine  
James Lipscomb  
Richard Ravitch  
Edward Skyler

1. Do not increase rates or delay cuts to personal income taxes;
2. Use federal aid wisely to stabilize the State's finances;
3. Reject extraordinary Executive budget powers;
4. Smooth year-to-year changes and direct school aid to high-need districts;
5. Prudently budget marijuana and mobile sports wagering revenues;
6. Reject and reverse cost shifts to local governments;
7. Reduce unproductive economic development spending and modify capital financing to offset harmful spending reductions;
8. Reform other post-employment benefits financing;
9. Enact the "rail-advantaged housing" proposal;

**President**  
Andrew S. Rein

10. Revive and transform the Medicaid Redesign Team into a Health System Transformation Team;  
and
11. Enact legislation to implement a comprehensive performance management system.

### **Do not increase rates or delay cuts to personal income taxes**

*Reject the proposed personal income tax surcharge.* The State should focus on making New York an attractive place for residents and businesses, particularly in the current circumstances. Given the alternatives presented by CBC, higher revenue projections, and federal aid that may be higher than the “worst case” scenario, personal income tax increases are not needed to close the budget gaps or stave off damaging cuts. Furthermore, the risk that increasing taxes on high income earners could encourage resident migration is higher than it has been previously. Many individuals and businesses have shifted to toward remote work, and estimates from the Department of Labor suggest that more than one-third of current jobs in the State could be fully remote (including over 40 percent within New York City).<sup>3</sup> The State’s personal income tax receipts already heavily rely on high-income earners, with the top 1 percent of filers providing over 40 percent of receipts.<sup>4</sup> Given the pandemic related closures of cultural and social amenities, the federal cap on deducting state and local tax payments (“SALT cap”), successful shifts toward remote work, and at least temporary migration of some residents, increasing personal income taxes now is even more likely to be harmful to the State’s economic competitiveness.

While the proposed tax increase is to be temporary, history casts doubt on this being the case if adopted. In response to the Great Recession, in 2009 the State enacted the three-year millionaire’s tax, which has been repeatedly extended, albeit modified.

*Reject the delay in the middle class tax cut.* Middle class personal income tax cuts, first enacted in 2016, will be fully implemented by 2025 under current law. The Executive Budget proposes delaying implementation for one year, with rate reductions completed instead by 2026. Proceeding with the middle class tax cuts would provide relief to some that may need it particularly during the recession, and given the alternatives to stabilize the budget, the delay is unnecessary and should be rejected.

### **Use federal aid wisely to stabilize the State’s finances in both the near and long term**

Since March 2020, federal aid packages have provided the State \$5.5 billion in elementary and secondary education aid, \$5.1 billion in Coronavirus Relief Funds, \$4.5 billion in enhanced Medicaid funding, other targeted aid, and aid to authorities such as the Metropolitan Transportation Authority (MTA). The State likely will reap additional benefit from enacted aids, including roughly \$1.5 billion in likely additional enhanced Medicaid funding that the Executive has not yet included in the Financial Plan.<sup>5</sup>

Based on current drafts in Congress, the next aid package may provide significant additional funds to New York. Current drafts would provide New York State with \$12.6 billion in direct federal aid plus \$10.6 billion to local governments and billions more for schools and the MTA.<sup>6</sup>

The Fiscal Year 2022 Enacted Budget should use known and assumed federal aid to balance the budget, support critical non-recurring needs and correct long-term fiscal imbalances. In the short-term, federal aid should support the pandemic response, including new public health activities; pandemic-driven program cost increases; and provide temporary fiscal relief needed due to pandemic-related budget shortfalls. Federal funds in excess of those needs could be used to provide temporary economic relief to business and people affected by the recession. The funds should not be used to support recurring spending, including new ongoing programs, since this would exacerbate the State's long run fiscal problems when the federal aid ultimately is depleted.

While fiscal relief should allow the State to forgo unneeded spending cuts, it should not relieve the State of the need to restructure spending to address its underlying structural budget gaps that preceded the recession. Approximately half of these large gaps were driven by costs of the Medicaid program that were not previously included in the budget. Out-year structural gaps including those due to the Medicaid program costs, persist.

If the aid is sufficient and flexible, the State would be wise to spread it over time, leveraging it as a bridge to fiscal stability. The time provided could ease design and implementation of needed changes to Medicaid, which include controlling long-term care costs, and school aid, which involves redirecting resources toward the highest need school districts. There would be opportunity for even greater impact when combined with CBC's proposals to streamline economic development spending, focus the capital program, and dispose of unneeded State assets.

### **Reject extraordinary Executive budget powers**

Last year the budget passed while the pandemic was accelerating. The depth and duration of its associated fiscal impacts were largely unknown. While the CBC did not support the State enacting a budget that was not balanced, it accepted as reasonable a contingency process for balancing the budget during the year as needed. Last year, the Executive was granted four extraordinary budget powers: to reduce planned spending (with a legislative opportunity to pass its own budget), to withhold payments, to transfer appropriations authority within the State Operations bill, and to issue up to \$11 billion in short-term debt that could be converted to long-term debt.

This year, the fiscal picture is much clearer and relatively favorable. The current projected tax revenue shortfalls are half of what was assumed last April and existing and anticipated federal aid will provide significant relief. Given this clarity, the Executive does not need extraordinary authority. The Executive should not be granted extraordinary power to reduce or hold back spending, transfer appropriations unilaterally, or issue debt for operating purposes.

*Reject midyear budget modification and withholding power.* If midyear adjustments to the budget are required, the Legislature should reconvene to adjust the State's spending plan with the Governor in accordance with existing State law. If the Legislature deems it necessary to authorize the Executive to adjust the budget midyear, the Executive should be required to propose a detailed, public gap-closing plan. The Legislature then should have authority to pass an alternative gap-closing plan. If such a plan is implemented, or if authority to withhold spending is granted and used, details on reductions or withholdings should be publicly available.

*Reject Executive authority to transfer appropriations.* The extension of universal State Operations appropriation transfer authority should be rejected. This power is overly broad and unnecessary.

*Reject authority to borrow for operations.* Borrowing for operations should be a last resort. Appropriately, the Executive Budget does not propose issuing debt for State operating purposes. Still, authorization of borrowing should be conditioned on spending control, a fiscal stability plan, transparency, and accountability, including budgeting and reporting in accordance with generally accepted accounting principles.<sup>7</sup>

*Reject proposal to create extraordinary COVID-19 response fund.* The Governor's 30-day budget amendments would create a new "COVID-19 Extraordinary Relief Fund" into which all receipts from taxes enacted during fiscal year 2022 would be deposited. The Governor would have sole authority to expend such funds, which could total billions of dollars. These are general revenues and should be appropriated by the Governor and Legislature in the regular budget process.

### **Smooth year-to-year changes and direct school aid to high-need districts**

School Aid consumes the largest portion of State funds in the budget. The Executive Budget uses \$2.6 billion of the \$4.3 billion granted in December's federal aid bill as budget relief and \$1.2 billion to increase school aid in school year 2021-22. The balance is aid for non-public and charter schools.

Including the federal relief, the State's aid to schools would increase approximately 7.1 percent next school year but fall approximately 8.4 percent in the following year. The expiration of federal aid paired with increases in State share school aid in the out-years means that All Funds school aid spending will remain relatively constant. Rather than the year-to-year disbursement swings proposed in the Executive Budget, the Enacted Budget should smooth year-to-year school aid.

Whether spending is kept constant as in the current budget or subsequently increased, spending should be targeted to districts with the greatest need. If school aid is held constant, reductions in aid to districts with sufficient local resources to fund a sound basic education could facilitate increases in aid to high-need districts.<sup>8</sup>

The Executive Budget also proposes a new "Services Aid" funding structure that would combine several expense-based aids into a single source and distribute funding more based on need. However, the

proposal caps the funding available to New York City, distorting its allocation. The Legislature should reject this New York City-specific cap and adjust the Services Aid proposal to allocate these aids based on need.

### **Prudently budget marijuana and mobile sports wagering revenues**

For a third consecutive year, the Executive Budget proposes to legalize and tax the production and sale of recreational marijuana. Additionally, this year's Executive Budget authorizes mobile sports wagering. The Financial Plan assumes that these proposals would generate approximately \$300 million and \$500 million annually, respectively, when fully mature. Realistically, it will take several years until these policies generate this much revenue. Both policies can have negative social impacts, so it is reasonable to dedicate a portion of the revenues to mitigate these direct impacts. However, the vast majority of these revenues should not be dedicated and should be allocated in the budget process.<sup>9</sup>

### **Reject and reverse cost shifts to local governments**

*Reject the NYC-specific cut to public health matching funds.* The Executive proposal reduces the State's General Public Health Work (GPHW) funding for New York City. GPHW provides a State match of 36 percent for certain public health programs to local health departments in New York State, except for New York City, where the match was reduced to 20 percent two years ago. This year's budget proposes to reduce the State match for New York City to 10 percent. This should be rejected.

*Reject the elimination of State-share Medicaid Indigent Care Pool for public hospitals.* The Executive Budget proposes eliminating the State share component of the Medicaid Indigent Care Pool for public hospitals. The Indigent Care Pool is a component of the Medicaid Disproportionate Share Hospital (DSH) program that provides supplemental payments to hospitals providing services to Medicaid and uninsured patients. Eliminating State financing of these payments would shift these costs to local governments in jurisdictions that have public hospitals. This proposal should be rejected. Instead, the State should be moving toward taking over more of the local share of Medicaid rather than pushing additional Medicaid costs onto local governments.<sup>10</sup>

*Reverse the intercept of local sales tax funds.* The Legislature should reverse the \$500 million local government sales tax intercept that was enacted last year. Under this policy, the State intercepted \$250 million from county sales tax collections in January 2021 and will intercept another \$250 million over the next year. This proposal was erroneously linked to the Medicaid budget issues of last year's budget. Like the Indigent Care Pool cut, this proposal was a step backward on Medicaid financing and should be reversed.

## **Reduce unproductive economic development spending and modify capital financing to offset harmful spending reductions**

CBC identified alternative spending reductions, including temporarily shifting more capital financing to long-term debt and reducing unproductive economic development and low priority capital spending.<sup>11</sup> These could provide up to \$7 billion over four years. The cuts in the proposed budget, including ongoing 5 percent cuts to some aid to localities programs, should be reevaluated to see if they should be offset by these available resources. If not all the resources are needed, continuing pay-as-you-go capital financing should be preserved to reduce the level of outstanding debt.

## **Reform other post-employment benefit (OPEB) financing**

The Governor again has proposed to reform the State's funding and cost-sharing for OPEB liabilities. New York is one of 19 states that do not pre-fund any portion of health care benefits for retirees; the State now carries an unfunded liability of over \$50 billion.<sup>12</sup> The Executive Budget proposes to reduce the State's OPEB costs by a) eliminating State reimbursement for the Medicare Part B surcharge on high income beneficiaries, b) freezing the State's cost-sharing for Medicare Part B premiums, and c) implementing a tiered cost-sharing structure for future retirees. These actions would reduce annual costs for the State and reduce the size of the State's outstanding OPEB liability.<sup>13</sup> These proposals should be supported by the Legislature.

## **Enact "rail-advantaged housing" proposal**

The Executive Budget includes provisions to encourage the development of housing in proximity to transit infrastructure—dubbed "rail-advantaged housing"—particularly in the downstate region. For years, New York City metropolitan area housing production has lagged other urban metro areas. Other states have enacted policies to encourage production of housing near suburban public transportation corridors. This can improve housing supply and affordability.<sup>14</sup> The Executive Budget proposal begins the process of facilitating development in transit-oriented areas and should be enacted.

## **Revive and transform the Medicaid Redesign Team (MRT) into the Health System Redesign Team**

The MRT was reconvened last year to identify \$2.5 billion in recurring savings after the State acknowledged that Medicaid spending was growing faster and was greater than was budgeted—a fact the State shielded from public view by repeated disbursement deferrals.<sup>15</sup> The MRT identified savings that were enacted by the Governor and Legislature but fell short of the goal. Furthermore, the State still is not transparent about the Medicaid program. The Executive budget does not clarify whether the State continues to shift payments across fiscal years and the State has not posted statutorily required monthly reports; the first report on Medicaid expenditures for fiscal year 2021 was just made public, nearly 11 months into the year.<sup>16</sup>

New York State's health system problems go beyond Medicaid. As laid bare by the challenges of responding to the pandemic, the system is not coordinated as evidenced by the massive challenge of allocating care in the first wave, and there are significant disparities in access and outcomes. The State should not squander this opportunity to learn from these and pre-pandemic lessons.

To address both the challenges of the Medicaid program and the health system more broadly, the State should revive the MRT and expand its charge to Health System Redesign. For Medicaid, the new Team should identify possible efficiencies and program redesign, confirm what data should be made publicly available on a regular basis, and fix the Global Cap. While reasonable to benchmark cost growth to inflationary indexes, the current Global Cap is neither "global" nor a "cap." Billions in costs are excluded, and budgeting on a cash basis allows for it to be subverted by disbursement deferrals that exacerbate fiscal problems.<sup>17</sup> The Team should affirm the importance of providing monthly expenditure reports and recommend additional content that would allow better monitoring, evaluation and identification of program improvements and efficiencies. Subsequently, the Team should address the broader issues of the health system; it should develop a long-term plan for improving the effectiveness, efficiency and equity of public health, primary and acute health care delivery, long term care and behavioral health in the State.


#### **Enact legislation to implement a comprehensive performance management system**

The pandemic has highlighted the value of governmental transparency and the potential of public performance measurement and management. New York State could improve its performance and responsiveness by implementing a performance management system, as recommended by the (SAGE) Commission and the CBC.<sup>18</sup> CBC specifically recommended that such a system be "established through statutory provisions that promote consistency in reporting across agencies, authorities, and administrations."

The Fiscal Year 2022 Enacted Budget must close the near-term budget gaps. By fully and smartly leveraging federal funds and using prudent gap-closing alternatives as CBC recommends, the Legislature and Governor can avoid harmful tax increases and help stabilize the State's finances in the long term.

Thank you for considering CBC's recommendations. As always, my staff and I are happy to answer questions or discuss these issues.

Sincerely,



Andrew S. Rein  
President  
Citizens Budget Commission

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<sup>1</sup> New York State Division of the Budget, *FY 2022 Executive Budget Financial Plan* (January 2021), p. 13, [www.budget.ny.gov/pubs/archive/fy22/ex/fp/fy22fp-ex.pdf](http://www.budget.ny.gov/pubs/archive/fy22/ex/fp/fy22fp-ex.pdf).

<sup>2</sup> David Friedfel, *New York State's Hard Choices* (Citizens Budget Commission, May 2020), <https://cbcny.org/research/new-york-states-hard-choices>.

<sup>3</sup> New York State Department of Labor, *Employment in New York State: September 2020* (September 2020), [www.labor.ny.gov/stats/PDFs/enys0920.pdf](http://www.labor.ny.gov/stats/PDFs/enys0920.pdf).

<sup>4</sup> New York State Division of the Budget, *FY 2022 Economic and Revenue Outlook* (January 2021), p. 104, [www.budget.ny.gov/pubs/archive/fy22/ex/ero/fy22ero.pdf](http://www.budget.ny.gov/pubs/archive/fy22/ex/ero/fy22ero.pdf).

<sup>5</sup> See Norris Cochran, US Department of Health & Human Services, letter to state governors, (January 21, 2021).

<sup>6</sup> American Rescue Plan Act of 2021, H.R. 1319, 117<sup>th</sup> Cong. (2021); and Chris Sommerfeldt and Denis Slattery, "N.Y. to get \$50B from next COVID stimulus, likely averting draconian budget cuts" *Daily News* (February 12, 2021), <https://www.nydailynews.com/coronavirus/ny-covid-ny-stimulus-cuts-20210212-ag25cmlldqfcqxdaocbtgamjfm-story.html>.

<sup>7</sup> Andrew Rein, "NYS Should Not Borrow for Operations Without Spending Restraint, Fiscal Stability Plan, Enhanced Oversight, and Transparency" (Citizens Budget Commission Blog, February 10, 2021), <https://cbcny.org/research/nys-should-not-borrow-operations-without-spending-restraint-fiscal-stability-plan-enhanced>.

<sup>8</sup> Testimony of David Friedfel, Director of State Studies, Citizens Budget Commission, before the New York State Senate Joint Standing Committees on Education and on Budget and Revenues, *Testimony on the Distribution of the Foundation Aid Formula as it Relates to Pupil and District Needs* (December 3, 2019), <https://cbcny.org/advocacy/testimony-distribution-foundation-aid-formula-it-relates-pupil-and-district-needs>.

<sup>9</sup> Timothy Sullivan, "Hold Your Bets: Four Guidelines for Legalized Sports Betting in New York State" (Citizens Budget Commission Blog, September 2018), <https://cbcny.org/research/hold-your-bets>; and Patrick Orecki, "Getting Into the Weeds About Potential Recreational Marijuana Revenues" (Citizens Budget Commission Blog, November 2020), <https://cbcny.org/research/getting-weeds-about-potential-recreational-marijuana-revenues>.

<sup>10</sup> Patrick Orecki, *Still a Poor Way to Pay for Medicaid*, Citizens Budget Commission (October 2018), <https://cbcny.org/research/still-poor-way-pay-medicaid>.

<sup>11</sup> Patrick Orecki, *Balancing Act: Alternatives that Balance the NYS Budget without Raising Income Taxes*, Citizens Budget Commission (February 10, 2021), <https://cbcny.org/research/balancing-act>.

<sup>12</sup> Pew Trusts, "Update: 50-State Survey of Retiree Health Care Liabilities" (December 21, 2018), [www.pewtrusts.org/en/research-and-analysis/fact-sheets/2018/12/update-50-state-survey-of-retiree-health-care-liabilities](http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2018/12/update-50-state-survey-of-retiree-health-care-liabilities); and Office of the New York State Comptroller, *Comprehensive Annual Financial Report for Fiscal Year Ended March 31, 2020* (September 2020), p. 142, [www.osc.state.ny.us/files/reports/finance/pdf/cafr-2020.pdf](http://www.osc.state.ny.us/files/reports/finance/pdf/cafr-2020.pdf).

<sup>13</sup> Patrick Orecki, "Budget Proposals with a Big Long-Term Payoff" (Citizens Budget Commission Blog, March 2017), <https://cbcny.org/research/budget-proposals-big-long-term-payoff>.

<sup>14</sup> Sean Champion, *Strategies to Boost Housing Production in the New York City Metropolitan Area*, Citizens Budget Commission (August 26, 2020), <https://cbcny.org/research/strategies-boost-housing-production-new-york-city-metropolitan-area>.



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<sup>15</sup> David Friedfel and Patrick Orecki, *Overdue Bills: Time to Face the Reality of Rising Medicaid Costs* (Citizens Budget Commission, October 2019), <https://cbcny.org/research/overdue-bills>.

<sup>16</sup> The first Medicaid Monthly Global Cap Update for the fiscal year 2021 period was posted on February 25, 2021 and covers the nine-month period of April 2020 through December 2020. See New York State Department of Health, "Monthly and Regional Global Cap Updates" (updated February 2021), [https://health.ny.gov/health\\_care/medicaid/regulations/global\\_cap/](https://health.ny.gov/health_care/medicaid/regulations/global_cap/).

<sup>17</sup> Andrew Rein, President, Citizens Budget Commission, before the New York State Medicaid Redesign Team, *Public Comment to Submitted to the Medicaid Redesign Team II* (March 2, 2020), <https://cbcny.org/advocacy/public-comment-submitted-medicare-redesign-team-ii>.

<sup>18</sup> Patrick Orecki, *It's Time for New York State to Heed SAGE Advice on Performance Management*, Citizens Budget Commission (June 23, 2020), <https://cbcny.org/research/its-time-new-york-state-heed-sage-advice-performance-management>.