



Nondiscretionary Spending and Budgetary Management

Highlights

- Nondiscretionary spending as a share of total funds spending has declined from a peak of 43 percent in FY 2014 to 38 percent as of FY 2022.
- The City also incurs legally or contractually required costs other than the “traditional” categories of nondiscretionary spending, i.e., “quasi-controllable” spending.
- OSC considers such costs to be “quasi-controllable” if current operational needs, or a lack of lower-cost alternatives have historically prevented the administration from avoiding unplanned city-funded costs.
- OSC estimates that the measure of quasi-controllable spending, as a share of total spending, has risen in recent years (from 5.5 percent in FY 2015 to 8.7 percent in FY 2023).
- The size and degree of control over nondiscretionary and quasi-controllable spending is a concern because such spending “crowds out” resources that would otherwise be available for the City’s controllable spending.
- Absent alternatives (e.g., higher-than-planned tax collections or new revenue raisers), the City could be required to scale back planned discretionary spending to close its out-year budget gaps.
- Publishing a regular update of nondiscretionary costs and fully budgeting for quasi-controllable spending will improve transparency and inform understanding the challenges that lay ahead.

In a recent report on the June 2023 Financial Plan, the Office of the State Comptroller (OSC) found that entering Fiscal Year (FY) 2024, New York City’s short-term financial condition remained strong, driven by higher-than-planned revenue collections in FY 2023. However, the City still faces significant risks to the financial plan which could widen the budget gaps to more than \$16.2 billion by FY 2027 (19 percent of City revenues).

While the City has already engaged in expanding savings programs to close out-year budget gaps, it is limited in how it may do so. As of FY 2022, two-fifths of the City’s spending was nondiscretionary, such as fringe benefits and debt service, which the City has limited flexibility to unilaterally change.

The City also provides a wide range of services where it has greater management control, even if those services are legally required, and can mitigate costs through administrative and operational actions. There are also services that are not legally required, where the City can reduce costs by curtailing or cutting the service. The City has a larger share of funds to dedicate to these other services, which made up about three-fifths of spending in FY 2022, when nondiscretionary spending does not rise more quickly than other, more controllable spending.

Certain of these “controllable” expenses, have in recent years required that more funds be added to the budget, as ongoing operating needs and difficulties in finding lower-cost alternatives have prevented the City from staying within its plan. These “quasi-controllable” costs include certain social services, educational programming and overtime. Given escalating cost pressures, clearly understanding which programs the City has control over can help inform the public where future changes to spending and related services, are likely, in order to help close future budget gaps.

Nondiscretionary Spending

Nondiscretionary spending refers to the portion of the City’s budget where spending is legally or contractually required and the City generally has limited or no flexibility to unilaterally (i.e., without State or federal authorization) mitigate unplanned costs in the short run.

Based on past reporting from the New York City Office of Management and Budget [last updated in 2014](#), such spending includes the following major expenditure components: pensions; fringe benefits; Medicaid; debt service; public assistance and other centrally-administered, legally or contractually-required payments, which are mostly payments to the Metropolitan Transportation Authority; certain criminal justice contracts and indigent defense services payments administered by the Mayor’s Office of Criminal Justice; and water and sewer payments for City facilities.

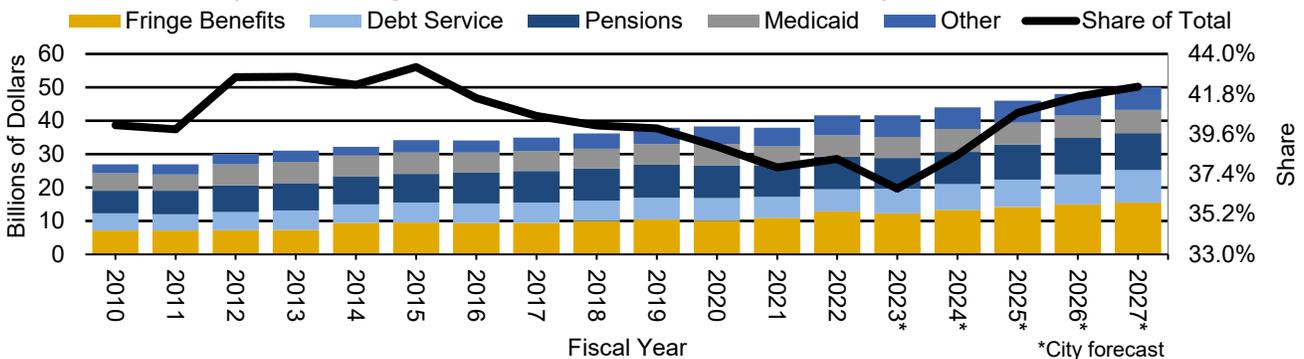
OSC has updated the City’s 2014 analysis to include estimated spending through FY 2027. As shown in Figure 1, nondiscretionary spending rose from \$26.9 billion in FY 2010 to \$34.2 billion in FY 2015, from 40 percent of citywide spending to 43 percent, a prior-decade peak. The growth during this period was driven mainly by fringe benefits, fueled by relatively high annual increases to health insurance premiums as well

as revisions in actuarial assumptions and methods used to calculate employer contributions (e.g., reflecting longer life expectancies and a reduction to the City’s discount rate from 8 percent to 7 percent).

In the seven years since then, nondiscretionary spending rose to \$41.6 billion in FY 2022, an increase of \$7.4 billion. As a share of total funds, however, such spending declined from the peak of 43 percent in FY 2015 to 38 percent as of FY 2022. The decline reflects the impact of a slowdown in the annual growth in pension contributions as well as the State’s three-year takeover of the growth in the local share of Medicaid, which was completed in FY 2016. Health insurance costs also did not rise as much fueled by the City’s savings initiatives agreed to by the Municipal Labor Committee.

Nevertheless, fringe benefits and debt service remain [among the fastest growing components of citywide spending during the plan period through FY 2027](#). The June Plan assumes nondiscretionary spending would reach 42 percent of total spending by FY 2027, near the peak level, although this assumption appears conservative. The City’s level of nondiscretionary spending is led by fringe benefits and debt service, which may be offset by elevated vacancy rates as well as capital commitments and interest rates, respectively.

FIGURE 1
Nondiscretionary Spending, Components and Share of Citywide Total



Note: "Other" includes certain centrally-administered legal or contractual spending, such as public assistance; judgments and claims; payments to the MTA; indigent defense services; and water and sewer payments, offset in part with savings from the overestimation of prior-year payables. Debt Service is adjusted for surplus transfers and other discretionary actions. The General Reserve and Capital Stabilization Reserve are excluded. Sources: NYC Comptroller; NYC Office of Management and Budget; OSC analysis

Controllable Spending

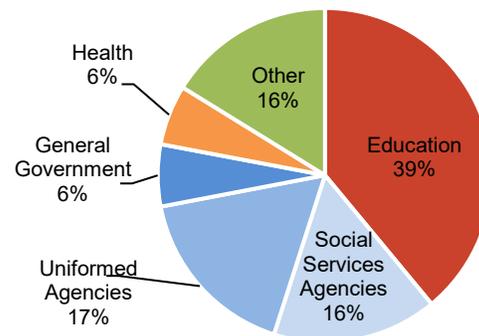
Spending that is not included as non-discretionary can be classified as "controllable." While these costs may be mandated by federal, State and local regulatory and policy choices, the City maintains substantial control over the provision of these services. These measures may include regulation to change eligibility for municipal services, renegotiation of contractual services costs, and if necessary, a reduction in services.

This category includes basic municipal services such as education, public safety, and sanitation where the City has historically demonstrated a high degree of control over annual spending. Controllable spending also includes services not required by federal or State law, such as funds for cultural events or maintaining parks. It also includes expansions in the eligibility of existing services beyond a legal or contractual mandate, such as 3-K education services or the Fair Fares program.

OSC estimates that the share of the FY 2024 budget that is controllable is more than three-fifths of projected spending for that year (about \$69 billion, excluding budgetary reserves). Most of this spending consists of salaries and wages, contractual services, and other administrative costs (e.g., supplies and materials, energy and lease costs and other service charges). Nearly 40 percent of controllable spending is allocated to education and another third is split between social services and the uniformed agencies (see Figure 2).

Controllable spending on education (\$26.9 billion) includes general and special education classroom instruction and related services for Kindergarten through Grade 12. While locally funded spending on education is subject to a maintenance of effort requirement under State law, the City also offers programs that are not State-mandated, including the Summer Rising academic and enrichment program, as well as programs for children under

FIGURE 2
Controllable Spending by Program Area



Sources: NYC Office of Management and Budget; OSC analysis

the age of 4, including the 3-K program and EarlyLearn.

The City's controllable social services (\$11.8 billion) are concentrated in shelter and related supports other than single adults (families with children), services for children (e.g., foster care, adoption subsidies, child care vouchers, as well as preventive and protective services); and various services for young adults such as the Summer Youth Employment Program. The City recently has also expanded anti-eviction services (e.g., legal representation in housing court proceedings).

Uniformed agency services that fall into the controllable category (\$11 billion) include emergency response and prevention services, custody and care of individuals detained in the City's jails, as well as curbside and containerized collection, and export of the City's solid waste.

Quasi-Controllable Spending

As noted earlier, while controllable spending may be legally or contractually required, the City can still exert substantial control over such costs. However, OSC considers any legally or contractually required controllable spending to be "quasi-controllable" if the City has consistently needed to raise its forecast of such spending beyond the amount anticipated at the time of budget adoption.

Unplanned quasi-controllable spending incurred since budget adoption may be explained by changes in operational needs or a lack of lower-cost alternatives. In such cases, the City is required to add additional funding mid-year to address the unanticipated need.

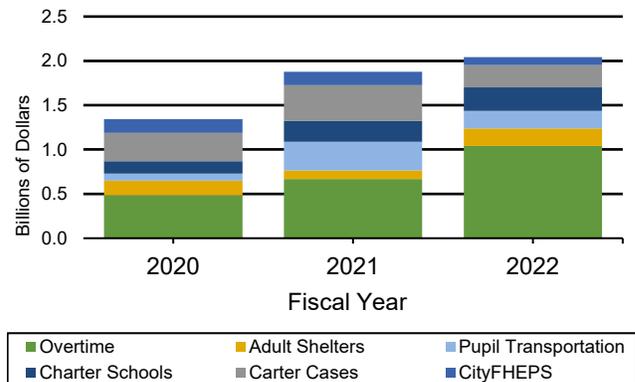
OSC highlights the following categories of quasi-controllable spending:

- Educational, including legal and related costs for special education services, State-required transfers to charter schools for tuition and related expenses, contractual costs for pupil transportation;
- Social services, including single adult shelter and related services; and the City’s Family Homeless and Eviction Prevention Supplement Program (CityFHEPS);
- Services for asylum seekers; and
- Overtime

As indicated in Figure 3, OSC estimates that the selected components of quasi-controllable spending, as a share of total spending, has risen in recent years (from 5.5 percent in FY 2015 to 8.7 percent in FY 2023). This growth has occurred as nondiscretionary costs shrunk as a portion of spending.

The recent growth in selected quasi-controllable spending, while still a seemingly small portion of total spending, is a cause for concern. The examples of quasi-controllable spending used for this report have incurred costs, on average, significantly exceeding the City’s initial forecast at the time of budget adoption (see Figure 4).

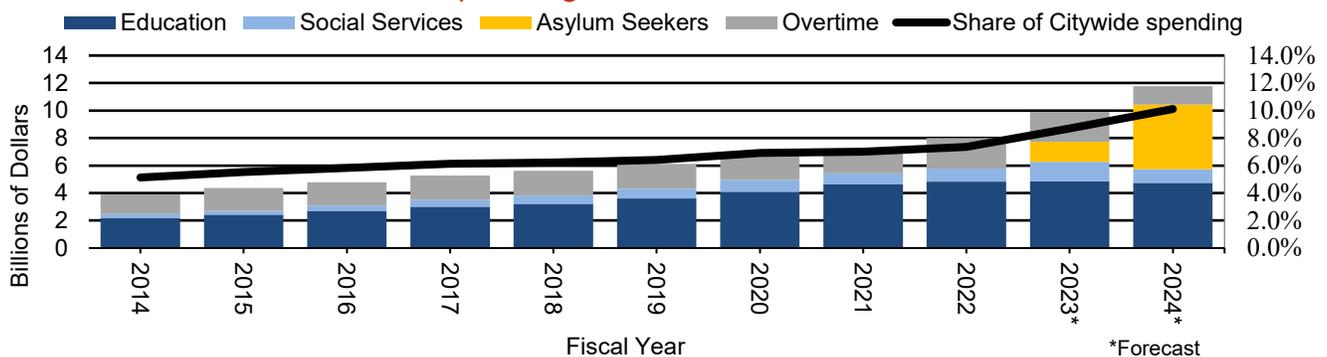
FIGURE 4
Increase in Spending Since Initial Forecast



Sources: NYC Comptroller; NYC Office of Management and Budget; OSC analysis

Such unplanned costs were effectively offset in prior years with unanticipated resources from sources such as higher-than-expected tax collections and savings identified in past Programs to Eliminate the Gaps, as well as with extraordinary federal pandemic aid during the public health emergency. The City is likely to realize additional unanticipated resources because of its generally conservative revenue forecasting and because it budgets other portions

FIGURE 3
Selected Quasi-Controllable Spending



Note: Education consists of general education, charter schools and lease payments, general and special education bus services, and Carter cases. Social Services consists of single adult shelter and the CityFHEPS programs. FY 2024 spending has been adjusted to include a revised estimate of asylum costs, at \$4.7 billion, reported after the publication of the June Plan, in August 2023. Sources: NYC Comptroller; NYC Office of Management and Budget; OSC analysis

of its spending conservatively (e.g., debt service). But there can be no guarantee that the amount of unanticipated resources realized in future years will reach a similar magnitude, especially if an economic contraction were to occur.

Quasi-controllable costs are also projected to accelerate during the plan period. Under a court decision in effect since the early 1980s, there exists a legal “right to shelter” for any individual who requests such aid from the City. Prior to the beginning of the asylum seeker influx in 2022, the City had already faced a significant fiscal challenge stemming from a rising single adult population residing in its shelter system. Such costs have routinely exceeded the City’s initial forecast each year.

As detailed in OSC’s [August 2023 report on the City’s latest financial plan](#), the City is now also incurring precipitously rising costs for shelter and related services provided to asylum seekers.

In August 2023, the City raised its forecast of costs for services to asylum seekers in FY 2024 from \$2.9 billion to \$4.7 billion, an increase that exceeds the \$1.45 billion in contingent reserves budgeted for that year. Based on these updated estimates, the selected components of quasi-controllable spending could exceed 10 percent of the City’s projected spending in FY 2024.

The City has also not yet incorporated into its financial plan the potential costs of an expansion in the CityFHEPS program enacted in July 2023. The Mayoral administration anticipates the costs could total \$17 billion over a five-year period once the expansion is implemented. Such local mandates are likely to further accelerate quasi-controllable spending.

OSC did not prepare an exhaustive list of quasi-controllable spending, but instead focused on the largest sources of financial plan risk. There are likely other examples of such spending which is legally or contractually required, and where the City has limited unilateral ability to mitigate unplanned costs in the short run.

Conclusion and Recommendations

The Mayor recently announced that absent alternatives to offset the local costs of services for asylum seekers, additional across-the-board reductions in planned spending will be necessary to maintain budget balance and close future budget gaps. The FY 2024 Program to Eliminate the Gap (PEG) targets five percent of agency spending in each of the next three financial plan updates for each year of the plan period, for a cumulative reduction of about 15 percent of agency spending. As part of the PEG, the City will impose a hiring freeze, limit contractual spending, and freeze city-funded new agency spending. The City has also indicated that unformed overtime, a source of prior-year unplanned spending, will be under renewed scrutiny for cost avoidance.

Given the size of the PEG and rising quasi-controllable spending, especially for asylum seekers, it is likely that controllable services will be adversely impacted by the new program, and it is possible that the City may need to reduce or defer the implementation of previously planned service expansions until the City’s long-term fiscal outlook improves.

Going forward, funding for controllable services will depend on the availability of fiscal resources during each annual budget adoption process, the amount of non-discretionary spending, and on the priorities of the City. The City has benefited in recent years from higher-than-projected federal and tax revenue collections and slower growth in non-discretionary spending, but these favorable fiscal conditions may not last.

In a recession, tax collections may be lower than anticipated; the State may shift financial responsibility for the cost of certain services to localities (e.g., school aid and the local share of the growth in Medicaid); and the financial markets may underperform, which can result in higher-than-planned employer pension contributions.

There may also be an increase in enrollment in safety-net programs. In the past, such unfavorable developments have typically occurred around the same time, creating significant fiscal pressure on the City in the short-term. Providing the public with a sense of the choices facing the City will be informed by a transparent accounting of what can be controlled.

Given the size of the City's reported budget gaps and the substantial risks recently identified by all fiscal monitors, OSC recommends that the City publish an updated assessment of its nondiscretionary and controllable costs, indicating the resources projected to be available and dedicated over the plan period. In addition, if the City is unable to implement a cost-avoidance initiative to bring "quasi-controllable" spending in line with projections, it should raise its forecast to reflect current trends.

The assessment would also be enhanced if informed by previous recessionary experience and a scenario-based approach to analyzing major cost drivers, providing a sense of the fiscal resources available after meeting the City's many legal and contractual obligations. Including actions that the City could implement to fully fund projected spending over the financial plan period to achieve structural balance, and including cost-reduction initiatives, funding shifts, and revenue raisers, would further enhance the assessment.

In addition, fiscal impact statement transparency would be improved by identifying all recurring locally generated and grant-supported resources available to fully fund the projected recurring cost of the legislative mandates until fully annualized. This change would lead to better understanding

of the potential implications of new requirements the City would be legally obligated to provide and their impact on the overall budget.

New York City's sophisticated budgetary management, and the transparency that comes with it, has provided a sound fiscal foundation to weather prior periods of fiscal stress in the past; a commitment to that approach now will help the public understand the difficult choices it must navigate ahead.

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