

**Testimony of Samantha Koshgarian
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**Before the Committee on Human Services
Council of the District of Columbia**

Public Oversight Hearing Regarding the Department of Human Services

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The Legal Aid Society of the District of Columbia¹ submits this testimony to discuss the Department of Human Services' (DHS) Emergency Rental Assistance Program (ERAP). Over the years, Legal Aid has testified repeatedly about the need for adequate funding for this critical program. Rather than providing the support necessary, DHS appears to be de-prioritizing ERAP as a tool for keeping families in the District stably housed, in favor of alternative programs. Legal Aid is testifying today to reiterate our support for robust ERAP funding and express our concern that the current administration of ERAP is preventing District tenants from accessing an otherwise successful program.

ERAP is one of the most effective tools the District has to offer to keep individuals and families in stable housing and prevent evictions. Legal Aid attorneys see firsthand how ERAP funds can be the difference between housing stability and homelessness. Demand for ERAP remains high from year to year – so high, in fact, that each year, need for ERAP outstrips funding availability. Given the District's housing affordability crisis, this is not surprising. According to the DC Fiscal Policy Institute, "In 2016, the most recent year for which data is available, 63 percent of DC's extremely low-income renters spent at least half of their income on housing." These 27,000 households are considered "severely housing cost burdened" by the US Department of Housing and Community Development and classified as a "worst case housing need."² For families with a rent burden that high, any emergency may be enough to cause them to fall behind on housing costs and face displacement or eviction as a result.

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Over the last 87 years, tens of thousands of the District's neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, immigration, and consumer protection. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

² Building the Foundation: A Blueprint for Creating Affordable Housing for DC's Lowest-Income Residents, Claire Zippel, April 4, 2018. Accessible at: <https://www.dcfpi.org/all/building-the-foundation-a-blueprint-for-creating-affordable-housing-for-dcs-lowest-income-residents/>

As long as our affordable housing crisis continues, there will be a significant need for assistance for families who are a single emergency away from financial crisis. As a District, we should want ERAP to be available and accessible when families need it; ERAP is a cost-effective way to keep families housed and to avoid their unnecessary entry into the homeless services system. And yet, we have seen that many eligible families encounter significant obstacles when they try to access funds. The greatest obstacle is providers running out of funding before the fiscal year ends – whether a family can access needed ERAP funds depends on the time of year at which they apply, which is a direct and unfortunate result of the chronic underfunding of the program. Additionally, we have observed that policies and processes at the provider level also present significant barriers for families in need.

The good news is that all of these barriers can be addressed and removed. As we move from oversight season to budget season, we urge the Mayor and the Committee to increase funding for ERAP to ensure that there is enough funding in FY20 to meet the full demand for assistance. We also urge the Committee to ask questions about ERAP policies and procedures, and work to ensure that such procedures are made more consistent *without reducing access to the program*.

ERAP's Underfunding Hampers its Effectiveness

While much of the oversight data provided by DHS lacks clarity, what is clear is that there is significant unmet community need for ERAP, primarily due to chronic underfunding of the program. In addition to the thousands of people who, based on DHS's own data, unsuccessfully sought assistance in FY2018, the lack of necessary funding becomes clear as ERAP reaches a drought point in the last few months of each fiscal year.

DHS reports that for FY18, 61 customers were denied assistance due to lack of funding, but the actual figure is likely in fact much higher. Three of the six ERAP providers ran out of funds to distribute prior to the end of the fiscal year and, as a result, simply stopped processing applications. DHS's reported data do not appear to account for any individuals who may have been unable to apply for assistance in the first instance because half of the providers stopped scheduling appointments based on the lack of funding.³ Moreover, the drying up of funds at the end of the year exacerbated the difficulties that individuals and families in crisis faced trying to navigate among the remaining providers, creating even more demand for limited appointments by effectively reducing the number of providers by half.⁴ This means that a family is more likely to experience eviction simply based on the bad luck of experiencing an emergency close to the end of the fiscal year, regardless of the merit of their application for assistance.

ERAP's underfunding has another effect that is deeply damaging even for tenants who are able to get assistance. As noted in DHS's oversight responses, the agency's policy is for ERAP providers to prioritize individuals with judgments and live writs, particularly when funding is

³ Department of Human Services, Performance Oversight Questions at 84.

⁴ *Id* at 89.

low.⁵ Not only is this practice not supported by the regulations, it creates a perverse incentive that legal services attorneys regularly see play out in Landlord-Tenant Court. Tenants – even those with meritorious and even complete defenses - often come before the Court with their landlords’ attorneys to confess judgment, stating that they had been told by an ERAP provider that they could not receive assistance without a judgment or a writ. This leads to judgments on the tenants’ records that make it more difficult to rent other properties in the future, and – if the tenants are ultimately not approved for assistance – accelerates the legal process toward eviction in cases that the tenant might otherwise have chosen to defend and resolved more favorably. Adequate funding that allows ERAP to serve all eligible applicants in need of assistance would remove the need to prioritize applicants who have a judgment or a writ, thereby removing the perverse incentive for tenants to unnecessarily tarnish their rental records and give up valuable legal rights.

ERAP Needs to Be More Accessible

While underfunding is the most critical accessibility issue, the practical administration of ERAP even in times when the program is well-funded make it difficult to access for those in need.

Funding issues aside, the biggest obstacle to assistance through ERAP that we see for our clients is simply getting in the door. The program is contracted out to six providers, each of which has a different process for ERAP applicants. The general model across all providers is that certain days each month are designated for applicants to be able to call a specific phone line to make an appointment, generally first thing in the morning. The days and times during which applicants can call for appointments vary from organization to organization – for example, one organization accepts calls to schedule appointments on the first of the month beginning at 9am, while another accepts calls at 8:30am on the second and fourth Fridays of the month. Several of the organizations schedule only one call-in day per month, meaning that a tenant who received information about ERAP after that date would have to wait for the next month before even being able to schedule an appointment with that provider.

The narrow and varied windows to call for an ERAP appointment are particularly troubling because even with good information regarding the call-in dates, it is extremely difficult to get through to an appointment scheduler, due to the high volume of calls. We regularly hear from tenants who called repeatedly at the right time and date, but were still unable to schedule an appointment. Indeed, even the case manager who works in the Housing Unit at Legal Aid was only able to reach a live person after calling for each possible call-in date *for several months straight*. On the morning that she got through, she called the same number more than 100 times over a two-hour period. For low-income tenants without flexibility at work and unlimited phone usage, this kind of effort is often impossible. The difficulty in scheduling appointments – coupled with the fact that it may be two to four weeks between a call and the appointment to apply – puts tenants at a greater risk that they may be evicted or lose an available unit they had otherwise been approved for before they even have the opportunity to apply for assistance.

⁵ *Id* at 89.

While it appears that at some level ERAP providers do collect data on the number of individuals seeking assistance, these numbers do not appear to reflect those individuals who call to seek assistance but never make it through the congested phone lines. DHS and ERAP providers should work together to streamline the application process and provide alternative means of securing appointments – such as a single online application, or a centralized phone system - rather than relying entirely on six different sets of call-in and walk-in dates.

ERAP Administration Would Benefit From Greater Transparency and Consistency

In addition to the difficulty of getting an appointment, the data also suggest that even for those who make it through, ERAP remains difficult to access. According to DHS's data, in FY18, there were over 9,000 people who sought ERAP assistance either over the phone or in-person who were neither granted an award through the program, nor denied for assistance. It is unclear from the data, however, what accounts for this discrepancy between the number of people seeking ERAP and the number who had an application processed. Additionally, there is wide variance from provider to provider in percentage of people initially seeking assistance (either over the phone or in person) who ultimately submit applications. For the six organizations, the number of applications submitted as a percentage of individuals seeking assistance ranges from six percent to 99.5%. This suggests either a lack of any standardization in data collection or tremendous variance in program administration across providers. Either is troubling from an oversight perspective.

Additionally, according to the agency responses, the only guidance providers receive to standardize administration of funds are the regulations themselves.⁶ This is concerning, in large part because of the significant variation we have witnessed in how different providers administer the funds. We have been informed that one provider, for example, has denied applicants who live in public housing, on the basis of their expectation that the Housing Authority will make repayment arrangements with tenants. This disparate treatment for tenants receiving one specific housing subsidy is not supported by the regulations or DCHA's practices regarding repayment plans, and it prevents assistance going to those who have the greatest assurance that addressing the short-term emergency will lead to sustainable housing in the long-term. It is also most likely source of income discrimination in violation of the DC Human Rights Act.

There is also wide variation from provider to provider in practices for determining whether an applicant for ERAP is able to contribute a required portion of the outstanding rent and/or whether they will be able to continue making rental payments after receiving assistance. Inconsistencies and wide discretion in this determination mean that in some cases otherwise eligible tenants with high rent burdens are denied, while others receive thousands of dollars of assistance only to be evicted immediately thereafter.

More consistent data and transparent policies would help ensure that ERAP is being fairly administered to all applicants and that the program applies funds where they are most likely to preserve a tenancy for the long-term. We look forward to the opportunity to review and comment

⁶ *Id* at 90.

on the forthcoming program regulations, and hope that they will address some of the current issues around access and consistency. However, we also want to caution the agency against any efforts to use regulations to constrict eligibility for the program – for example by screening out subsidized tenants as discussed above. It is important that the agency ensure standardization and coordination across providers while also allowing tenants to access the program when they fall into an emergency.

ERAP Should Not be Cut in Favor of HPP

As outlined above, ERAP would benefit from increased funding and greater transparency and consistency in its administration. However, the program remains one of the District's most effective tools to promote housing stability.

For this reason, we are concerned that in recent years, DHS has suggested that it is inclined to reduce funding for ERAP in favor of the Homelessness Prevention Program (HPP) model. There are certainly ERAP recipients who would benefit from HPP services, and we do not oppose offering those services to individuals who apply for ERAP funding where appropriate. However, diverting ERAP funding to HPP ignores the reality that ERAP fundamentally addresses a very different community need than HPP. It is well-recognized that the District has an affordable housing crisis. The fact is that for low-income families in the District, low wages and lack of affordable housing often means that one medical emergency or reduction in work hours can mean an imminent risk of eviction. For families in this situation, the problem is not a lack of budgeting skills or a need for case management to connect them to services – there is simply not enough money to get through the emergency. This is precisely the need that ERAP is designed to fill.

DHS has pointed to the incidence of repeat ERAP applications to suggest that those clients who are seeking assistance in multiple years would benefit from case management, but this applies a broad diagnosis that simply does not acknowledge the reality of DC's rental market. More frequently, the reason families need ERAP assistance in multiple years is not because they need comprehensive services – it is because the housing affordability crisis in the District persists and deepens with each passing year. No amount of budgeting or case management can change the fact that severely rent-burdened families will periodically experience a crisis that will cause them come up short when the rent is due. To require those families to engage in more comprehensive programming to receive that assistance does nothing but create an additional unnecessary burden on the already-scarce time and resources of the family and fiscal resources of DHS homeless services programming.

ERAP is demonstrably stabilizing housing for families who might otherwise face homelessness and require shelter stays or short or long-term housing subsidies. Given the high costs of those kinds of assistance, ERAP presents a remarkably cost-efficient way to keep individuals and families housed in a rental market that presents significant affordability challenges for even the most capable and resourceful low-income families. Until the affordability crisis is resolved, robust ERAP funding is one of the best tools the city has to alleviate that burden.

Conclusion

ERAP is an invaluable program – a lifeline for low-income District residents who are on the brink of losing their homes. But for too many years, it has been underfunded and undervalued by the agency. The Mayor and the Committee should put the program on firm financial footing, making sure that a tenant’s ability to access assistance is not dependent on the time of year or providers’ efforts to stretch limited funds to meet a significant community need. And we hope that the Committee will work with the agency and the legal services community to ensure greater standardization and coordination among providers, as well as low-barrier access for the District’s most vulnerable tenants.