

**Testimony of Rachel Rintelmann  
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**Before the Committee on Human Services  
Council of the District of Columbia**

**Public Oversight Roundtable on Rental Assistance and  
the District’s Eviction Prevention Strategies**

**February 22, 2021**

A year into the COVID-19 pandemic, it is indisputable that Black and brown residents of the District have borne by far the heaviest burden, seeing family members, neighbors, and friends lose their lives to the disease, all while coping with catastrophic financial losses that will reverberate in their families and communities for generations to come. The number of calls and requests for assistance that the Legal Aid Society of the District of Columbia<sup>1</sup> received from individuals and families in crisis this past year far exceed any prior year. The devastation that this pandemic has wrought upon low- to middle-income DC residents of color cannot be overstated.

In light of all of this ongoing loss, much attention has rightly been paid to the impending barrage of evictions. Stout, a global advisory firm, estimated in September 2020 that between 20,000 and 40,000 households in the District had already fallen behind on rental payments, with 30,000 facing imminent eviction at the expiration of the moratorium.<sup>2</sup> By the end of November 2020, the most recent data available, they had increased the estimate to between 22,000 and 45,000

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<sup>1</sup> 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.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 89 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, [www.LegalAidDC.org](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

<sup>2</sup> Stout, *Analysis of Current and Expected Rental Shortfall and Potential Evictions in the U.S.* Prepared for: National Council of State Housing Agencies, Sept. 25, 2020, available at [https://www.ncsha.org/wp-content/uploads/Analysis-of-Current-and-Expected-Rental-Shortfall-and-Potential-Evictions-in-the-US\\_Stout\\_FINAL.pdf](https://www.ncsha.org/wp-content/uploads/Analysis-of-Current-and-Expected-Rental-Shortfall-and-Potential-Evictions-in-the-US_Stout_FINAL.pdf).

families facing eviction.<sup>3</sup> According to the most recent Census Pulse data, more than 20% of Black households report that they are not current in their rent, compared with 3% of white households.<sup>4</sup> Moreover, 45% of Black households reported that it was “somewhat” or “very” likely that they would need to leave their housing due to eviction within the next two months.<sup>5</sup> More than a third of those households reported that they had “no confidence” or only “slight confidence” that they would be able to afford the next month’s rent.<sup>6</sup>

Meanwhile, the measures the Council put into place to protect tenants from eviction during the public health emergency hang in the balance after a Superior Court judge held that the eviction case filing moratorium is unconstitutional. On February 19, the judge further declined to impose a stay on eviction filings while the District appeals his ruling. If his ruling stands, there is a high likelihood that we will begin seeing eviction cases filed by the thousands, and that the ruling may be used to invalidate the other protections put into place by the Council. Even if the eviction moratorium stands, without far-reaching rent relief, the eviction crisis is merely kicked down the road.

We must face, and avert, that crisis. Evictions will lead to a wave of housing instability and homelessness, which is itself public health crisis, compounding the significant damage already being done by COVID-19. Many families will have no choice but to present at shelters or double-up with relatives, with the close contact increasing exponentially the risk of the spread of COVID-19 and its emerging variants. This, of course, is to say nothing of the well-documented trauma that evictions, housing instability, and homelessness impose upon those who experience them.<sup>7</sup> Families are destabilized, personal belongings and vital records are lost, and the mental health toll on both adults and children is immeasurable.

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<sup>3</sup> STOUT Data: *Estimation of Households Experiencing Rental Shortfall and Potentially Facing Eviction (8/19/20 – 11/23/20)*, available at <https://www.ncsha.org/resource/stout-rental-and-eviction-live-data/>

<sup>4</sup> U.S. Census Bureau, *Week 23 (Jan. 20 – Feb. 1, 2021) Housing Table 1b. Last Month’s Payment Status for Renter-Occupied Housing Units, by Select Characteristics: District of Columbia*, available at <https://www.census.gov/data/tables/2021/demo/hhp/hhp23.html#tables>.

<sup>5</sup> *Id.* at *Housing Table 3b. Likelihood of Having to Leave this House in Next Two Months Due to Eviction, by Select Characteristics: District of Columbia*.

<sup>6</sup> *Id.* at *Housing Table 2b. Confidence in Ability to Make Next Month’s Payment for Renter-Occupied Housing Units, by Select Characteristics: District of Columbia*.

<sup>7</sup> *See, e.g.* Megan Sandel, Richard Sheward, Stephanie Ettinger de Cuba, Sharon M. Coleman, Deborah A. Frank, Mariana Chilton, Maureen Black, Timothy Heeren, Justin Pasquariello, Patrick Casey, Eduardo Ochoa and Diana Cutts, *Unstable Housing and Caregiver and Child Health in Renter Families*, PEDIATRICS, FEB. 2018; Hugo Vásquez-Vera, Laia Palència, Ingrid Magna, Carlos Mena, Jaime Neira, Carme Borrell, *The Threat Of Home Eviction and its Effects On Health Through The Equity Lens: A Systematic Review* SOCIAL SCIENCE &

**COVID-19 may have been unavoidable. Evictions are not.**

In total, Stout estimates that the amount of rent shortfall for D.C. households that are unable to pay rent and is between \$66,000,000 and \$119,000,000 through the end of January 2021.<sup>8</sup> While this may sound like a lot, that number is not remotely insurmountable. With the influx of \$200 million in Emergency Rental Assistance (ERA) federal funds, plus the adjusted funds the District was shorted during the initial distribution of CARES Act funding, and the \$2 billion in total funds allocated to the city through Biden’s \$1.9 trillion Coronavirus Relief package, the District is well-equipped to handle the impending eviction crisis. Indeed, with meaningful and accessible rental assistance programs, *it could prevent even one single D.C. resident from being evicted for nonpayment of rent.*

Providing broad rent relief to tenants will have positive effects reaching well beyond housing stability. Of 11,030 Black families with children surveyed in the District, almost 60% reported not having enough food to eat “sometimes” or “often” in the previous seven days.<sup>9</sup> Among surveyed families of all races who reported experiencing food insecurity, 63% of those surveyed said that their children were not eating enough because food was not affordable “often” or “sometimes.”<sup>10</sup> Of 36,670 Black households surveyed on the topic, 51% reported having difficulty paying for usual household expenses during the coronavirus pandemic.<sup>11</sup> Removing the burden of rent arrears from these households will not only keep them stably housed, it will enable them to pay for other necessities – including those as critical as food – while also giving them the power to invest their limited means into the local economy.

**The District Needs a Streamlined Method of Assisting the Maximum Number of Tenants with the Greatest Efficiency and Lowest Possible Barriers.**

As we have testified before, the Emergency Rental Assistance Program is a program in need of significant improvements before it can meaningfully address the crisis now facing many of the

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MEDICINE, Feb. 2017; Deborah Padgett, *Homelessness, Housing Instability and Mental Health: Making the Connections*, CAMBRIDGE UNIVERSITY PRESS, June 15, 2020.

<sup>8</sup> STOUT Data: *Estimation of Households Experiencing Rental Shortfall and Potentially Facing Eviction (8/19/20 – 11/23/20)*, available at <https://www.ncsha.org/resource/stout-rental-and-eviction-live-data/>

<sup>9</sup> U.S. Census Bureau, *Week 23 (Jan. 20 – Feb. 1, 2021)* at Food Table 3. *Food Sufficiency for Households with Children, in the Last 7 Days, by Select Characteristics: District of Columbia*, available at <https://www.census.gov/data/tables/2021/demo/hhp/hhp23.html#tables>

<sup>10</sup> *Id.* at Food Table 5. *Recent Food Insufficiency for Households with Children, by Additional Food Related Household Characteristics: District of Columbia.*

<sup>11</sup> *Id.* at Household Spending Table 1. *Difficulty Paying Usual Household Expenses in the Last 7 Days, by Select Characteristics: District of Columbia.*

District's tenants. We strongly believe that ERAP is a program worth improving and investing in, but also believe that the moment may require a slightly different approach to rental assistance.

Legal Aid recommends the creation of a new program designed to provide larger-scale relief to both landlords and tenants on a more streamlined basis. Specifically, such a program would allow for the payment of a percentage of *all* unpaid rents at a particular property. Rather than requiring individual tenants to navigate complex administrative and bureaucratic systems, this would allow landlords to apply on behalf of multiple tenants, lowering the barriers to entry. Currently, ERAP and CHAP providers report being overwhelmed by the numbers of applications, so a corresponding benefit of program that allows the processing of assistance for a large number of tenants on a building-by-building basis would be the substantial reduction of the burden on service providers. And, most importantly, it would expedite the payment of rent relief for those who need it most.

We recognize that a program designed to pay all unpaid rents in the District would be costly, particularly given the ongoing nature of the public health emergency. To address this concern, we propose that the amount of unpaid rent the landlord recovered would operate on a sliding scale, depending on the size and nature of the housing provided; small, non-profit, and naturally affordable properties could recover a higher proportion of the unpaid rent, while larger and for-profit landlords would recover less.

This model does bear some similarities to the Housing Stabilization Grants program administered by DHCD in December 2020, but we propose some key differences:

- First, program rules must be clear that acceptance of a payment by a landlord must be in full satisfaction of the debt, meaning that all rental arrears are deemed to have been paid, and the tenant's account brought to a zero balance. We have spoken with tenants whose landlords received the Housing Stabilization funds, but still demanded the remaining 20% of rent (which they had agreed to waive) from the tenants. We have also observed at least one court hearing in which a landlord acknowledged receiving those funds, but nevertheless declined to dismiss the pending eviction case for nonpayment of rent.
- Second, it must require notice to the tenant of both the application for funds and the receipt of funds so that they can retain such notice for their records. Notice should be provided directly to the tenant, and general building-wide data should also be made publicly available.
- Third, it must take into account funds received by the landlord through Paycheck Protection Program (PPP) and other federal and local assistance programs. Many housing providers benefitted from the receipt of substantial sums of money from these programs, but declined to pass any of those funds along to tenants in the form of rent savings.<sup>12</sup> Landlords cannot be allowed to “double-dip” in this way, essentially utilizing

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<sup>12</sup> Morgan Baskin, *The Same Property Management Companies and Building Owners Pressuring Tenants to Pay Rent Are Benefitting from Pandemic Relief Funding* WASHINGTON CITY PAPER, Aug. 20, 2020, available at <https://washingtoncitypaper.com/article/304571/the-same-property->

taxpayer funds to threaten eviction, double-collect rent, and come out ahead financially as a result of the crisis.

- Fourth, as a condition of receipt of the funds, landlords must represent that there are no health, life or safety violations in the rental units covered by the payment *or* certify that the funds received will be used to address those violations. Too many landlords took advantage of the Housing Stabilization Grants and collected more rent than they were likely entitled to, given the extent of housing code violations in their properties.
- Fifth, it must have enforcement methods built into the program, so that landlords that do not comply with program rules are held accountable. The Attorney General should have enforcement authority, including the authority to claw back funds without adverse consequences for the tenant. Tenants should also have a right of action against any landlord attempting to collect rents waived under this program.
- Finally, if landlords refuse to participate in the program, tenants should nonetheless be allowed to apply and to receive the funds directly. This is permissible under the guidance for the federal ERA program, and a rational approach under the circumstances. Payments directly to tenants would allow them to negotiate manageable repayment agreements or – if their landlord refused to agree to reasonable terms – use those funds to relocate and rent elsewhere. Either way, the goal of housing stability is achieved.

The ERA program does require certification by tenants of eligibility for the program, but to the greatest extent possible, self-certification should be all that is required for participation in the local program. In the event that a tenant cannot make such a certification – perhaps because the arrears are attributable to financial hardship not caused by COVID-19 – or if the landlord is otherwise unable to quickly reach a tenant for cooperation with a building-wide application, the District should utilize unrestricted federal or local funds to cover the rent for those households. It is crucial to the success of a meaningful rental assistance program that good intentions are assumed on the part of non-paying tenants, that trust is placed in those who self-certify as to financial hardship, and that the primary goal is the payment of rent and the prevention of the displacement of tenants in the midst of a global pandemic. This must be a low barrier program, and where burdens imposed by restricted federal funds make payment impossible, the solution is not to leave rents unpaid, but to tap into other available resources.

### **The Emergency Rental Assistance Program Must be Strengthened and Adequately Funded.**

Although Legal Aid firmly believes that the program outlined above would be by far the fairest and most efficient way to deal with the looming eviction crisis, we acknowledge that there may be landlords who, for whatever reason, decline to participate. In those instances, ERAP will continue to be a viable option for tenants who would otherwise face eviction. However, as my colleague Emily Near has laid out extensively in her written testimony which accompanies mine

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today, there are significant problems with the program that render it inaccessible to many of the tenants it is intended to serve.

Moreover, despite incredibly positive changes this Council made to ERAP enabling DHS to provide assistance up to the number of months of the public health emergency, DHS nevertheless exercised its discretion to cap assistance at five months for most households. Simply put, five months of rent assistance in the middle of a financial crisis that has lasted 11 months and counting helps almost no one. Indeed, because providers have reasonably relaxed requirements that tenants demonstrate ability to pay the remaining balance, many landlords have collected those five months of rent without waiving balances and will likely move for eviction as soon as it is lawful to do so. ERAP, when used in this way, is not homelessness prevention but landlord stimulus.

To solve this problem, the Council should remove DHS's discretion and instead make it mandatory that assistance be provided up to the number of months in the PHE. Of course, this will increase the cost of the program, and funds should be invested to ensure that the need can be met. Anything short of a well-funded ERAP without adequately high caps on assistance simply does not keep tenants housed.

### **Conclusion**

Existing structural inequities, paired with a pandemic wholly uncontrolled at the federal level, have wrought devastation on Black and brown District residents over the past year. Rent assistance is a practical solution to the economic and social cost of evictions and a corresponding rise in housing instability and homelessness. It is a practical solution, but it is also an equitable one.

As Councilmember McDuffie articulated in his February 9 editorial in the *Washington Post*, “decades of structural and institutional racism in D.C., and across the United States, have created pervasive and widespread racial inequities across all indicators for success, including in health, education, employment, housing, transportation, business and policing and the criminal justice system. In recent years, local policies have not corrected course but instead left Black and Brown residents further behind.”<sup>13</sup>

Nowhere is that more evident than it is in the faces of those affected by the current crisis, many of whom now face eviction without intervention. And there is no greater opportunity for the Council to act than now.

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<sup>13</sup> Councilmember Kenyan McDuffie, *D.C.'s Racial Equity Agenda Demands Action Now*, WASHINGTON POST, Feb. 9, 2021, available at <https://www.washingtonpost.com/opinions/2021/02/09/dcs-racial-equity-agenda-demands-action-now/>