

**Testimony of Rachel Rintelmann
Supervising Attorney, Housing Law Unit
Legal Aid Society of the District of Columbia**

**Before the Committee on Human Services
Council of the District of Columbia**

Performance Oversight Hearing Regarding the Department of Human Services

March 1, 2021

The Legal Aid Society of the District of Columbia¹ submits the following testimony regarding the performance of the Department of Human Services (DHS), specifically the Rapid Rehousing Program (RRH) and the Emergency Rental Assistance Program (ERAP). Legal Aid also submits this testimony to make recommendations for the use of newly allocated federal funds for emergency rental assistance.

The services provided by DHS are more critical than ever, as COVID-19 has had a devastating and disproportionate effect on low-income District residents of color. The pandemic has laid bare the existing deep racial inequities in our community, and the consequences will be apparent generations from now. But this is also a moment of unique opportunity for the District to act. An infusion of federal funds, including \$200 million in Emergency Rental Assistance (ERA) and some \$2 billion anticipated in unrestricted funds, will provide the city an opportunity not only to rebuild after significant economic losses, but to reimagine how to provide lasting and meaningful assistance to low-income District residents.

Research shows that the best and single most cost-effective poverty reduction tool is the provision of stable and affordable housing.² While DHS ostensibly provides services designed both to preserve housing and to help families transition out of homelessness, those programs are

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.” 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, and our blog, www.MakingJusticeReal.org.

² See, e.g., The National Low Income Housing Coalition, *Explore Issues: The Problem* available at <https://nlihc.org/explore-issues/why-we-care/problem>

in desperate need of restructuring if they are to address the needs of low-income families, especially those impacted by COVID-19.

The District Must Prioritize Eviction Prevention Through the Use of Streamlined and Broad-Reaching Rental Assistance Programs

Much has been made of the impending eviction crisis, and rightly so. As many as 45,000 families face eviction for nonpayment of rent, and the costs – both social and economic - of such a wave of evictions and the corresponding increase in housing instability and homelessness would be too high to bear.

In total, estimates provide that the total rent shortfall for D.C. households that are unable to pay rent is between \$66,000,000 and \$119,000,000 through the end of January 2021.³ 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.⁴ 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.”⁵ Of 36,670 Black households surveyed on the topic, 51% reported having difficulty paying for usual household expenses during the coronavirus pandemic.⁶ Removing the burden of rent arrears from these households will not only keep them stably housed, it will also enable them to pay for other necessities – including those as critical as food – while giving them the power to invest their limited means into the local economy.

³ 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/>

⁴ 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>

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

⁶ *Id.* at Household Spending Table 1. *Difficulty Paying Usual Household Expenses in the Last 7 Days, by Select Characteristics: District of Columbia.*

The Moment Demands Investment in a New Kind of Rent Assistance Program

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 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 to apply for assistance, this would allow landlords to apply on behalf of all tenants in arrears, lowering the barriers to entry. A corresponding benefit would be a substantial reduction of the administrative 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.⁷ Landlords cannot be allowed to "double-dip" in this way, essentially utilizing

⁷ 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. Self-certification has worked in the context of ERAP and is the best practice for any 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 laid out extensively in her written testimony submitted for last week's oversight hearing regarding rental assistance programs in the District, there are significant

management-companies-and-building-owners-pressuring-tenants-to-pay-rent-are-benefiting-from-pandemic-relief-funding/

problems with the program that render it inaccessible to many of the tenants it is intended to serve.⁸

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 (PHE), 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 with adequately high caps on assistance simply does not keep tenants housed.

The District Must Transition Resources Away from the Rapid Rehousing Program

Circumstances of the last year have forced DHS to move away from exiting families from the Rapid Rehousing Program (RRH), providing a much-needed break for families that might otherwise have faced homelessness upon exit. In effect, DHS has been forced to turn RRH -- temporarily-- into a long-term subsidy program, which means that for the first time in many years, the program is not leading to significant displacement as families reach the dreaded RRH cliff.

But none of this was by design. Given the choice, DHS would have continued with the exiting of families that could not afford their monthly rent, as it has always done. As Legal Aid has testified many, many times, DHS's own data make clear the fact that RRH is not a program that leads to long-term and stable housing. Despite a multitude of evidence that RRH does not work, its budget has only increased.

It is time to reverse course and move resources away from RRH. Legal Aid believes that all RRH subsidies must be extended through at least the end of the fiscal year; that families must not be exited unless they can afford their monthly rent without a subsidy (based on the federal definition of affordability); that families who cannot afford the rent without a subsidy should be exited into permanent subsidy programs; and that the District should begin the process of transitioning its resources away from this failed short-term subsidy program in favor of proven permanent subsidy programs.

⁸ *Legal Aid Public Oversight Roundtable Testimony Regarding Rental Assistance and Eviction Prevention* (February 22, 2021) (Testimony of Emily Near), https://www.legalaiddc.org/wp-content/uploads/2021/02/Rental-Assistance-Roundtable-Testimony_EN_2.22.21-FINAL_to-post-1.pdf

Time-Limited Subsidies do not lead to Permanent Housing.

For years, Legal Aid has expressed concern that imposing time limitations upon recipients of Rapid Rehousing is wholly counterproductive and far more likely to cycle families back into homelessness than to result in permanent and stable housing. DHS data supports what Legal Aid has seen in practice for many years: time-limited subsidy programs do not lead to permanent and stable housing.

The data on families participating in Rapid Rehousing have long painted a discouraging picture of the program, and this year's oversight responses from DHS are no different. Overall, the numbers suggests that families are being forced into rental arrangements that they cannot afford, and do not experience anywhere near the meaningful income growth that they would need in order to pay high (and rising) District rents.

The theory behind Rapid Rehousing has always been that participants will be able to sufficiently increase their incomes while in the program to be able to take over the payment of rent and remain stably housed after their exit from the program. This might work for an otherwise high-wage earning family experiencing truly short-term financial hardship, or for a family in a lower-rent jurisdiction. But those are not the families served by Rapid Rehousing in DC. Instead, the numbers show that families referred to Rapid Rehousing in the District are *far* from being able to afford their housing when they begin their time in the program and the vast majority do not experience the substantial gains in income that it would take to afford their housing at the end. For families served by Rapid Rehousing in FY20, the average monthly income at entry was \$952.⁹ At exit, families had an average income of \$992, a mere \$40 higher than the average entry income. Indeed, only 9.3% of participant saw any increase in their household income at all.¹⁰ Meanwhile, the average monthly rent for a two-bedroom apartment was \$1,546, higher than the average income at both entry and exit.¹¹ The sizeable gap between average income and average rent does not meaningfully close during the time that families participate in the program. Even if a family could somehow devote 100% of their income to rent, they still could not afford their housing after the subsidy ends. Simply put, the program places families in housing that is unaffordable from start to finish, and average income gains do not make up the difference.

Rapid Rehousing is Both Ineffective and Extremely Expensive

DHS continues to insist that RRH should be a one-size-fits-all solution for exiting families from shelter. But the reality is that many, if not most, participant families do not need the heavy-handed comprehensive services built into RRH. Most participant families need rental assistance because they are living on very low incomes in one of the nation's most expensive cities; housing is unaffordable and high-paying jobs are difficult to come by. Case management cannot change those economic realities. To succeed in RRH and leave the program with sustainable housing at \$1546 per month, the average participant family would have to more than quadruple their monthly income over the course of a year. For a single adult-headed household, that would mean securing a fulltime job that pays at least \$27 per hour. The case management services

⁹ DHS FY20-FY21 Performance Oversight Responses, Q 62.

¹⁰ *Id.*

¹¹ *Id.* at Q 59.

provided through RRH are spotty and inconsistent at best, but even much better case management could not create economic opportunity where it does not exist. If a family would benefit from appropriate, targeted case management, referrals should certainly be made. But participation in case management simply should not be a mandatory condition for receipt of a much-needed rental subsidy.

Yet, RRH relies on services that are as expensive as they are ineffective. Of the almost \$27,000 that was budgeted per participant family in FY2020,¹² over \$8000, or just under 30%, will be spent not on rent, but on case management services.¹³ As noted above, the return on that significant investment was nearly imperceptible; even those 9.3% of families that saw a moderate increase in income still could not afford market rent at the end of the program. For many families, that \$8000 would have been far better spent on rent than on case management. Put frankly, many families just need the rent assistance and not all of the other intensive (and expensive) services that Rapid Rehousing provides. Families with employed heads of household may not need these services; job placement, for example, is not terribly useful for a tenant who is already employed full-time. And, looking beyond the high economic cost of the Rapid Rehousing program itself, we remain concerned about the human cost as even those families who succeed in securing fulltime employment nevertheless continue to face housing insecurity. Rather than really grapple with this issue, DHS continues to force those families over the program cliff, declaring them successes and abandoning them with rents they cannot afford.

Rapid Rehousing Families Struggle with Unsafe and Unhealthy Housing, As Well As Inflated Rents

The agony of the brief and often traumatic cycle of a RRH tenancy is often compounded by unsafe housing and predatory landlords. In our experience, many of the few landlords willing to incur the risk of renting to a family with a short-term subsidy tend to be slumlords, relying on the family's desperation to find housing as they exit shelter, and counting on their willingness to endure deplorable conditions as an alternative to homelessness. We have met Rapid Rehousing participants who are living with bedbugs, roaches, rats, and sewage leaks, in units somehow approved by the subsidy provider prior to move-in.

There is a thriving sub-market for RRH rentals, with landlords accepting District dollars to rent uninhabitable units to unsuspecting tenants. And this is largely a successful model for such landlords because by the time the family complains or pursues legal remedies, the subsidy has ended, and the landlord can evict the family for nonpayment of rent without consequence or need to make repairs. Remarkably, because subsidy payment standards are high, landlords can often rent units to RRH tenants at rates higher than they would be able to get on the private rental market. Once the subsidy ends, families are left struggling to afford inflated rents on substandard units they would rather not have occupied in the first place.

¹² DHS FY19-FY20 Performance Oversight Responses, Q94.

¹³ DC Department of Human Services, Taskforce Presentation: Overview of the Family Rehousing and Stabilization Program (FRSP) at 17 (Annual FRSP Investments).

The families participating in RRH are among the most vulnerable families in the District; almost by definition, all have experienced financial hardship so serious that they were left with no choice but to enter the shelter system. It is clear that those families will face the longest and most difficult road to recovery after the pandemic. Now is not the time to double-down on a short-term subsidy for those families. DHS has made clear, over and over again, that it does not view long-term, sustainable (or even safe) housing as a goal of the Rapid Rehousing Program. There is no better moment than now to completely reverse that course.

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. Investment in improved rental assistance programs and the reallocation of resources away from RRH in favor of permanent housing subsidies are practical solutions to avoid the economic and social cost of evictions, housing instability, and homelessness.

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.”¹⁴

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.

¹⁴ 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/>