

**Testimony of Beth Mellen
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**Before the Special Committee on COVID-19 Pandemic Recovery
Council of the District of Columbia**

**Public Oversight Hearing Regarding an Equitable End to Safety Net Protections Put in
Place During the COVID-19 Pandemic**

May 21, 2021

The COVID-19 pandemic is worsening existing economic inequalities in the District, imposing disproportionate burdens on Black and Latinx residents, and deepening a longstanding affordable housing crisis. With emergency protections for tenants in place throughout the pandemic, the District has been able to hold off on what may still become a devastating wave of evictions and displacement. Federal legislation now has approved up to \$352 million in emergency rental and utility assistance for District residents, placing solutions within reach. This opportunity to avert a crisis is at risk, however, because of fundamental problems with implementation of the Stronger Together by Assisting You (STAY) DC program.

The Legal Aid Society of the District of Columbia¹ believes that the winding down of tenant protections must be equitable and thoughtful. The eviction and utility moratoria have saved lives and should remain in place for at least the public health emergency plus 60 days, with a requirement for other metrics on rental and utility assistance to be met first. To avoid evictions for nonpayment of rent, the Council and District agencies must take immediate steps to fix problems with STAY DC and fully fund the Emergency Rental Assistance Program (ERAP). Threatening tenants with eviction will not help; government action in collaboration with community-based organizations can. The Council also should implement short-term and long-term improvements to the eviction process, to ensure that eviction always is a last resort and that the process is as equitable as possible.

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.

The COVID-19 Pandemic Is Exacerbating the District’s Existing Affordable Housing Crisis, Putting Black and Latinx Tenants at Risk of Displacement

In a city where the average rent for a one-bedroom apartment now tops \$2,000 per month, households with low and moderate incomes — the vast majority headed by people of color — are being left behind.² Since 2002, the District has lost over half of its low-cost rental units, those renting for \$800 or less.³ Subsidized housing also remains out of reach for most tenants. The centralized waiting list maintained by the D.C. Housing Authority (DCHA) has been closed for eight years and still numbers just under 40,000 families.⁴

The result of this deepening affordability crisis is that low-income families are paying far too much of their limited incomes for housing. Nearly two-thirds of extremely low-income households in the District pay half or more of their income towards rent, a threshold that HUD classifies as “severely housing cost burdened”.⁵ This issue is one of racial equity; 88 percent of extremely low-income, severely rent-burdened households are headed by a person of color.⁶

The shortage of affordable housing and accompanying heavy rent burdens are having devastating effects on Washingtonians with low incomes, particularly Black households. A national study found that the District had the greatest “intensity of gentrification” of any city across the country for the period of 2000 to 2013, with more than 20,000 Black residents displaced.⁷ This ongoing displacement is caused in part by eviction, which disproportionately impacts majority-Black areas of the District with high concentrations of poverty.⁸

² RentCafe, *Washington, DC Rental Market Trends*, available at <https://www.rentcafe.com/average-rent-market-trends/us/dc/washington/>.

³ D.C. Fiscal Policy Inst., *Going, Going, Gone: DC’s Vanishing Affordable Housing* (March 2015), available at <https://www.dcfpi.org/wp-content/uploads/2015/03/Going-Going-Gone-Rent-Burden-Final-3-6-15format-v2-3-10-15.pdf>.

⁴ D.C. Hous. Auth., *2020 Performance Oversight Hearing - Committee on Housing and Neighborhood Revitalization Responses to Pre-Hearing Questions* (March 2020), p. 28, available at <https://dccouncil.us/wp-content/uploads/2020/03/dcha.pdf>. DCHA did not provide updated figures in this year’s performance oversight responses.

⁵ D.C. Fiscal Policy Inst., *A Broken Foundation: Affordable Housing Crisis Threatens DC’s Lowest Income Residents* (Dec. 8, 2016), p. 3, available at <https://www.dcfpi.org/all/a-broken-foundation-affordable-housing-crisis-threatens-dcs-lowest-income-residents/>. Extremely-low income families are those with incomes at or below 30 percent of area median income.

⁶ *Id.* at 1.

⁷ National Cmty. Reinvestment Coal., *Shifting Neighborhoods* (March 2019), available at <https://ncrc.org/gentrification/>. An updated study covering 2013 to 2017 found that the District “still has a high intensity of gentrification” with displacement continuing. National Cmty. Reinvestment Coal., *Gentrification and Disinvestment 2020* (June 2020), available at <https://ncrc.org/gentrification20/>.

⁸ See Brian J. McCabe & Eva Rosen, Georgetown Univ., *Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability* (Fall 2020), pps. 18-21, available at <https://georgetown.app.box.com/s/df0d4mruf59wcvqm6cqo9a8pyu8ukeuk>. McCabe and Rosen

Against this backdrop, nearly 40 percent of District residents have lost employment income since mid-March 2020, and District employees have filed over 200,000 claims for unemployment.⁹ Over 50,000 families report that they are still finding it “very difficult” to pay their regular bills.¹⁰ This includes 11 percent of tenants in the District reporting they were not current in their rent payments as of the end of April 2021, and 14 percent with little or no confidence in their ability to pay May 2021 rent.¹¹ The burden of this economic and housing crisis is falling disproportionately on low-income Black and Latinx families. Ninety-four percent of the families reporting that they are not current in their rent and 98 percent of the families with little or no confidence in their ability to pay future rent are Black or Latinx.¹²

Eviction Always Should Be a Last Resort Because of Its Devastating Consequences on Families, Neighborhoods, and Ultimately on the District Overall

Responding to the potential eviction crisis is essential because of the devastating consequences that eviction has on individuals, families, neighborhoods, and communities. Five years ago, Harvard sociologist Matthew Desmond published his path-breaking book *Evicted: Poverty and Profit in the American City*, which charts his experience living in low-income communities for over a year and studying eviction up close. The central thesis of Desmond’s book is that eviction is a cause, not just a condition, of poverty. Preventing evictions not only is humane, just, and in furtherance of race equity, it also avoids multiple negative impacts and costs to families, communities, and safety net programs.

Eviction disproportionately affects families with children. Even after accounting for other facts such as how much the tenant owed the landlord, household income, and race, the presence of children in the household almost tripled a tenant's odds of receiving an eviction judgment.¹³ This same reality is playing out in the current crisis; 61 percent of

found that nearly sixty percent of all eviction cases in the District are filed against tenants living in Wards 7 (22.6 percent) and 8 (34 percent), both of which have populations that are over 90 percent Black, even though those two Wards account for only 25.7 percent of all renter households.

⁹ U.S. Census Bureau, *Week 27 Household Pulse Survey: Mar. 17-29 – Detailed Tables*, Employment Table 1, available at <https://www.census.gov/data/tables/2021/demo/hhp/hhp27.html>; D.C. Dep’t of Emp’t Servs., “Unemployment Compensation Claims Data,” available at <https://does.dc.gov/publication/unemployment-compensation-claims-data>. The Census Household Pulse Survey has collected survey data from jurisdictions across the United States, including the District, since the week of April 23, 2020.

¹⁰ U.S. Census Bureau, *Week 28 Household Pulse Survey: Apr. 14-26 – Detailed Tables*, Spending Table 1.

¹¹ *Id.*, Housing Tables 1b., 2b.

¹² *Id.*

¹³ Matthew Desmond, *Evicted: Poverty and Profit in the American City* (2016), p. 332.

tenants currently behind on their rent and 77 percent of those worried about paying future rent are families with minor children.¹⁴

Eviction leads to future employment instability. The likelihood of being laid off is roughly 15 to 20 percent higher for workers who have recently experienced eviction.¹⁵ Eviction causes many stresses on low-wage workers that can lead to job loss due to longer commutes, missed days of work, increased tardy days, and mistakes on the job.¹⁶

Evicted families often are forced to move into worse housing. “Because many landlords reject applicants with recent evictions, evicted tenants are pushed to the very bottom of the rental market...”¹⁷ Tenants forced to move are 25 to 35 percent more likely to experience long-term housing conditions problems in their next unit.¹⁸ Families who experience a forced move also are more likely to relocate to neighborhoods without access to public transportation, grocery stores, child care, and other critical resources.¹⁹

Eviction can lead to psychological instability, depression, and even suicide. Half of recently evicted mothers report multiple symptoms of clinical depression, double the rate of similar mothers who were not forced from their homes.²⁰ Psychiatrists have cited eviction as “a significant precursor to suicide.”²¹ Dr. Craig Pollack — a professor at John Hopkins, a primary care physician, and a health researcher — similarly testified before

¹⁴ *Week 28 Household Pulse Survey: Apr. 14-26 – Detailed Tables, supra*, Housing Tables 1b., 2b.

¹⁵ *Evicted, supra*, at 296; Stout, Risus, Ross LLC, *The Economic Impact of an Eviction Right to Counsel in Baltimore City* 37-38 (May 2020), available at <https://cdn2.hubspot.net/hubfs/4408380/PDF/Eviction-Reports-Articles-Cities-States/baltimore-rtc-report-final-5-8-2020.pdf> (collecting research studies).

¹⁶ Matthew Desmond and Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, 63 Soc. Prob. 46, 59 (2016), available at <https://scholar.harvard.edu/mdesmond/publications/housing-and-employment-insecurity-among-working-poor>.

¹⁷ Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 Am. J. Soc. 88, 118 (2012), available at <https://scholar.harvard.edu/files/mdesmond/files/desmond.evictionpoverty.ajs2012.pdf>. Even under the District’s temporary legislation requiring many eviction records to be sealed, tenants with judgments entered against them are not protected for at least three years.

¹⁸ Matthew Desmond, Carl Gershenson, and Barbara Kiviat, *Forced Relocation and Residential Instability among Urban Renters*, Social Servs. Rev. (June 2015), pps. 249-51, available at https://scholar.harvard.edu/files/mdesmond/files/desmond.etal.2015.forcedrelation.ssr_2.pdf. Examples of housing conditions include lack of heat, broken appliances, and faulty wiring.

¹⁹ *Evicted, supra*, at 297.

²⁰ *Id.* at 298; see also Stout, Risus, Ross, *supra*, at 41-45.

²¹ *Evicted, supra*, at 299.

this Special Committee in February that lifting eviction moratoria has been associated with significant increases in mental distress.²²

Eviction has proven negative effects on children’s health and schooling. Substandard housing conditions to which evicted families too often must relocate can negatively impact a child’s health, ability to learn, and sense of self-worth.²³ Eviction also is associated with higher rates of adolescent violence and poor school performance, and ultimately may lead to lower future earning potential as a result.²⁴

Eviction can lead to loss of a vital housing subsidy. A court-ordered eviction results in loss of a subsidy for tenants whose assistance is tied to their units and also is a basis to terminate tenant-based assistance.²⁵ For those on the waiting list for subsidized housing, eviction and unpaid debts often count as a strike against an applicant.²⁶

Eviction results in tenants losing important possessions that are expensive to replace. Some tenants cannot afford to move larger, more expensive items such as furniture and appliances and are forced to leave behind these and other possessions when evicted. Even for tenants able to pay for storage initially, items may be lost later if payments are not made to the storage facility.²⁷

Eviction also is costly for landlords and for the government. The Aspen Institute estimates that each eviction may cost a landlord up to \$6,000, particularly in high-cost areas such as the District.²⁸ The costs for the District are high as well, with increased funding required for

²² Written Testimony of Dr. Craig Pollack, Before the Council of the District of Columbia, Committees on the Judiciary & Public Safety, Housing & Executive Administration, and Human Services, Joint Oversight Public Roundtable Record, (Feb. 4, 2021), p. 46, *available at* https://lms.dccouncil.us/downloads/LIMS/46524/Oversight_Hearing_Record/HR24-0011-Oversight_Hearing_Record.pdf. Dr. Pollack also noted the body of research showing that eviction or other forced moves are associated with poor adult physical health outcomes (including respiratory conditions and high blood pressure), adult mental health outcomes (including anxiety and depression), and child physical health outcomes (including low birth weight and food insecurity).

²³ *Evicted, supra*, at 299; *see also* Stout, Risus, Ross, *supra*, at 41-45.

²⁴ *Eviction and the Reproduction of Urban Poverty, supra*, at 89; *see also* Stout, Risus, Ross, *supra*, at 38-39, 45-47.

²⁵ Matthew Desmond and Rachel Tolbert Kimbro, *Eviction’s Fallout: Housing, Hardship, and Health*, 94(3) Soc. Forces 295, 299 (2015), *available at* https://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015_2.pdf; *see also* Stout, Risus, Ross, *supra*.

²⁶ *Evicted, supra*, at 297.

²⁷ *Eviction and the Reproduction of Urban Poverty, supra*, at 119.

²⁸ Aspen Institute Financial Security Program, *National Eviction Risk Projections* (Aug. 2020), pps. 8, 18, *available at* <https://www.aspeninstitute.org/wp-content/uploads/2020/08/Evictions-Data-Update-August.pdf>.

homeless services, medical services, and other social services. It costs \$50,000 annually to house a family in emergency or temporary shelter in D.C., or nearly \$150 per day per family. New housing subsidies save the District money compared to shelter but still amount to \$17,000 to \$27,000 annually per single adult and \$24,000 to \$35,000 per family.²⁹ Studies in other jurisdictions estimate that families experiencing homeless or housing instability also may have thousands more dollars annually in healthcare costs that require increased Medicaid funding.³⁰ Other government costs include increased costs for the child welfare system and lower utility bill and property tax collections.³¹

Preventing eviction and displacement and keeping a family in their home can avoid these costs to the District government, as well as the devastating short- and long-term costs for that family and their neighborhood and community. It is important to note that in the District — where housing costs remain stubbornly high and the wait for a homeless family to gain a housing subsidy can stretch for many years — eviction is likely to lead to displacement from the District altogether. If the coming eviction crisis is not addressed, the city could lose tens of thousands more Black and Latinx families.

Emergency Eviction and Utility Moratoria Have Saved Lives and Remain Necessary to Protect Public Health, Given the Uneven Pace of Recovery in the District

The harmful effects that accompany eviction and other forced moves even in ordinary times are significantly magnified by the current crisis. Families facing eviction often are forced to vacate their homes, increasing housing instability.³² Many forced moves happen outside the formal eviction process, when tenants who receive an eviction complaint or pre-court notice leave instead of defending themselves in court. As Georgetown University Professor Eva Rosen testified before this Special Committee, “In some percentage of cases, tenants are likely to leave of their own accord, either as a result of fear, threats, or pressure from the landlord.” In fact, Professor Rosen reports that landlords tell her they often file eviction cases to pressure a tenant either to pay up or to leave on their own (and not for the purpose of litigating the case to conclusion).³³

²⁹ District of Columbia Interagency Council on Homelessness, *Homeward DC 2015-2020 – Strategic Plan 2015-2020* 76-79, available at https://ich.dc.gov/sites/default/files/dc/sites/ich/page_content/attachments/ICH-StratPlan2.9-Web.pdf; District of Columbia Interagency Council on Homelessness, *Homeward DC 2015-2020 - Looking Back to Move Forward: Progress and Lessons Learned During the First Four Years of Homeward DC* 38 (Sept. 2019), available at https://ich.dc.gov/sites/default/files/dc/sites/ich/page_content/attachments/Homeward%20DC%20Progress%20Report_Final.pdf.

³⁰ Stout, Risus, Ross, *supra*, at 41-45.

³¹ *Id.* at 41, 47-49.

³² *Evicted, supra*, at 4.

³³ Written Testimony of Assistant Professor Eva Rosen, Before the Council of the District of Columbia, Committees on the Judiciary & Public Safety, Housing & Executive Administration, and Human Services, Joint Oversight Public Roundtable Record, *supra*, pps. 54-55. Studies in

These families often turn to doubling up with friends or family, moving amongst different temporary accommodations, or relying on the homeless services system while they search for permanent housing — all options that increase the risk of COVID-19 community spread.³⁴ Individuals forced to move often are not able to follow recommended protective measures such as socially distancing and self-isolating following any illness.³⁵ For all of these reasons, the Centers for Disease Control and Prevention (CDC) has concluded that in the context of the COVID-19 pandemic, “housing stability helps protect public health.” “[E]viction moratoria — like quarantine, isolation, and social distancing — can be an effective public health measure utilized to prevent the spread of communicable disease.”³⁶

Two recent studies confirm that eviction moratoria reduce community spread and resulting deaths from COVID-19. One study examined all 44 states with eviction moratoria and incidence and deaths from COVID-19 before and after moratoria were lifted in those states, controlling for a number of other factors. The authors found that incidence of COVID-19 was 1.6 times higher at 10 weeks after eviction moratoria were lifted and 2.1 higher at 16 weeks, and deaths from COVID-19 were 1.6 times higher at the 7-week mark and 5.4 times higher at the 16-week mark.³⁷

A similar study released by the National Bureau of Economic Research found that moratoria on both utility disconnections and various stages of the eviction process promote housing stability and therefore reduce transmission and resulting deaths from COVID-19. The authors conclude that if various policies limiting evictions (moratoria on eviction notices, case filings, actual evictions) had been in place across the United States from early March 2020 through the end of November 2020, COVID-19 infections would have been reduced by 14.2% and deaths would have been reduced by 40.7%. For moratoria on utility disconnections, COVID-19 infections rates would have been reduced by 8.7% and deaths by 14.8%.³⁸

other jurisdictions have found high rates of self-eviction and forced moves. *See, e.g.*, Matthew Desmond, Harvard University Dataverse, *Milwaukee Area Renters Study (MARS)*, available at <https://doi.org/10.7910/DVN/BLUU3U> (34% of tenants receiving eviction notice moved out); Sophie Collyer & Lily Bushman-Copp, Poverty Tracker/Robin Hood, *Spotlight on Forced Moves and Eviction in New York City* (May 2019), pps. 8-10, available at https://www.robinhood.org/uploads/2019/08/HOUSING-REPORT_8.5.pdf (19% of moves categorized as “forced”).

³⁴ Centers for Disease Control & Prevention, *Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19*, 85 FR 55292 (Sept. 4, 2020).

³⁵ *Id.* at 55294.

³⁶ *Id.*

³⁷ *See generally* Kathryn M. Leifheit, et al., *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality* (Nov. 30, 2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3739576.

³⁸ Kay Jowers, et al., National Bureau of Economic Research, *Housing Precarity & the COVID-19 Pandemic: Impacts of Utility Disconnection and Eviction Moratoria on Infections and Deaths Across US Counties* (Jan. 2021), available at <https://www.nber.org/papers/w28394>.

With COVID-19 metrics in the District trending in the right direction, it is tempting to think these lessons no longer apply. Unfortunately, vaccination rates in the District remain uneven, with communities of color still experiencing very low levels of protection. Overall, 35.7 percent of District residents are fully vaccinated, but in majority-Black neighborhoods east of the Anacostia River vaccination rates range from a low of 13.02 percent to a high of only 22.97 percent.³⁹ These same communities have seen the highest death rates from COVID-19 and continue to face uneven and unpredictable prospects for full economic recovery.

There is Still Significant Uncertainty Regarding the Post-Pandemic Economy, Especially for Groups Most Impacted By the Pandemic

In addition to mitigating the spread of COVID-19 and protecting the health of families, the eviction and utility shut-off moratoria were also necessary steps in the wake of COVID-19's impact on the District, regional, and national economy. With businesses closed or forced to operate at reduced capacity and fewer consumers in a position to visit in person, many District residents lost employment and their source of income. It was difficult enough for these residents to lose the ability to afford necessities like rent and utilities, but the problem was made worse by the unpredictable nature of the pandemic, as well as failures within our social safety net— most notably the failure of the District's unemployment insurance program to process claims in a reliable, consistent, and timely manner. All of this meant that many District residents were forced to grapple with uncertainty about when exactly they would again be able to afford their regular expenses, making it difficult to take mitigating steps like negotiating payment plans with landlords or other entities to which they owed unpaid balances. The eviction and utility shut-off moratoria offered automatic protection to keep households safely housed in the midst of this uncertainty.

While the re-opening of the District will hopefully mean an improvement in our local economy, the reality is that for many District residents, the uncertainty that they experienced will not go away all at once. There is much that we still do not know about how quickly the economy will recover, the pace at which various sectors of the economy will come back, and how many jobs will return and at what level. And there is precedent in the District for certain segments of the population experiencing slower economic recovery after a down-turn. The D.C. Fiscal Policy Institute has previously noted, for example, that in the aftermath of the Great Recession, Black District residents did not experience recovery at the same rate as white residents: As late as 2018, unemployment among the District's Black residents still had not recovered to pre-

³⁹ Office of the Mayor, *Vaccination Data*, "Coverage - % of fully vaccinated residents by Health Planning Neighborhood," available at <https://coronavirus.dc.gov/data/vaccination>.

recession levels,⁴⁰ and to this day, the District continues to suffer from extreme racial income and wealth gaps.⁴¹

We must understand that, if history is precedent, not all groups will experience economic recovery at the same rate or in the same manner. Nevertheless, policymakers must do everything possible to close existing inequities — or at a minimum, avoid widening them — as we emerge from the pandemic. To do so, it is crucial that the Council maintain key protections it has put into place as we transition out of the immediate crisis.

Eviction and Utility Moratoria Should Not Be Lifted Until Rental and Utility Assistance Programs Are Functioning Effectively and Other Metrics Are Met

In December 2020 and March 2021, the federal government approved sending up to \$352 million in emergency rental assistance to the District for tenants who fell behind on rent during the pandemic. On April 12, the District launched the new STAY DC program with an online application portal to distribute these funds. Since that time, according to numbers provided by the Department of Housing & Community Development last week, approximately 11,000 tenants have submitted completed applications online and another 10,000 tenants have started the process. The high level of initial applications from tenants — despite numerous barriers and problems with the online portal— belies any argument that tenants must be “incentivized” with the threat of an imminent eviction in order to seek rental assistance.

Legal Aid is submitting written testimony from our case manager, Emily Near, detailing the problems we have witnessed firsthand with the STAY DC online portal and our recommendations for changes. These problems must be resolved before the eviction process can move forward. The Council should act immediately to form a working group of tenants, tenant organizers and representative of other community-based organizations, and legal services providers to meet with representatives of the legislative and executive branches to provide detailed recommendations on STAY DC and ensure these recommendations are implemented as soon as possible. To summarize some of our key recommendations:

1. STAY DC should be widely accessible, including by distributing paper applications and creating drop-off points for applications and documentation, and by providing access in multiple language on- and off-line.

⁴⁰ Doni Crawford, DC Fiscal Policy Institute, *Applying a Racial Equity Analysis – Black Employment in the District of Columbia*, February 28, 2020, available at <https://www.dcfpi.org/all/applying-a-racial-equity-analysis-black-employment-in-the-district-of-columbia/>.

⁴¹ Tazra Mitchell, DC Fiscal Policy Institute, *The District’s Rising Economic Tide Isn’t Lifting Black Boats*, October 24, 2019, available at <https://www.dcfpi.org/all/the-districts-rising-economic-tide-isnt-lifting-black-boats/>.

2. Other barriers in STAY DC’s application should be fixed, including no longer requesting Social Security numbers and clarifying the definition of “household” for tenants in shared housing situations.
3. STAY DC’s self-attestation form should be simplified with clear instructions, available broadly including to verify identity and income, PDF-fillable, and incorporated within and throughout the application.
4. STAY DC’s application should default to automatically include a request for three months of future rent, with clear instructions on the website and the application itself.
5. STAY DC should partner with and fund community-based organizations to provide outreach and assistance to help tenants complete and submit applications. Creative ideas include library pop-ups (such as Councilmember Lewis George’s event this Saturday) and phone calls and text messages to tenants who have started but not completed applications.
6. STAY DC should work closely with government agencies to reach tenants who have qualified for other public benefits, such as unemployment insurance, the Supplemental Nutritional Assistance Program, Temporary Assistance for Needy Families, or D.C. Housing Authority programs.
7. STAY DC should center racial equity in its outreach efforts by targeting areas with large populations of Black and Latinx tenants, wards that historically have experienced the highest eviction rates, and other areas identified because of their high number of extremely low-income, rent-burdened, and/or COVID-impacted households.⁴²
8. STAY DC should be required to publicly report data on applications initiated, applications completed, approval, denials, and funds paid, all broken down further by neighborhood/ward.

Avoiding evictions also will require fully funding the Emergency Rental Assistance Program (ERAP) or a similar program that can cover rent owed for months before the pandemic. ERAP providers report they are out of funding and unable to process thousands of remaining applications. While STAY DC is critical, it does not cover rent balances before April 2020. Legal Aid represents or has been in contact with many families in precisely this situation, who will be evicted and displaced if ERAP or a similar program is not in place and fully-funded — not only for the upcoming fiscal year, but also for the remainder of Fiscal Year 2021. These

⁴² The Urban Institute has created an emergency rental assistance prioritization tool that breaks down regional need by census tract, using these measures. See Urban Institute, *Where to Prioritize Emergency Rental Assistance to Keep Renters in Their Homes*, available at <https://www.urban.org/features/where-prioritize-emergency-rental-assistance-keep-renters-their-homes>.

families are at risk not only because of the District’s longstanding affordability crisis, which predates the pandemic, but also because ERAP providers were encouraged to spend down local funds quickly, including for applicants with pandemic balances. Applicants with prior balances who might have received funding in a normal year were disadvantaged as a result.

Keeping all eviction moratoria in place for the public health emergency plus 60 days is a minimum, but it will not necessarily be enough. Based on the poor performance of STAY DC to date, as well as the complete lack of current funding for ERAP, lifting emergency eviction protections in the short term inevitably would result in a wave of evictions and displacement. We recommend the Council enact emergency legislation requiring that the following metrics are met before the eviction moratoria are lifted.

1. STAY DC allows for landlords to apply for assistance, with only a signature or other evidence of tenant consent required;
2. STAY DC includes a simple, straightforward self-attestation process for all requirements across the board;
3. STAY DC eliminates the backlog of applications, with no more than 1,000 applications submitted without a decision and no more than 1,000 draft applications pending;
4. Community-based organizations are provided with funding and have at least 60 days to implement a plan for outreach and assistance to tenants; and
5. ERAP or a similar program for pre-pandemic balances is fully-funded for fiscal year 2021 and 2022,⁴³ and ERAP has no more than 1,000 pending applications.

Finally, it is worth emphasizing that the current moratorium on actual evictions only lasts for the duration of the public health emergency, with no buffer on the back end.⁴⁴ The Council should include a buffer period of at least 60 days beyond the end of the public health emergency before actual evictions can restart. Without this protection, hundreds of District families may face immediate eviction before they have a chance to secure rental assistance and avoid eviction.

For at least three reasons, the utility shut-off moratorium should be extended for a similar timeframe. First, from a public health perspective, the eviction moratorium and utility shut-off moratorium have worked together to protect Washingtonians— eviction protections have kept them in their homes, while consistent access to electricity, water, gas, and telecommunications services have helped ensure health and safety. For as long as eviction protections will continue to be necessary from a public health perspective, protection of utility access will be crucial as

⁴³ Legal Aid will be submitting detailed recommendations for the Supplemental Fiscal Year 2021 budget and Fiscal Year 2022 budget for ERAP at the hearing on the Department of Human Services’ budget on June 14.

⁴⁴ D.C. Code § 42-3505.01(k).

well. Second, cutting off telecommunications and electricity at the very moment tenants and consumers need to access online rental and utility assistance applications is counterproductive. Third, a fully-functioning STAY DC and fully-funded ERAP are crucial, along with other safety net programs, to provide District residents with the level of financial certainty they will need to begin to address unpaid balances in other areas. As with the eviction moratorium, it is critical to make sure the District's safety net is functioning properly before ending the utility shut-off moratorium. The safest path to the end of the utility shut-off moratorium must be through a shoring up of programs that will place struggling households on firmer economic ground during the recovery.

The Council Must Strengthen Existing Emergency Protections for Tenants and Consider Other Long-Term Reforms, to Ensure a More Equitable Eviction Process

The Council has enacted far-reaching emergency and temporary legislation to protect tenants from eviction. As noted, actual evictions are barred for the duration of the public health emergency. Landlords cannot file new eviction cases during the public health emergency and for 60 days after.⁴⁵ Late fees cannot be charged during the public health emergency, and new rent increases are barred for the public health emergency plus 30 days.⁴⁶ Landlords also are required to offer payment plans to tenants who have been impacted financially by the pandemic and owe rent, for the duration of the public health emergency plus one year, with payments due over a period of 12 months.⁴⁷

These measures represent the most important first step in a crisis — to pause, regroup, and plan a comprehensive response. Not a single tenant in the District of Columbia has been evicted since mid-March 2020 as a result of actions taken by the Council. But pausing the crisis is not enough. To ensure the eviction process is as equitable as possible, and only turned to as a last resort, Legal Aid makes the following recommendations for actions the Council should take to protect tenants from eviction and displacement:

Extend and expand existing emergency tenant protections.

Extend the ban on actual evictions. The ban on actual evictions should be extended to cover the public health emergency plus at least 60 days, matching other protections. Tenants can remain in their homes if they become current in rent before their actual eviction and providing an additional window of time will improve their chances.

Require landlords to apply for rental assistance first. Landlords should be required to apply for rental assistance before they can sue a tenant for nonpayment of rent. Putting the burden on landlords — who are more likely to have access to technology to complete an online application — makes good sense. Landlords then should be required to provide

⁴⁵ D.C. Code § 16-1501(b).

⁴⁶ D.C. Code §§ 42-3194.01; 42-3502.08; 42-3509.04(c),(d) 42-3505.31(c)

⁴⁷ D.C. Code § 42-3281.

notice to tenants of the pending application and how to complete it at least 60 days before filing a lawsuit, with provisions for multiple 15-day extensions where processing delays are beyond the tenants' control.

Require landlords to serve new, clear 30-day eviction notices first. All eviction notices should have clear language that the tenant can contest the landlord's allegations in court and does not have to leave unless and until a court orders their eviction. Notices also should specify what steps the tenant can take to fix the violation and stay. Finally, the phone numbers of the Office of the Tenant Advocate and the Landlord Tenant Legal Assistance Network and information about their services should be included.

Require landlords to include critical details in 30-day nonpayment notices. Under current law, nonpayment notices require only minimal information. Instead, these notices should include clear statements about the current balance owed, for which months, and the payment required to avoid eviction. A current ledger should be attached.

Extend other emergency requirements for eviction lawsuits. The Council has enacted other critical eviction reforms that should be extended and then made permanent. These include requiring a minimum of \$600 to sue for nonpayment of rent, requiring a basic business license to sue for eviction, and requiring time-stamped photographic evidence of any service of a 30-day eviction notice or complaint by posting.

Extend the ban on rent increases. The ban on new rent increases should be extended to cover the public health emergency plus one year. Many tenants will continue to face precarious income and employment circumstances for many months ahead.

Extend the required term for tenant payment plans. The minimum repayment term of 12 months for tenant payment plans should be extended to 18 months. As rent arrearages have grown, tenants will need more time to catch up on missed payments.

Move forward with other eviction reforms on an emergency and permanent basis.

Require landlords to serve eviction complaints at least 30 days before the initial hearing. Current law requires landlords to serve tenants with an eviction complaint only 7 days before their "trial." Instead, the law should require service at least 30 days before the initial hearing, the first court date in the case, to allow tenants to ask off from work, arrange child care, and take other steps.

Clarify that consistent late payment of rent is not a ground for eviction. Current law allows landlords to evict tenants who "consistently" pay late, even when those tenants are current in their rent and all late fees, and regardless of the reasons for late payments. Tenants may be late for many reasons, including uneven pay schedules, Social Security payments received later in the month, and ordinary struggles to pay unaffordable rent. Allowing these evictions also undermines the right of District tenants to remain in their homes if they pay the balance due. These evictions should be barred.

Clarify that the death of the named tenant is not a ground for eviction if other adult household members remain. Current law allows landlords to evict families whenever the named tenant on a lease passes away or moves out, even if other adults named as authorized occupants still are living in the unit. This issue has been put in stark relief during the pandemic, as families have lost loved ones and then faced threatened eviction and accusations they are “squatters” and must leave. Evictions of remaining family members should be prohibited.

Clarify that new owners must have the deed before they can evict. Current law leaves some ambiguity as to whether a purchaser can attempt to evict a tenant or foreclosed homeowner even before the sale process is complete and the new owner has the deed. Some real estate investors and developers that are the highest bidders at a foreclosure auction pursue eviction and/or charge rent and fees before they have even gone to closing to complete the sale. This practice is unfair and should be prohibited.

Add new requirements for process servers. Earlier this year, an investigation by DCist revealed what tenants have known for years — process servers often lie and get away with it, putting tenants at risk of eviction without any notice. In addition to requiring time-stamped photographic evidence of all service attempts, process servers should have to be licensed and subject to a complaint and review process.

Protect tenants from harassment. During the pandemic, tenants have faced a significant increase in illegal lockouts, threats, and harassment from landlords. District law prohibits retaliation against tenants but does not specifically prohibit harassment. This protection should be added, using New York’s tenant protection law as a model.

Enact other pending bills with critical tenant protections. Finally, Legal Aid also supports the enactment of other permanent measures to protect tenants, including B24-0096, the Eviction Record Sealing Authority Amendment Act of 2021, B24-0106, the Fair Tenant Screening Act of 2021, and B24-0119, the Eviction Protections and Tenant Screening Amendment Act of 2021.

Conclusion

Thank you for this opportunity to testify. We look forward to continuing our dialogue with the Council and relevant District agencies to ensure an equitable end to emergency protections for tenants, most especially those tenants continuing to face the threat of imminent eviction and displacement.