

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

Performance Oversight Hearing Regarding Department of Human Services

February 24, 2022

The Legal Aid Society of the District of Columbia¹ submits the following testimony regarding the Department of Human Services' Emergency Rental Assistance Program. This hearing is occurring at a historically unprecedented time for the program, and we encourage the Council to provide robust support ERAP in the District, and to ensure that DHS takes the challenge of this moment as an opportunity to address longstanding issues and strengthen the program for the future. ERAP must be adequately funded to meet need for eligible tenants. Going forward, the Council should perform meaningful oversight to make sure that regulations make sense and are being implemented consistently across provider organizations. Finally, the Council should take this opportunity to look clearly at the role ERAP is designed to fill in the lives of the District's low-income residents, and work with DHS make sure that other assistance programs that could complement this critical role are also both adequately funded and effectively administered.

ERAP Providers have Served as Frontline Crisis Management During the Pandemic

After over a year of pandemic-related moratoriums, evictions in the District of Columbia began again in September of 2021. In the months since, ERAP providers have been nothing short of inspiring. Working in coordination with tenant organizers, legal services organizations, DHS officials, and DC Superior Court staff, ERAP providers have played a critical role in reaching out to tenants at risk of eviction to see whether, with combinations of federal and local assistance and legal intervention, their evictions might be prevented. Working together, DHS, ERAP providers, legal services providers, and the Court stopped 68% of scheduled evictions for

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 90 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.

nonpayment of rent over roughly four months beginning in September 2021, amounting to nearly 300 evictions prevented. When service providers needed more time, the Council took emergency action to provide for delaying eviction where a tenant had an active rental assistance application, ensuring that providers would have time to process applications. It has been a remarkable group effort with real, tangible outcomes for families, and it could not have happened without the amazing coordination, facilitation, and expedited processing ERAP providers have undertaken or the dedicated efforts of DHS staff, some of whom rushed to personally deliver checks to tenants across the city just in time to stave off eviction.

While this level of effort has been tremendous and at times heroic, is also ultimately unsustainable, from both a financial and a logistical perspective. As case filings return to their usual volume, and with STAYDC assistance no longer available, it is not possible or desirable for ERAP to continue to operate as a last-minute clearinghouse for making whatever payment necessary to get a tenant out of a given eviction case in the nick of time. ERAP providers and partners met the moment, and it is now time for DHS and the Council to make the changes that will make ERAP a sustainable, effective assistance program that truly meets the needs of tenants in the District.

The Council Should Adequately Fund ERAP to Meet Need

The events of the last two years have frankly made it very difficult to have good, recent data that shows the level of need for ERAP assistance. During 2020 and much of 2021, moratoriums on evictions and eviction case filings, new emergency legislation requiring that landlords offer repayment plans, and the availability of large amounts of rent assistance through the STAYDC program, coupled with a lack of understanding about how to apply for ERAP given COVID restrictions and changes to the online application system, meant that few ERAP applications were submitted and even fewer were processed. What we know is that historically, need has always outstripped availability of funds. This is even more likely to be the case now, as STAYDC winds down, residents continue to struggle to recover financially from the pandemic as disruptions to work and childcare continue, and rents are again going up.

In acknowledgment of all these factors, the Council acted to allow DHS to provide ERAP assistance to cover rents for up to the number of months in the public health emergency, but DHS declined to do so, instead capping assistance at five to seven months of rent. Anecdotally, what we have seen at Legal Aid is that clients are already being denied for ERAP in the amounts that would redeem their tenancies, and in some cases being told by providers that it is not worth applying for a waiver of the cap from DHS, because those waivers are too unlikely to be approved. As Legal Aid has previously testified, we believe the Council should act to require DHS to provide ERAP assistance for up to the number of months of the public health emergency in eligible cases. However, for this flexibility to be meaningful in helping people get through this historically difficult time, the program must be funded to meet historic need.

ERAP Should Keep Many Positive New Regulations

During the pandemic, ERAP issued emergency regulations to implement the Emergency Rental Assistance Reform Temporary Amendment Act of 2020. We support many of the changes in

these emergency regulations becoming permanent. First, the emergency regulations permit tenants to provide unsworn declarations as documentation where necessary. We have testified for years that many of the District's most vulnerable residents have struggled to obtain required documentation, and that providers should be working with tenants to make assistance more accessible. This is an important step in that direction and should be made permanent.

The emergency regulations finally reflect that eligibility is capped at households making over 40% of AMI, and that eligible households do not need to include children or individuals with disabilities, making it less likely that tenants will be wrongfully denied. We also support increased assistance caps being made permanent – specifically, while we do not believe that capping rent arrearage payments at five months is appropriate in the context of the pandemic, we support moving to assistance being tied to fair market rent, rather than the rent at a given unit, which disadvantages families paying lower rents even though they are often most vulnerable to housing instability and most critically need to maintain their current housing. Similarly, we support language that caps security deposit and first months' rent payments to actual monthly rents, rather than the previous low and arbitrary cap of \$900.

Finally, we support making permanent a structure that would allow a family to apply multiple times a year up to a monetary cap on assistance rather than limiting approvals to once in a 12-month period. This will remove the counterproductive incentive for families to inch closer to crisis before applying for assistance.

DHS Should Take This Opportunity to Improve ERAP Administration

The Covid-19 pandemic created new challenges that required every tenant-focused organization in the city to adapt, and ERAP providers rose to that moment. Some positive structural developments came out of that process, including better coordination between ERAP providers and tenant organizers and legal services providers, and in particular, the consistent presence of ERAP providers in Landlord-Tenant Court initial hearings, facilitating direct communication between providers and tenants in need of assistance.

Notwithstanding these positive developments, we remain concerned that overall, when eviction and case volumes return to their normal levels, DHS will not have meaningfully addressed longstanding barriers to ERAP assistance. These include limited accessibility of the application process, particularly with respect to scheduling appointments, a lack of consistency in how different providers apply the regulations and process applications, and difficulty for tenants in obtaining required documentation to complete applications. Because the online application process, which for many providers has been the only means to seek assistance, changed mid-year, and given the many unusual factors at play, it is particularly critical that DHS provide specific answers about the work they are doing to administer this assistance.

DHS should identify what outreach they are doing to ensure that tenants are aware of the online application system, and how they are identifying and accommodating tenants who do not have the ability to complete an application online. They should describe in detail the process for providers claiming applications from the central application system, and the timeline on which that is generally occurring, including to what extent that depends on factors like a tenant's court

involvement. They should answer how they are communicating and working with providers to make sure they are appropriately implementing the current emergency regulations and ensuring that there is some consistency around how different organizations are exercising discretion around things like waivers of assistance limits. Eviction case filings are currently low but increasing, which makes this an ideal moment to make any needed improvements to program administration before the program becomes overwhelmed by applicants in crisis.

DHS Should Assess Assistance Programs to Complement ERAP and the Committee Should Make Sure All Tenant-Focused Assistance Programs are Appropriately Funded and Administered

As we have testified in many prior years, ERAP fills a critical need for low-income District residents who are often severely rent-burdened and one emergency away from falling behind. DHS oversight data frequently identifies the number of families applying for ERAP awards repeatedly in consecutive years as raising concerns about the effectiveness of the program. What this data actually shows is common sense – most families will experience periodic financial hardships. An unexpected and necessary car repair, a medical emergency, lost hours at work – these are normal parts of life. For rent-burdened residents in the District, their income simply does not allow them to cover these everyday occurrences without assistance. However, because the structure of ERAP is to assist families facing housing emergencies at the time of the emergency, and because the funding routinely runs out and is not guaranteed, there will be cases in which severely rent-burdened households will need assistance that is either more sustained or offered further upstream – or both.

For this reason, we hope that, at the same time that DHS adequately funds ERAP and improves accessibility of the program, it also explores how to expand programs that better address consistent rent burdens. For many families, this means expanding access to full and permanent housing subsidies. For other families, shallow subsidy programs like DC FLEX may be enough to provide housing stability at a lower cost, allowing for the District to fund more participants. We are optimistic about the potential of programs like this to allow low-income households to access support that is consistent and reliable, while offering them more autonomy and control over how that assistance can best support their family. We hope that DHS will provide detailed and robust data about the outcomes of the DC FLEX expansion as well as new funding for vouchers, to allow the Committee to make informed decisions about how best to use rent assistance funds to support low-income families.

Conclusion

Legal Aid appreciates the opportunity to testify about the continuing need for ERAP and complementary supports for tenants in danger of eviction. We look forward to continuing to work with the Committee and DHS to address the concerns we raise in our testimony today.