

**Testimony of Matthew Boucher
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**Before the Committee on Human Services
Council of the District of Columbia**

Budget Oversight Hearing Regarding the Department of Human Services

March 31, 2022

The Legal Aid Society of the District of Columbia¹ submits the following testimony regarding the proposed Fiscal Year 2023 budget for the Department of Human Services, and specifically Rapid Rehousing and the Emergency Rental Assistance Program (ERAP). Legal Aid urges the Council to use the FY23 budget and FY22 supplemental budget to help our most vulnerable residents achieve housing stability by reforming DHS’s failed Rapid Rehousing program and by adequately funding ERAP in a time of historic arrearages.

Legal Aid testifies each year about the fundamental flaws in Rapid Rehousing and the cycle of housing instability that it creates for program participants, who are overwhelmingly low-income people of color. DHS's continued overreliance on this program will not stop unless the Council acts and the District's budget surplus presents an opportunity to take action. Specifically, the Council should require DHS to temporarily extend all families in the program until they can be matched with a permanent subsidy that will ensure they have access to stable housing.

Meanwhile, the Council should amend the Homeless Services Reform Act to prohibit time-limit related exits from Rapid Rehousing unless the family being exited is reasonably likely to be able to maintain housing stability without the subsidy. Finally, the Council should fund and create additional permanent subsidies to assist those families who are unlikely to be able to afford market rate rent in the foreseeable future.

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.

The current iteration of Rapid Rehousing consistently fails to meet its goals

The theory behind Rapid Rehousing has always been that once a participant has temporary housing, they will quickly be able to earn more income due to the increased stability and support that comes with it. Under program guidelines, when new participants enter the program, they are generally required to pay 40% of their income in rent, but after 12 months they are to be exited from the program and expected to pay their entire market-rate rent themselves. This graduated subsidy makes sense in theory and may even be successful in parts of the country with available affordable housing and low barriers to employment. It may even be a reasonable option for an otherwise high-income family that experiences an unexpected short-term financial hardship.

Unfortunately, Rapid Rehousing has never been effective in DC. For families served in FY21, the last year we have complete data, the average monthly income at entry was \$867.² At exit, families had an average monthly income of \$906, an increase of only \$39 per month after completing the program.³ Only 26% of households increased their income at all.⁴ Meanwhile, the average rent for a two-bedroom apartment for a program apartment is \$1,570.12.⁵ These numbers mean that upon exit from Rapid Rehousing, the average participant family must pay 173% of their income in rent, or face eviction. The numbers from FY21 are not an anomaly. In FY20, the average monthly income at entry was \$952, and \$992 at exit.⁶ Only 9.3% of families experienced an increase in income.⁷ In order for the average participant family to be able to “afford”⁸ the full rent for the average two-bedroom apartment in the program, they would need to suddenly earn five times their average household income at the time of exit.

These numbers demonstrate just how ineffective Rapid Rehousing has been in helping participants secure stable housing while DHS has the discretion to exit families for overstaying inflexible time limits. Legal Aid watches year after year as participants struggle with the decision that this program forces families to make, which is choosing between leaving their homes with nowhere to go or facing an eviction case in Landlord Tenant Court. The cycle began again this fall following the expiration of pandemic-related pause on exits, as DHS sent notices of program exit to hundreds of families. We expect that as long as DHS exits participant families

² DHS FY21-22 Performance Oversight Responses, Q72.

³ Id.

⁴ Id.

⁵ DHS FY21-FY22 Performance Oversight Responses, Q69.

⁶ DHS FY20-FY21 Performance Oversight Responses, Q99.

⁷ Id.

⁸ The Department of Housing and Urban Development defines affordable housing as that which costs no more than 30% of household income.

from this program utilizing rigid time limits, the vast majority of those families being exited will eventually become homeless again or be forced into another unstable housing situation.

DHS has continued to exit families for over-staying time limits, despite efforts from the Council to ensure that they do not have to do so

As previously noted, DHS temporarily paused program exits during the Covid-19 Public Health Emergency.⁹ In July of 2021, DHS shared a plan to restart program exits and identified more than 500 families whom it intended to exit in the coming months. These families were selected because they had been in the program for more than 18 months. Shortly thereafter, in August of 2021, this Council passed the Homes and Hearts Amendment Act of 2021 which made an unprecedented \$65 million investment in new permanent housing vouchers and housing subsidies in Fiscal Year 2022.¹⁰ The Act created more than 1,100 new permanent housing subsidies for families.¹¹ Legal Aid was initially optimistic that DHS would utilize the new subsidies to ensure that no families were exited for overstaying time limits during the remainder of the fiscal year. Unfortunately, DHS proceeded to send notices of program exit to hundreds of families, and in February 2022, announced that it intended to exit a total of 913 families during FY22.¹²

Director Zeilinger has maintained that Rapid Rehousing is a time-limited program and argued that DHS *must* resume exiting families.¹³ However, DHS has not put forth any budgetary analysis to show that exiting families is actually necessary. It appears from this sequence of events that there is no amount of funding that this Council could provide that would prevent DHS from exiting families from overstaying rigid timelines, so long as they have the ability to do so.

⁹ DHS FY21-22 Performance Oversight Responses, Q89.

¹⁰ DC Council Public Oversight Hearing Notice, The Department of Human Services' Implementation of Historic Housing Investments and Pandemic Recovery Efforts, November 10, 2021.

¹¹ Washington Legal Clinic for the Homeless, Historic Housing Investments Present Opportunity to Make Real Progress in Ending Homelessness, (August 13, 2021), *available at* <https://www.legalclinic.org/historic-housing-investments-present-opportunity-to-make-real-progress-in-ending-homelessness/>

¹² DHS PowerPoint presentation, February 9, 2022.

¹³ Testimony of Laura Green Zeilinger, Director of DHS, for the Public Oversight Hearing: Implementation of Historic Housing Investments and Pandemic Recovery Efforts, November 10, 2021.

The Council should Use the FY23 Budget and FY22 Supplemental Budget Processes to ensure that no family is returned to homelessness or housing instability

Legal Aid has long advocated that no family should be exited unless they can afford their monthly rent without a subsidy (based on the federal definition of affordability) and that all families who cannot afford the rent without a subsidy should be exited into permanent subsidy programs. Families in Rapid Rehousing are not overstaying their allotted time in the program because they want to; they are remaining in the program because they are unable to drastically increase their income in a short period of time, while living in a city that is in the midst of an affordable housing crisis. DHS exiting them from the program before they are able to maintain housing stability on their own is not going to change these circumstances, but it is likely to undercut any progress these families have made while in the program and force them back into housing instability. Put simply, exiting families for overstaying time limits punishes these families for being too poor to afford market-rate rent in the District.

By continuing to exit families for staying in Rapid Rehousing too long, despite appearing to have the resources to avoid having to do so, DHS has called the Council back into action. Legal Aid now asks the Council to:

1. Demand that the Mayor immediately withdraw all time-limit termination notices that have been issued by the Department of Human Services (DHS),
2. Devote FY21 surplus funds to maintain rapid re-housing rent support until every participant has the resources they need to afford housing,
3. Increase permanent affordable housing vouchers in the FY23 budget so that rapid re-housing participants can transition into a program that better maintains housing stability, including Targeted Affordable Housing for families and Local Rent Supplement Program tenant vouchers, and
4. Reform rapid re-housing legislatively so that DC residents cannot be terminated for a time limit until they can afford rent without further assistance.

The Council Should Adequately Fund ERAP to Promote Housing Stability Despite Historic Arrearages

We are pleased to see that the Emergency Rental Assistance Program received a significant increase in funding. However, the \$42 million allocated is unlikely to be enough to meet need. As of mid-March 2022, 17 percent of tenants in the District report they are not current in their rent payments, amounting to approximately 28,000 households.¹⁴ Over ninety percent of the families reporting that they are not current in their rent are headed by a Black or Latinx tenant.¹⁵ According to Census data, of those households that are not current, 70% are households with

¹⁴ U.S. Census Bureau, Week 43 Household Pulse Survey: Mar. 2-14 – Detailed Tables, Housing Table 1b, available at <https://www.census.gov/data/tables/2022/demo/hhp/hhp43.html>.

¹⁵ Id.

children, 71% report loss of employment income in the last 4 weeks, and 70% have income below \$25,000. These households represent many of the District’s most vulnerable families.

As of March 18, 2022, DHS reported that they had received 9,091 ERAP applications, requesting a total of \$52 million, an average ask of approximately \$5700 per application. To extrapolate these numbers out over the course of a year is to see that \$42 million will not meet need, and this is even before accounting for tenants who have struggled to apply for assistance with continuing pandemic-related barriers. We continue to see tenants in court who did not benefit from STAY DC with balances resulting from many months of nonpayment during the pandemic. These balances are significantly higher than ERAP’s regulations currently allow the program to cover. Many residents have not recovered economically from the pandemic and are still looking for employment or struggling to access unemployment benefits. For these tenants, their rent arrearages continue to grow. This is even more of an issue as landlords begin to take rent increases that were previously prevented due to the pandemic. High inflation means that even landlords who are constrained by rent stabilization laws can take unusually high rent increases this year, making it even harder for tenants to catch up. With all these factors, there is every reason to believe that need for rental assistance will remain historically high.

For these reasons, we support the Fair Budget Coalition recommendation of \$200 million for ERAP funding for FY23, a figure that would allow the program to meet the need. We believe this moment calls for giving ERAP providers flexibility to provide higher levels of assistance than the regulations would typically permit. However, giving the providers discretion to award assistance in amounts that will actually cover tenant arrearages must not simply mean that ERAP funding runs out even earlier in the year than it historically has. Without more funding, ERAP providers will be unable to keep tenants housed, whether because they are strictly limited for individual tenants or because they run out of program funds.

To the extent the Council is inclined to fund ERAP at the lower level proposed in the Mayor’s budget, we believe that two things are critical – first, the program should be administered to prioritize stability in sustainable and affordable housing. Any additional discretion for providers to exceed the ERAP caps should prioritize providing more months of rent assistance in affordable units, rather than allowing providers to repay large arrearages for units that significantly exceed monthly fair market rent standards under the program. This prioritization balances the goals of acknowledging the historic challenges tenants face and keeping families sustainably housed in light of them, without quickly spending limited funds on units that are not generally sustainable for tenants who meet ERAP’s income limits. Second, the Council must remain engaged to continuously assess demonstrated need and remaining funds, and must be willing to allocate funds later in the year if necessary to ensure that ERAP assistance remains available through the rest of the year.

Conclusion

The Council has an opportunity to save families on the verge of being exited from Rapid Rehousing from the likely return to housing instability or homelessness that often follows. The Council also has the opportunity to end the vicious cycle that District families have been subjected to for far too long, by reforming Rapid Rehousing to prohibit program exits for

overstaying time limits. In addition, the Council should fund ERAP at a level that will meet historic need and ensure that District residents do not face eviction. Legal Aid urges the Council to take these important steps to protect these and future families, and to use this surplus revenue to do so.