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**Testimony of Molly Catchen and Mel Zahnd  
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**Before the Committee on Housing  
Council of the District of Columbia**

**Public Hearing Regarding:**

**B25-0994 the “Emergency Rental Assistance Reform Amendment Act of 2024”**

**November 15, 2024**

Legal Aid DC<sup>1</sup> submits the following testimony regarding B25-0994 the “Emergency Rental Assistance Reform Act of 2024”.

Legal Aid DC shares the Council’s goal of making the Emergency Rental Assistance Program (ERAP) more effective and efficient. We represent hundreds of tenants in eviction matters each year and regularly help tenants navigate the ERAP process. Based on our experience, we have several specific suggestions to make the Program more effective while balancing the interests of both housing providers and tenants.

There is no question that the District is experiencing a housing crisis. Rents are outpacing wages and communities throughout D.C. are struggling. ERAP changes – while important – will not address this reality on their own. Instead, they must be paired with investments to make DC a truly affordable city and one of long-term housing stability.

In our testimony, we will explain the following recommendations for the introduced ERAP bill and for investments in deeply affordable housing.

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<sup>1</sup> Legal Aid DC is the oldest and largest general civil legal services program in the District of Columbia. 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 legal system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. For more information, visit [www.LegalAidDC.org](http://www.LegalAidDC.org).

- Reschedule authorized evictions for tenants with pending ERAP applications
- Expand the exception to documentation requirements
- Address processing delays
- Broaden the definition of emergency
- Grant one stay as a matter of right per eviction case
- Improve landlord participation in the ERAP process

### **Housing Providers Should Be Required to Reschedule Evictions for Tenants with Pending ERAP Applications That Would Cover the Arrearage Balance**

Section r(3) of the bill<sup>2</sup> requires an eviction to be rescheduled if a tenant has an *approved* ERAP application that will cover the full balance owed. This means that a tenant with a *pending* ERAP application will be evicted, even if their ERAP application will cover the full balance, while they wait for a decision on their application. This is contrary to the goal of ERAP and exacerbates DC's affordable housing crisis.

The language in this section should be changed from “approved” application to “pending” application. Once a tenant completes their ERAP application, they have no control over the landlord response or application processing time. Tenants should be afforded the opportunity to have a decision made on their ERAP application (if it will redeem the tenancy) before an eviction is carried out. The language in this provision is also confusing and requires greater clarification that should be addressed in the committee report. To leave the language as is will almost certainly result in avoidable evictions. A family whose home would have been saved through ERAP will instead be homeless. This result negatively impacts communities throughout DC and costs DC government more both financially and socially.

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<sup>2</sup> the Emergency Rental Assistance Reform Amendment Act of 2024, as introduced on October 9, 2024 (Bill 25-0994).

## **The Permanent Legislation Should Decrease Barriers to ERAP Funds**

As introduced, the bill makes it harder for tenants to obtain ERAP funds, which harms both tenants and housing providers.

### The Committee Should Allow Self-Certification of All Documents

The removal of tenants' ability to self-certify imposes barriers to accessing ERAP funds that some tenants may never be able to overcome. A survivor of intrafamily violence, for example, who may be unable to access their own financial records, would be unable to comply with the documentation requirement. Tenants in these situations should not be closed out of the process.

The removal of the self-certification will also slow down the ERAP process because tenants are now required to submit additional documents which may not be readily available to them. A tenant who was laid off must now rely on their former employer to provide documents they need to demonstrate their job loss. While this may seem like a simple task, in our experience, this can be exceedingly difficult to accomplish as former employers are not always eager to help staff they have recently terminated. Legislative changes should be made to make the program more efficient, not add delays to an already slow process.

We are already seeing the impact the emergency legislation is having on tenants with pending applications from the July ERAP cycle. Tenants who were told their applications were complete are now being called and asked for additional documentation, some with a very short turnaround time. Only one of our tenants has received an updated response to their application, despite complying with the requests. The documentation requirement has thus already created processing delays.

### Processing Delays Must Be Addressed

To address delays in the ERAP process, the permanent legislation should mandate a timeline for the processing and payment of ERAP applications. We frequently see tenants waiting months for their application to be claimed by a processing agency. Once their application has been approved, they often wait months again for payment to be issued. These delays are entirely outside a tenant's control. We recommend implementing statutory deadlines for processing and payment of ERAP applications. The legislation should require the following:

- ERAP processing agency must claim all applications within 45 days of submission,

- All applications must be processed within 45 days of being claimed by an ERAP processing agency, and
- All payments must be issued to the housing provider within 14 days of approval.

Reducing the time it takes to process applications and issue payments will benefit both tenants and housing providers.

### **The Definition of Emergency Should be Broadened to Include the Range of Emergencies Tenants Experience**

The proposed bill also makes it more difficult for tenants to access ERAP funds by narrowing the definition of an emergency to an “unforeseen or unusual” situation. This fails to consider that many tenants are living on the verge of crisis every day, and that even a foreseeable change in circumstance can tip the scales. A family that spends 60% or more of their income on rent will always be one emergency away from housing instability. ERAP is a crucial tool to keep families housed. The permanent legislation should revert back to the previous and more broad definition of an emergency to ensure that tenants are able to access ERAP funds when they need them.

### **As a Matter of Right a Tenant Should be Granted One Initial Stay in an Eviction Case**

The proposed bill strips tenants of the right to a temporary pause of their eviction proceedings, otherwise known as a ‘stay’ while an ERAP application is pending. This is a significant change from previous law that will lead to an increase in avoidable evictions.

Tenants should be entitled to one stay as a matter of right to allow their ERAP application to be processed and a determination of funding to be made. This will ensure tenants whose eviction case could be resolved through ERAP are not evicted while their application is processed. This will also limit the additional administrative burden the legislation imposes on the court because it narrows the number of cases where a decision will have to be made about an ERAP stay. Any request for a subsequent stay should be discretionary taking into consideration the reason the first application was not approved, in particular, whether the first application was not approved due to failure of the housing provider to cooperate. These improvements will address concerns of multiple stays while ensuring that a tenant is not evicted while their ERAP application is processed.

## **Improve Housing Provider Participation in The ERAP Process**

In our experience housing providers often fail to provide the information necessary to complete an ERAP application. As one example, we worked with a tenant whose ERAP application was denied three times because her housing provider intentionally refused to participate with ERAP. The landlord made it clear he wanted her out of the unit, turning off her water and air conditioning in an attempt to expedite the process. Despite significant effort, this tenant was never able to successfully apply for ERAP.

Unfortunately, a situation where a housing provider fails to engage with the ERAP process is not an outlier. We often see delays due to housing providers failing to submit all the required documents such as a lease and ledger which are necessary to complete an ERAP application. This can result in the denial of meritorious ERAP applications and court delays.

The Council should incentivize housing providers to participate in good faith by allowing the court to waive the amount of rent that would have been covered by ERAP if the tenant can demonstrate that the housing provider failed or refused to participate in the application process. A tenant who would otherwise be awarded ERAP funds should not be denied due to inaction by their housing provider. Those housing providers who submit documents on time should not be concerned about this suggestion, as it would focus only on those who fail to engage with the ERAP process.

## **As Long As the District Continues to Underinvest in Permanent Affordable Housing ERAP Will Be Necessary**

The need for ERAP will always depend on the investments the District, and this Council, are willing to make in deeply affordable housing.<sup>3</sup> In the District, this means meaningful investments in the approximately 51,512 tenant households, or 28% of all tenant households who live below 30% of the area median income (AMI)<sup>4</sup>. As well as targeted investments in the 75,013 tenant households who live below 50% of the AMI, which is

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<sup>3</sup> Legal Aid DC believes truly affordable housing means significant housing available, developed, and preserved for households with income equal to, or less than, 30% of the area median income, as well as for “very low income” households with income equal to between 31% and 50% of the area median income and for “low-income” residents meaning households with income equal to between 51% and 80% of the area median income.

<sup>4</sup> See National Low Income Housing Coalition, District of Columbia, <https://nlihc.org/oor/state/dc>.

41% of all tenant households in the city that require investment<sup>5</sup>. As long as deeply affordable rents remain out of reach for the majority of residents in the District<sup>6</sup> and as long as it continues to underinvest in deeply affordable housing, many residents will be unable to maintain their tenancies and the District will continue to require considerable investments in emergency support. These investments can be balanced with market rate housing for DC tenants who have the means to pay, but we urge this committee to keep in mind that DC's rent is 47% higher than the rest of the country.

Reforms to ERAP will not address the root cause of the District's housing crisis. We urge Council to focus on this in the coming budget cycle in making investments in truly affordable housing. Some ways this can be accomplished are leveraging the Housing Production Trust Fund, particularly to preserve existing affordable housing, funding more permanent vouchers, expanding and enforcing inclusionary zoning for new housing developments at 30% AMI, and funding the First Right to Purchase Program (FRPP) so tenant TOPA purchasers can keep their buildings affordable.

### **Conclusion**

Low-income tenants in the District are in crisis. Expenses are increasing faster than wages. We know the Council cares deeply about these issues and keeping individuals and families housed. We look forward to working with Council to make improvements to the permanent legislation to prevent avoidable evictions and make ERAP more efficient for everyone.

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<sup>5</sup> *Id.*

<sup>6</sup> The District has a majority of tenants, with 54.7% of the population renting compared to 45.3% who own their homes. See National Low Income Housing Coalition, District of Columbia, <https://nlihc.org/oor/state/dc>.

\*Addendum:

1. Tenant Outreach

- a. Increase the number of pop-ups at buildings to increase tenants' awareness of their rights and provide more assistance and case management on site.
- b. Increase funding, including public funding, for community-based organizations to expand their capacity to conduct outreach and education.

2. Emergency Financial Resource Access

- a. Increase funding for ERAP. With high inflation, government agencies and community-based organizations anticipate that the current level of funding is inadequate to address the expected demand for rental assistance in the coming years.
- b. Stabilize ERAP funding from year to year. Because of the high demand for ERAP, the number of ERAP applications consistently exceeds the capacity of provider organizations to meet demand in a timely manner. By stabilizing a realistic ERAP budget at the outset of each fiscal year, ERAP providers would be better equipped to provide the necessary staffing and other resources to meet the expected demand.
- c. Integrate landlord access into the ERAP portal so landlords can more effectively support their tenants' ERAP applications with documents necessary for processing. This access would allow landlords to upload ledgers, leases, payment plans, and payment documents to support prompt ERAP approvals.
- d. Improve communication and coordination between DHS and the DC Housing Authority (DCHA) for tenants who apply for ERAP.

3. Eviction Defense Access

- a. Create technology supports for tenants who do not have access to computers to apply for benefits.

4. Court Processes

- a. Provide training for court navigators on available resources both inside and outside of the courthouse. Training could also help with language access and help ensure that tenants are in the correct virtual courtroom.
- b. Establish a data sharing agreement between the court and DC government agencies (DHS, OTA, and DMPED), community-based organizations

providing housing counseling and rental assistance, and legal services providers to identify eviction cases early on and provide coordinated legal and financial assistance. This should include data on upcoming mediations with unrepresented tenants. (See the data section below).

#### 5. Access to Broader Housing Supports

- a. The ability for housing providers, including DCHA, to forgive and/or abate tenants' rent with documentation of substandard conditions.
- b. Sufficient staff and funding for DCHA to ensure recertification is processed in a timely manner. Where tenants are unable to complete this process without more support, and where they have case managers through other programs, DCHA should fund efforts for community-based organizations to support tenants in the recertification process.

#### 6. Data to Support Effective Collaboration and Tracking of Results

- a. The DC Superior Court and DHS plan to negotiate a data sharing agreement that would provide DHS and ERAP providers with access to information on case filings and court outcomes for ERAP applicants. The court would also have access to information on ERAP applications to inform its eviction diversion program. The Council should provide any needed financial support for this agreement in the FY2026 budget.
- b. DHCD's rent administrator could share data on pre-court notices for tenants with other lease violations with HCS and the CLCPP so they can conduct outreach and help tenants understand their rights and what types of legal assistance are available.

\*Note: These recommendations are selected, and updated as needed, from the following report: Additional recommendations for improvements to ERAP and the Landlord and Tenant Court process from Noah Abraham, Lori Leibowitz & Marian Siegel et al., Urban Institute, A Collaborative Framework for Eviction Prevention in DC, available at [https://www.urban.org/sites/default/files/2023-01/A%20Collaborative%20Framework%20for%20Eviction%20Prevention%20in%20DC\\_1.pdf](https://www.urban.org/sites/default/files/2023-01/A%20Collaborative%20Framework%20for%20Eviction%20Prevention%20in%20DC_1.pdf)