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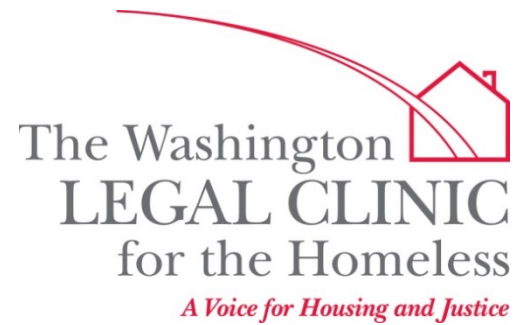
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## Special Committee on COVID-19 Pandemic Recovery An Equitable End to Safety Net Protections Put in Place During the Covid-19 Pandemic Amber W. Harding May 21, 2021

Thank you for holding this critical hearing today. The Legal Clinic envisions – and since 1987 has worked towards – a just and inclusive community for all residents of the District of Columbia, where housing is a human right and where every individual and family has equal access to the resources they need to thrive.

In the past year, we have seen a tremendous effort by the DC Council and the Mayor to wrap protections around DC residents to protect them from some of the preventable harms of the COVID-19 pandemic and related economic crisis. Now that DC may be nearing the end of the public health emergency, DC should not prematurely lift those protections, which would harm DC residents. We also have a unique opportunity to envision a path forward in the District that embraces housing as a human right and rejects systems and policies that further racial inequalities.

### Homeless Individuals Deserve Safe, Private Shelter Options

For the first time in DC's history, the largest shelter program for individuals is safe, private and humane. Our clients have been saying for years that they get sick in large congregate shelters. We have clients who sleep on the street because they feel safer there or have fewer illnesses. Yet shelters continued to be large communal spaces, and even when Mayor Bowser replaced DC General, she (and the Council) refused to concede that private space is fundamental to safety, dignity, and good health. Instead, families had to share bathrooms and living space.

When the pandemic hit, DC, albeit reluctantly, slowly and incompletely, began opening up hotel rooms to individuals at high risk of severe illness or death from COVID-19. When the program, called PEPV, is at capacity, it will serve over 800 individuals. The program has been lifesaving during COVID-19, but it has also dramatically improved people's quality of life and health outcomes beyond avoidance of the coronavirus. Unfortunately, the program is slated to end when the federal money lapses at the end of the fiscal year.

**Commit to extending the hotel program beyond the fiscal year and revisit DC's longterm shelter redevelopment plans to ensure that DC's shelter system has non-congregate options. We urge DC to purchase hotels that it can convert for this purpose.**

## Arbitrary Time Limits in Rapid Rehousing Should be Abolished: They Are Unjust, Rooted in Racism, and Harm Black Families

While the public health emergency legislation failed to require the Mayor to maintain housing subsidies for families in rapid rehousing, the Department of Human Services chose to sustain those families throughout the public health emergency, recognizing that families were suffering from the pandemic and the resulting economic crisis. As result of that decision and the eviction moratorium, family homelessness is at an all-time low.<sup>1</sup> This pandemic has laid bare the core flaw of rapid rehousing: its arbitrary time limit leaves no room for crisis. DHS was, rightfully, quick to decide that it would be unfair and unwise to terminate families when a global pandemic interfered with a family's ability to increase their income and afford market rent. But the COVID-19 pandemic is not the only factor outside of families' control. What about the lack of available jobs that pay enough for families to be able to afford rent? Lack of affordable childcare, education or housing? Centuries of systemic racism?

Individual decisions or motivation are not primary causes of lack of housing stability.<sup>2</sup> Building a program around the myth that families, almost exclusively Black families, need an arbitrary time limit to motivate them to increase their income is racist. Cutting families off from support before they can afford the rent is unjust, pandemic or no, and disproportionately harms Black families.<sup>3</sup> People who are suffering from housing instability because of the pandemic or co-occurring recession are worthy of support. But so are people who are suffering from housing instability because of a myriad of other external forces, some centuries in the making.

**Extend rapid rehousing subsidies until permanent housing subsidies are available and/or the program is reformed to prohibit arbitrary time limit terminations.**

### Make STAY DC a Low Barrier, Accessible Program

Others will provide extensive testimony in support of changes that need to be made to STAY DC to make it a program that tenants can easily access. I do not think it is up for debate that STAY DC is an overly cumbersome, burdensome program that is failing to get relief to DC residents.

For illustration purposes, though, I wanted to remind the Council that we have been here before. In the summer and fall, the Council expressed concern that the Emergency Rental Assistance Program (ERAP) was not getting money out the door quickly enough. When community members and advocates raised a number of concerns about how difficult the process was for applicants, Chairman Mendelson convened a working group to draft legislation to reduce the barriers to that program. The result of that process was emergency legislation that removed many of the barriers to applying for ERAP and allowed self-certification in order to ensure that renters could access assistance more easily. (The permanent bill is the Emergency Rental Assistance Reform Amendment Act of 2020.) As a result, DHS spent its entire FY21 appropriation of over \$14 million in a few short months.

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<sup>1</sup> As the authors of the recent Georgetown eviction study recently concluded: "While the Rapid Rehousing Program aids households to exit shelters more quickly, it may be contributing to eviction rates in the District. More long-term solutions like permanently affordable housing can be more effective at achieving housing stability."

<https://georgetown.app.box.com/s/df0d4mruf59wcvqm6cqo9a8pyu8ukeuk>

<sup>2</sup> See this article about the racism inherent in focusing on individual versus systemic causes of poverty.

<https://www.urban.org/urban-wire/poverty-results-structural-barriers-not-personal-choices-safety-net-programs-should-reflect-fact>

<sup>3</sup> DHS admits in its performance oversight responses that in FY20 that only 17% of families were exited from rapid rehousing because they no longer required assistance. (Question 64, Page 90.)

Reducing the barriers worked and did not result in widescale fraud, as had been suggested by the agency.

Interestingly, the Council did not propose linking ERAP applications to lifting of the eviction moratorium in the fall-- the right approach. The problems with STAY DC should be resolved with urgency, but should not be coupled with any lifting of eviction or utility protections. After learning that over 13,000 tenants had applied to STAY DC and not one had received assistance, it is mind boggling that the Council would even suggest that tenants aren't motivated to apply for assistance.

Suggesting, contrary to existing evidence, that the only way to "motivate" tenants to apply is to threaten the loss of their homes is frankly, racist. It is a long-standing false and racist trope that Black people are not intrinsically motivated to pursue opportunities that are objectively in their own interest and must be "motivated" by punitive measures. Similarly, DHS' resistance to developing a clear, low-barrier process for application, including self-attestation as encouraged by federal guidance, is based on a pernicious, poisonous myth that poor Black people are more likely to commit fraud, i.e. to game the system to get public benefits.

**Enact changes to STAY DC to make the program low barrier, accessible and efficiently run. Decouple those changes from any lifting of public health emergency protections.**

#### Extend Eviction and Utility Moratoria and Eliminate Evictions Except in the Most Serious of Circumstances

Having the eviction and utility moratoria in place for over a year has not only saved people's lives during a pandemic, but significantly reduced family homelessness. It is clear that eviction and loss of utilities play a critical, even primary role as drivers of homelessness. And even when homelessness does not result, we know that eviction causes trauma and housing instability can negatively impact education outcomes and employment opportunities. Eviction is also disproportionately aimed at Black DC residents-- a recent Georgetown study found that evictions disproportionately took place in Wards 7 and 8 and that, the more Black renters there are per census tract, the more evictions took place.<sup>4</sup>

It is important to note that the public health emergency may end before COVID-19 has fully been controlled, and almost definitely will end before DC's economy has fully recovered. The eviction and utility moratoria should be extended until DC's economy has recovered, and until DC has ensured that tenants are able to access the relief they need, potentially multiple times.

My eviction defense colleagues will provide you more thorough post-public health emergency recommendations for ways that DC could (and should) reduce the number of eviction filings. I want to highlight though, the importance of eliminating "consistent late payment of rent" as a cause of action. The remedy for late payment of rent should be a late fee, not eviction. If we do not make this legislative change, tenants could pay all of their back rent owed and still face eviction for consistent late payment—a loophole that could undermine all the work DC is doing to preserve people's tenancies.

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<sup>4</sup> Brain J. McCabe, Eva Rosen "Eviction in Washington, DC: Racial and Geographic Disparities in Housing Stability," <https://georgetown.app.box.com/s/df0d4mruf59wcvqm6cqo9a8pyu8ukeuk>

While we do not think it makes sense to tie evictions and utility terminations to applications for assistance or payment plans *during* the public health emergency, we do think it makes sense to do so after the moratoria are lifted.

**Extend the eviction and utility moratoria further beyond the public health emergency to allow for economic recovery. After the moratoria are lifted, limit eviction filings and utility terminations as much as possible, including prohibiting evictions for consistent late payment of rent and prohibiting filings or terminations when the tenant is making a good faith effort to make payments or seek rental or utility assistance.**

Below is a nonexclusive list of recommendations compiled by a working group that the Legal Clinic participates in that provides some ideas for legislative change coming out of the public health emergency. We look forward to working with the special committee to put some of these ideas into legislation.

## **Tenant Barriers Group**

### **Proposals for Post-Public Health Emergency Protections**

Below is a nonexclusive list of proposals to assist DC residents who are experiencing economic hardship due to the COVID-19 pandemic as the public health emergency protections are phased out.

#### **Housing**

- Widescale rental and mortgage payment assistance: ensure programs are streamlined, low barrier, and sufficiently funded to meet the need.
- Maintain eviction moratorium until tenants can fully access eviction prevention funds.
- Pass the Emergency Rental Assistance Reform Amendment Act of 2020.
- Eliminate cause of action that allows landlords to evict tenants for “consistent late payment of rent.” Landlords have recourse for late payments through late fees, and delays in rental assistance or unemployment checks could be causing these late payments.
- Extend rapid re-housing families at least through this fiscal year and until there are enough permanent housing vouchers to maintain their housing stability.
- Clarify that a third-party purchaser from a foreclosure auction is entitled to possession only after they have the deed to the property.
- Condo foreclosure limitation on high attorneys’ fees.

#### **Utilities**

- Widescale utility assistance to prevent terminations: ensure programs covers all services, are low barrier and are sufficiently funded to meet the need. Explore forgiveness or cancellation for DC-owned utilities (like DC Water).
- Maintain utility termination moratorium until customers can fully access relief funds.

#### **Tenant Screening**

- Pass Fairness Tenant Screening Act (FTSA) and Eviction Record Sealing Authority Amendment Act.
- Prohibit landlords from using negative rental credit history from the public health emergency period against consumers when applying for rental housing.
- Automatic sealing of evictions for any cause of action arising during public health emergency.

#### **Consumer Credit Reports**

- Extend the Emergency credit alert protection in Section 28-3863.02(b) to past the expiration of the public health emergency for any adverse information in a report that was the result of an action or inaction by a consumer that occurred during the covered time periods if there is a COVID-19 alert in the consumer’s credit report.

#### **Debt Collection**

- Protect residents from having their federal economic impact payment/tax credits from being attached by plaintiffs in debt collection cases.
- Place reasonable cap on attorneys’ fees paid by individual consumers in debt collection cases.
- Eliminate the “under seal” based evasions of the 3-year limitations period.
- Protect DC residents from being imprisoned for failure to pay or appear in debt collection cases.
- Provide procedural protections for DC residents at risk of civil arrest for contempt in debt collection cases.