Re: Emergency Rental Assistance Reform Amendment Act of 2024

Dear Members of the Council of the District of Columbia,

We, the undersigned organizations, are a coalition of legal services organizations that represent tenants facing eviction and applicants for rental assistance. We are writing to express our opposition to the Emergency Rental Assistance Reform Amendment Act of 2024 and share suggestions to improve the legislation that will reduce inefficiencies in Emergency Rental Assistance Program (ERAP) processing and ensure that eligible tenants are able to receive assistance in a timely manner. As drafted, the bill does little to address the problems the Council has identified regarding delays in eviction cases and rental assistance processing. Indeed, the bill may well exacerbate delays by creating burdensome administrative requirements and novel legal proceedings, all while displacing tenants who have a pathway to pay the rent they owe. The Council should reject this approach and reorient the bill toward improving the administration of ERAP — a goal all stakeholders should agree on.

Any reforms to the ERAP program must fundamentally recognize that the vast majority of tenants are applying for ERAP in good faith, and the delays in court proceedings and ERAP processing are largely outside their control.

Tenants and Landlords are Impacted by Significant Delays in ERAP Processing

There have been significant delays in DHS' processing of applications and distribution of ERAP funds. In many instances, tenants who have already been found to be eligible for ERAP wait months, and in some egregious cases over a year, for distribution of ERAP funds. Our understanding is that a new system of payment orders was implemented in FY2024 that led to a slow roll out of the funds. During a difficult period this summer, one ERAP processor informed us that they had $8 million in applications that they were ready to approve but could not move forward because they were waiting on funds from DHS. This situation went on for many weeks and was extremely frustrating to both landlords and tenants as cases needed to be delayed while they waited for the money to arrive.

These delays were evident for one tenant who applied for ERAP in January 2024. The application was accepted, processed, and ready for approval in mid-March. But due to the slow issuance of funds from DHS to the processor, her application was not approved until April and the payment

did not appear on her ledger until June. The eviction matter was not resolved until mid-July because of lack of response from the landlord about funds in the registry and dismissal of the case. The slow distribution of funds and the failure of this landlord to respond caused this case to drag on for an additional four months — both matters outside of the tenant's control.

This tenant's story is one of many that underscore the need for the Council to require faster processing of ERAP applications and payments to reduce court delays. We would recommend, for example, that this legislation require that all applications should be claimed by an ERAP processing agency within 45 days of submission, all applications should be processed within 45 days of being claimed, and all payments should be issued to the housing provider within 14 days of approval.

As drafted, the bill will only exacerbate processing delays by requiring additional documentation from tenants and eliminating self-certification. Eliminating a tenant's ability to self-certify by imposing a documentation requirement will create further delays in processing timelines. Moreover, requiring an applicant to prove that an emergency led to the need for assistance will unnecessarily limit who is eligible without giving ineligible applicants any new pathways to assistance. If the goal is to eliminate delays and increase rent payments to landlords, requiring more paperwork and limiting eligibility will be counterproductive.

ERAP Stays Are Necessary to Protect Tenants in Eviction Proceedings

The proposal to eliminate automatic ERAP stays will add to court delays. As drafted, the proposed bill adds new administrative hurdles to the process. This change will require additional court proceedings — for example, by creating a new type of evidentiary hearing regarding a tenant's ERAP eligibility and the amount that might be paid — which will only further delay cases.

We agree with limiting the number of stays as a matter of right to one per case. Subsequent stays should be presumptively granted. If the landlord challenges the request for an additional stay, they must prove (1) that the ERAP application was filed in bad faith and (2) that the housing provider has been reasonably diligent in the ERAP application process. At a minimum, the bill should include automatic stay of final judgment and eviction, which would allow parties to proceed on underlying issues that can be addressed through the normal court process, while still protecting tenants from eviction in cases where ERAP will help the tenant stay in their home.

In our experience, many of the delays in court proceedings and ERAP processing are caused by some housing providers failing to respond to requests for basic documentation like ledgers and leases, which are necessary to determine ERAP eligibility and to ultimately resolve the case. This can result in the denial of meritorious ERAP applications and delay to a court case. By refusing to engage with the ERAP process, housing providers are undermining a fundamental protection under DC's eviction law that a tenant cannot be evicted if they pay all the money that is owed. We have

found that some housing providers' repeated failures to engage in good faith negotiations further delay resolutions of their cases. Housing providers and tenants' counsel can often resolve rental arrearages — even arrearages that exceed the ERAP limit — through a combination of an ERAP payment and a payment plan. Unfortunately, it often takes months longer than it should to reach these settlements because some housing providers' counsel do not respond to repeated phone calls and emails.

One example of these issues is a tenant who applied for ERAP in July and had their application accepted by a processor within the month. Through counsel, the tenant has raised numerous eviction defenses including serious housing code violations. The tenant has been paying a substantial portion of their rent into the court registry as the eviction case proceeds. After the landlord initially moved toward settling the case with the payment of ERAP assistance, they then reversed course and refused to cooperate with the processor to issue the ERAP funds or provide documents. The tenant's application was denied at the end of July because of the landlord's lack of responsiveness. This eviction matter is still not resolved. The landlord has now reversed their position again, and the tenant intends to apply for ERAP again in October.

To meaningfully address these types of delays, any reform effort should incentivize housing providers to engage with the ERAP and court processes, by, for example, deeming rent waived if a tenant can show a landlord's repeated failure to comply with ERAP requirements.

Reforms to ERAP will not address the root cause of the District's housing crisis. We urge the Council to focus on addressing the fundamental issue that rents are outpacing income for too many District residents, by, for example, leveraging the Housing Production Trust Fund, funding more permanent vouchers, 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. But in the immediate term, we look forward to working with the Council to address the issues with this bill and the ERAP program.

Sincerely,

Legal Aid DC
Bread for the City
Washington Legal Clinic for the Homeless
D.C. Bar Pro Bono Center
Legal Counsel for the Elderly