



501 3<sup>rd</sup> Street, NW · 8<sup>th</sup> Floor  
Washington, DC 20001  
T 202.467.4900 · F 202.467.4949  
[www.childrenslawcenter.org](http://www.childrenslawcenter.org)

Testimony Before the District of Columbia Council  
Committee on Housing  
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Public Hearing:  
Emergency Rental Assistance Reform Amendment Act of 2024 (B25-0994)

Makenna Osborn  
Policy Attorney  
Children's Law Center

## **Introduction**

Good morning, Councilmember White, and members of the Committee. My name is Makenna Osborn. I am a Policy Attorney at Children’s Law Center, a resident of the District. Children’s Law Center believes every child should grow up with a strong foundation of family, health and education and live in a world free from poverty, trauma, racism and other forms of oppression. Our more than 100 staff – together with DC children and families, community partners and pro bono attorneys – use the law to solve children’s urgent problems today and improve the systems that will affect their lives tomorrow. Since our founding in 1996, we have reached more than 50,000 children and families directly and multiplied our impact by advocating for city-wide solutions that benefit hundreds of thousands more.

Thank you for the opportunity to testify regarding the Emergency Rental Assistance Reform Amendment Act of 2024 (the Act).<sup>1</sup> Children’s Law Center shares the Council’s concern that financial pressures are threatening the ability of affordable housing providers – many of whom serve as landlords for our clients – to continue operating in the District.<sup>2</sup> We also agree that improving DC’s Emergency Rental Assistance Program (ERAP) is one step Council can take to help alleviate that pressure.<sup>3</sup> Lengthy delays in ERAP administration prevent landlords from receiving timely payment for rent owed by tenants with financial hardships and contribute to prolonged eviction proceedings in DC Courts.<sup>4</sup>

Children’s Law Center wants to support the Council’s goal of improving ERAP and aiding affordable housing providers in crisis. However, we do not believe Council’s efforts should come – or need to come – at the expense of DC families’ ability to access ERAP. Instead of reducing the inefficiencies causing delays in ERAP processing, the Act removes protections that ensure DC families who apply for ERAP assistance will not be evicted from their home until they have had a chance for their application to be reviewed.<sup>5</sup> The Act also adds barriers to applications that will exacerbate rather than improve ERAP processing delays, further limiting the ability of eligible DC families to utilize ERAP.<sup>6</sup>

Thankfully, the Committee on Housing can make adjustments that we believe will ensure the Act effectively increases the speed with which tenants move through the ERAP process and landlords receive ERAP payments without removing important protections for DC families. To that end, Children’s Law Center recommends that the Committee amend the Act to:

1. Require faster ERAP processing and payment by the Department of Human Services (DHS);
2. Require good faith participation in the ERAP process by landlords;
3. Allow reasonable exceptions to application documentation requirements;
4. Restore the previous definition of an “emergency” eligible for rental assistance; and

5. Grant one stay in eviction cases as a matter of right if a tenant has a pending ERAP application.

Children's Law Center welcomes the opportunity to work with the Committee and affordable housing providers to discuss these suggestions and produce a final bill that meaningfully and equitably improves ERAP.

### **Improving the Efficiency of the ERAP Process Will Result in Timelier Payments to Landlords**

In the introductory letter accompanying the Act, Chairman Mendelson emphasized that a group of 20 mission-driven affordable housing providers operating in DC have reported that their properties are accruing a combined \$15 million in rental arrears each year.<sup>7</sup> Children's Law Center appreciates how difficult this level of arrears is making it for non-profit providers to continue providing safe and healthy housing for all their tenants. We also believe that timely dispersal of the \$26.9 million in ERAP assistance that Council worked hard to include in the Fiscal Year 2025 budget, could go a long way toward alleviating the financial pressures on these providers.<sup>8</sup> Despite becoming available on October 1, 2024, none of that nearly \$27 million has been distributed yet and under DHS's current procedures it regularly takes multiple months to review ERAP applications and issue approved payments, meaning housing providers likely won't receive any money from ERAP until well into calendar year 2025.<sup>9</sup>

Lengthy processing times are not inherent to emergency rental assistance programs. In equivalent programs in Massachusetts, Illinois, and Philadelphia,

applications for assistance are generally reviewed and approved or denied within 30 to 45 days and payments are issued to landlords within days of application approval.<sup>10</sup> If DC's program operated on a similar timeline, landlords could receive an influx of ERAP payments before the end of 2024. This Act is an opportunity for the Council to address known pressure points that cause delays in ERAP processing and adopt best practices from jurisdictions with highly efficient rental assistance programs.

For example, action is required from three different stakeholders to move an ERAP application through the review process – the tenant, the landlord, and the DHS contracted processor. Yet, the laws and regulations governing ERAP only hold one of those stakeholders accountable for timely participation; if tenants do not supply all the information required to complete their application within 45 days of submission, their application is deemed “abandoned.”<sup>11</sup> While DHS's regulations state that processors “shall” make an eligibility determination within 10 days of an application becoming complete, there is no redress for applicants if their determination takes longer than 10 days and no way for the public or Council to know if processors are being accountable to that deadline.<sup>12</sup> The Committee could address these gaps by adding provisions to the Act that incentivize 1) more efficient application and payment processing by DHS and 2) timelier provision of information required from landlords.

*DHS Should be Required to Meet Statutory Deadlines for Each Step of the ERAP Process*

There are four main steps in the ERAP process controlled by DHS and the processors it contracts with: 1) once an application is submitted via the ERAP portal, it is “claimed” by a processor, 2) the processor then collects any additional information needed from the applicant and their landlord to complete the application packet, 3) the processor reviews the completed application and makes an eligibility determination, and 4) if an applicant’s eligibility is approved, the processor issues a payment of ERAP funds directly to the housing provider. Current law only provides a deadline for step three – making an eligibility determination – and as detailed above, that is not tracked or enforced. To incentivize more efficient application and payment processing by DHS and its contractors, the Committee should establish statutory deadlines for each step of the ERAP process. Children’s Law Center believes the following deadlines would be reasonable requirements to include in the Act:

- Each ERAP application must be claimed by an ERAP processor within 45 days of submission;
- Each ERAP application must be processed, meaning an eligibility determination is issued to the applicant, within 45 days of being claimed; and
- All ERAP applications must be issued to the housing provider within 14 days of an applicant’s eligibility being approved.

Children’s Law Center welcomes the opportunity to discuss these suggested deadlines with the Committee. We also encourage the Committee to speak with legal

service providers, tenant support specialists, ERAP processors, and DHS to understand how the Council can support DHS to meet these deadlines and hold them accountable when they do not.

*Landlords Should Be Required to Provide Timely and Good Faith Engagement with ERAP Applications*

For an ERAP application to be deemed complete and ready for an eligibility determination, the applicant's landlord must provide an updated rental ledger showing the amount of past due rent owed and a signed W-9.<sup>13</sup> If a landlord does not supply this information, their tenant's application will not move forward, and they will not receive an ERAP payment to cover rental arrears. While that may seem like a sufficient incentive for the timely provision of required materials by landlords, in practice it is not. Legal service providers regularly encounter client ERAP applications that are stalled for months and eventually deemed abandoned because the landlord will not engage in the ERAP process. DHS's own data indicates that in 2024, 10% of ERAP applications were closed because they were missing information required from landlords.<sup>14</sup> Regardless of whether the landlord's failure to provide the necessary information is the result of an oversight, a miscommunication, or intentional bad faith, otherwise eligible tenants should not have their ERAP application denied solely because of their landlords' inaction.

Children's Law Center recommends that the Committee amend the Act to better incentivize timely, good faith landlord participation in the ERAP application process. For

example, the Act could prohibit DHS from deeming an ERAP application abandoned if the only documentation missing is that required by the landlord. The Act could also authorize the Court hearing an eviction proceeding to waive some or all the rental arrears that would have been covered by ERAP if a tenant can demonstrate that the landlord did not make a good faith effort to participate in their ERAP application. Incentives targeted at landlord participation have been adopted in other jurisdictions. For example, in Philadelphia, before a landlord can file an eviction against a tenant, they must participate in the city's eviction diversion program "in reasonable good faith," including applying for rental assistance available from the city, for at least 30 days.<sup>15</sup>

Children's Law Center recognizes that many landlords, especially mission-driven affordable housing providers, do make every effort to provide support for their tenants' ERAP applications and those landlords would not be impacted by these requirements. However, other landlords may be more likely to make timely submission of required documentation if *they* – and not just their tenant – will face the consequences for their failure to do so.

### **Adding Stricter ERAP Application Requirements Will Exacerbate ERAP Processing Delays and Prevent Eligible Tenants From Accessing Assistance**

The Act, as introduced, restricts how tenants can demonstrate eligibility for ERAP by 1) removing the ability for tenants to self-attest any eligibility criteria except the "nature of [their] emergency situation,"<sup>16</sup> and 2) narrowing the definition of an eligible emergency.<sup>17</sup> Children's Law Center understands that Council is proposing these

changes to prevent alleged fraud in the ERAP program and target assistance to those most in need.<sup>18</sup> Before markup, the Committee must assess whether the restrictions appropriately balance the District's interest in preventing fraudulent use of ERAP with its interests to ensure that ERAP is equally accessible to all eligible DC tenants and efficiently administered to provide timely assistance to landlords. In Children's Law Center's view, they do not. There is no objective evidence of largescale fraud in ERAP.<sup>19</sup> But even considering the anecdotal allegations of fraud that Council has heard from housing providers, the harm the proposed restrictions would cause by unduly limiting the ability of eligible families to access ERAP and further delaying the application review process is not outweighed by any possible fraud prevention.

*Flexible Documentation Requirements Can Make ERAP More Efficient and Equitable Without Decreasing Program Integrity*

Children's Law Center agrees with the Council's previous assessment that allowing for self-attestation when an applicant is "factually eligible for ERAP, but factually unable to produce the documentation required by the agency . . . strikes the best possible balance between program accessibility and program integrity."<sup>20</sup> That flexibility made ERAP accessible for many eligible families that previously found it impossible to meet documentation requirements. Evidence shows that people with fewer resources are less likely to overcome administrative burdens and therefore such burdens, like strict documentation requirements, specifically decrease accessibility for already disadvantaged groups, including families where the head of household has a disability

or limited English proficiency and families with extremely low incomes.<sup>21</sup> The District's Office of Racial Equity also found that allowing applicants to self-attest their eligibility where needed would "likely expand access to emergency rental assistance, housing stability, and economic security for Black DC residents."<sup>22</sup>

However, if the Committee remains concerned that self-attestation alone no longer balances with the District's interest to protect ERAP's program integrity, there is a spectrum of other evidence-based practices that could provide the flexibility necessary to maintain equitable accessibility. Instead of completely removing the ability to self-attest, the Committee should consider requiring DHS to use fact-specific proxies, which are recommended by the US Treasury as a "promising practice" for emergency rental assistance programs that will "simplify the application process, reduce processing time, and ensure more households avoid eviction and housing instability."<sup>23</sup> Using a fact-specific proxy means that an agency will compare basic information supplied by an applicant with other data sources to reasonably infer that an applicant meets an eligibility criteria instead of requiring the applicant to supply documentation proving that they meet it. Proxies can be based on external facts, such as a household's geographic location, that reliably correlate to an eligibility factor and/or categorical eligibility, if an applicant is already enrolled in another government program with a similar eligibility requirement.<sup>24</sup> Fact-specific proxies are most often used to establish income eligibility.

Evaluations of emergency rental assistance programs across the country show that using combinations of self-attestation and fact-specific proxies provide flexible documentation requirements 1) increases the equitability of access to rental assistance<sup>25</sup> and 2) decreases the time between application submission and fund distribution to landlords<sup>26</sup> without notably increasing instances of fraud or misuse. For example, one study that reviewed nine emergency rental assistance programs that employed fact-specific proxies to maintain flexible documentation requirements found the following:

**A common concern about documentation flexibility is ensuring that program funds are not distributed to ineligible applicants or misused. Every program administrator we interviewed asserted that fact-specific proxy did not result in a noticeable increase in fraudulent activity. While administrators came across isolated cases of suspect applications, no suspect application was the result of increased program flexibilities. Administrators also noted that most ineligible applications were the result not of households purposefully attempting to mislead the program but rather of thinking they were eligible when they did not meet all program criteria. . . . Administrators are well-prepared to protect program integrity, and integrating fact-specific proxy did not appear to put programs at increased risk of fund misuse.<sup>27</sup>**

Some programs reviewed for the study used fact-specific proxies to identify households that could reasonably use self-attestation of income as their default, instead of requiring documentation as the default and only offering self-attestation as an exception if households could not provide it.<sup>28</sup> Others offered self-attestation of income eligibility for all applicants but applied a fact-specific proxy as part of the review process to help detect possible fraud.<sup>29</sup> Administrators of all of the nine programs found that “using fact-specific

proxies led to faster processing times” and several reported *substantial* decreases in the amount of time between application submission and completeness.<sup>30</sup>

Children’s Law Center strongly recommends that the Committee engage in a dialogue with tenants, tenant advocates, ERAP processors, and DHS about the feasibility of adopting fact-specific proxies in DC’s ERAP application. We believe with the Committee’s leadership the District can update its ERAP application requirements to incorporate the use of fact-specific proxies to complement self-attestation. The Committee should not move forward with statutory changes to completely remove self-attestation when reasonable alternatives exist to maintain accessibility and improve efficiency while upholding program integrity.

*Requiring Tenants to Prove Their Emergency is “Unforeseen or Unusual” is Not Practically Administrable and Will Decrease Program Accessibility and Efficiency*

The Act, as introduced, narrows the definition of an “emergency situation” for which a tenant would be eligible to receive ERAP to a situation “which is **the result of an unforeseen or unusual event**, such as the loss of a job or high medical costs.”<sup>31</sup> Children’s Law Center believes this “unforeseen or unusual” standard is vague and will be difficult to administer in practice, which means there is a risk that it will applied inconsistently across ERAP processors and subjectively by individual case managers. A family’s likelihood of receiving ERAP should not differ based on which processor claims their application or case manager is reviewing it. Applying the new standard also requires

even more documentation from tenants to prove their eligibility.<sup>32</sup> While Children’s Law Center appreciates that the Act does allow tenants to self-attest to the nature of their emergency if they cannot produce sufficient documentation, administering that documentation requirement and exception will still add time-consuming burdens to applicants and ERAP processors that will decrease program accessibility and efficiency.

It appears that the goal of the new definition of emergency is to prevent the District’s limited ERAP funds from going to tenants who cannot and will not be able to afford their rent moving forward. However, there are already provisions in the existing ERAP law that go towards that goal. An ERAP payment cannot be made for more than 5 months of back rent or if ERAP assistance would not “substantially alleviate” their emergency situation within the next 30 days.<sup>33</sup> Together, these standards already prevent many tenants dealing with chronic unaffordability from qualifying for ERAP.

**With a More Efficient ERAP Process, One Mandatory Stay of Eviction Proceedings for a Pending ERAP Application Will Be Reasonable and Fair to Tenants**

The Act, as introduced, removes the statutory requirement that the Court temporarily pause eviction proceedings against a tenant, otherwise known as a ‘stay,’ while their ERAP application is pending and instead makes granting a stay completely discretionary.<sup>34</sup> Children’s Law Center understands that eviction proceedings regularly being stayed for many months has contributed to the financial pressures facing affordable housing providers. It is critical to note, however, that the root cause of those delays is

how long ERAP applications are pending, not the mandatory stay policy itself. If the changes currently proposed in the Act are implemented, a family that is eligible for ERAP, who sought timely assistance to cover rental arrears and has done everything required of them to complete their ERAP application, could be evicted from their home before their application has even been reviewed due to administrative inefficiencies at DHS that are outside of their control. A family being evicted in those circumstances undermines the stated purpose of ERAP to “provide crisis intervention for District residents for the purpose of preventing homelessness.”<sup>35</sup>

With that in mind, Children’s Law Center urges the Committee to focus its amendments on how the Act can effectively reduce delays in ERAP processing and restore at least one stay as a matter of right while a tenant’s ERAP application is pending. Under the statutory deadlines we suggest the Committee add to the Act, the maximum amount of time a mandatory stay of an eviction would be in place is 104 days – 45 days to be claimed, 45 days to be processed, and 14 days for a payment to be issued. According to data reported by the Apartment and Office Building Administration of Metropolitan Washington (AOBA),<sup>36</sup> the initial hearing for eviction proceedings in DC Superior Court – which is not delayed by ERAP because a stay is not issued until the first hearing – currently occurs an average of 118 to 148 days after a tenant misses a rent payment.<sup>37</sup> That means if a tenant applied for ERAP as soon as they were able to -- 30 days after they

missed a rental payment – their ERAP application would likely be fully resolved before an initial hearing even occurs.<sup>38</sup>

Pausing eviction proceedings when a tenant has an application for emergency rental assistance pending is not unique to DC. For example, Massachusetts law requires courts to stay eviction proceedings and prohibits tenants from being evicted while they have an application pending with the state’s Rental Assistance for Families in Transition program (RAFT).<sup>39</sup> In Philadelphia, landlords cannot begin an eviction proceeding in court until they have participated in the city’s eviction diversion program, which includes working with their tenant to complete an application for emergency rental assistance if the tenant is eligible.<sup>40</sup> These are also jurisdictions where the emergency rental application decisions and funding are issued in a timely manner – typically 30-45 days, supporting our assertion that if DC focuses on decreasing the time it takes to process ERAP applications, maintaining at least one mandatory stay will be reasonable.

Additionally, Children’s Law Center is concerned that replacing the mandatory stay with judicial discretion will exacerbate delays and inequities in eviction proceedings. In practice, making stays discretionary means that judges would have to make individual determinations about whether to grant a stay in each case where one is requested by hearing arguments from the landlord and tenant and reviewing related evidence, all of which will be time consuming for individual judges and burdensome for the Court. Making stays discretionary would also put the burden on tenants to request one, which

poses significant equity issues for tenants navigating DC eviction proceedings. Unlike landlords, most DC tenants do not have access to legal representation to help them understand the complex eviction process or negotiate settlement deals to prevent eviction.<sup>41</sup> The tenants that do have legal representation are already more likely to raise legitimate defenses to eviction and less likely to end up having the Court issue an order for their eviction.<sup>42</sup> Placing the burden to request a stay on tenants will only further widen these material differences in outcome and hinder the District's efforts to increase access to justice in DC Courts.

## **Conclusion**

Many of the improvements the Council made to ERAP during the pandemic addressed problems that existed in the program long before the public health emergency. When Council enacted some of these changes permanently, it did so because after thoughtful consideration, it recognized "there is no reason to return to the unduly exclusive pre-pandemic status quo."<sup>43</sup> Children's Law Center believes that remains true today. We urge the Committee not to simply revert to the unduly exclusive and burdensome status quo of pre-pandemic ERAP on a permanent basis. Instead, the Committee should take this opportunity to make further necessary improvements targeted at reducing ERAP processing times because efficient administration of funds will support affordable housing providers in need of financial stabilization while still protecting eligible tenants from avoidable evictions.

Thank you again for the opportunity to testify. Children’s Law Center welcomes the opportunity to answer questions and assist the Committee as it amends this legislation before sending it to the full Council for consideration.

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<sup>1</sup> See B25-0994, *Emergency Rental Assistance Reform Amendment Act of 2024*.

<sup>2</sup> See Letter from the Office of Chairman Phil Mendelson for B25-0994, *Emergency Rental Assistance Reform Amendment Act of 2024*, (2024), available at:

<https://lims.dccouncil.gov/downloads/LIMS/56343/Introduction/B25-0994-Introduction.pdf?Id=199201> (citing Jon Banister, *The Whole Industry Could Collapse’: D.C.’s Housing Providers Face An Existential Crisis*, BISNOW, (Sept. 5, 2024), available at: <https://www.bisnow.com/washington-dc/news/multifamily/the-whole-industry-could-collapse-dcs-housing-providers-face-an-existential-crisis-125782>).

<sup>3</sup> Rental arrears are one of several sources of financial pressure compounding to put affordable housing providers in crisis. Independent of rental arrears, operational costs for housing providers in DC have increased significantly in recent years. Prices for building materials used in residential construction and repairs rose 14.6% and 15% year-over-year in 2021 and 2022 respectively and remain “far above pre-pandemic levels” in 2024. *How Soaring Prices for Building Materials Impact Housing*, National Association of Home Builders (Jul. 26, 2024), available at: <https://www.nahb.org/blog/2024/07/how-soaring-prices-building-materials-impact-housing> (last visited Nov. 27, 2024). At the same time, soaring property insurance costs (multi-family residential insurance rates increased an average of 12.5% each year between 2020 and 2024) and high interest rates have “creat[ed] financial gaps that make it difficult for [housing developers] to complete [and operate] below-market rental projects.” *Rising Insurance Costs and the Impact on Housing Affordability*, Emma Waters, Bipartisan Policy Center (Jun. 25, 2024), available at: <https://bipartisanpolicy.org/blog/rising-insurance-costs-and-the-impact-on-housing-affordability/> (last visited Nov. 27, 2024); *Developers Forecast Major Affordable Housing Drought in 2025*, Kriston Capps, Bloomberg (Jul. 29, 2023), available at: <https://www.bloomberg.com/news/articles/2023-07-19/affordable-housing-shortage-looms-amid-inflation-high-construction-costs> (last visited Nov. 27, 2024).

<sup>4</sup> Eviction proceedings are handled by the Landlord & Tenant branch of the DC Superior Court. District of Columbia Courts, *Landlord & Tenant*, available at: <https://www.dccourts.gov/services/civil-matters/landlord-tenant> (last visited Nov. 14, 2024).

<sup>5</sup> See B25-0994, *Emergency Rental Assistance Reform Amendment Act of 2024*, Sec. 2, lines 55-61.

<sup>6</sup> See B25-0994, *Emergency Rental Assistance Reform Amendment Act of 2024*, Sec. 2, lines 62-69.

<sup>7</sup> See B25-0994, *Emergency Rental Assistance Reform Amendment Act of 2024*, Statement of Introduction (citing Jon Banister, *The Whole Industry Could Collapse’: D.C.’s Housing Providers Face An Existential Crisis*, BISNOW, (Sept. 5, 2024), available at: <https://www.bisnow.com/washington-dc/news/multifamily/the-whole-industry-could-collapse-dcs-housing-providers-face-an-existential-crisis-125782>).

<sup>8</sup> FY25 DHS Budget, Table 30-PBB, p. E-94; See also, Report and Recommendations of the DC Council Committee on Housing on the Fiscal Year 2025 Budget for Agencies Under its Purview, p. 95 (May 9, 2024), available at: [https://lims.dccouncil.gov/downloads/LIMS/55149/Committee\\_Report/B25-0785-Committee\\_Report6.pdf?Id=195912](https://lims.dccouncil.gov/downloads/LIMS/55149/Committee_Report/B25-0785-Committee_Report6.pdf?Id=195912) (last visited Nov. 27, 2024).

<sup>9</sup> The portal operated by the Department of Human Services (DHS) where tenants can apply for ERAP was supposed to reopen for the first time in Fiscal Year 2025 on October 1, 2024. However, following the Council’s passage of emergency legislation to implement immediate reforms to ERAP, DHS announced

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that the portal reopening would be delayed, and it was eventually rescheduled for November 20, 2024 – five days after this hearing. *DC Council Bill to Reform Emergency Rental Assistance is Light on Supporting Data*, Suzie Amanuel, Washington City Paper (Sept. 30, 2024), available at:

<https://washingtoncitypaper.com/article/750612/d-c-council-bill-to-reform-emergency-rental-assistance-is-light-on-supporting-data/> (last visited Nov. 27, 2024).

<sup>10</sup> See *Apply for RAFT (emergency help for housing costs)*, Massachusetts housing assistance: Emergency and long-term help, available at: <https://www.mass.gov/how-to/apply-for-raft-emergency-help-for-housing-costs> (last visited Nov. 14, 2024); *The Illinois Court-Based Rental Assistance Program is open*, Illinois Housing Development Authority, available at: <https://www.illinoishousinghelp.org/cbrap> (last visited Nov. 14, 2024); *Frequently Asked Questions (FAQ): City of Philadelphia’s Eviction Diversion Program*, Department of Planning and Development: City of Philadelphia, available at: <https://eviction-diversion.phila.gov/#/FAQ> (last visited Nov. 14, 2024).

<sup>11</sup> 29 D.C.M.R. § 7501.15 (2022).

<sup>12</sup> *Id.* at § 7501.11; The quarterly reports on ERAP that DHS submits to the Council pursuant to D.C. Code § 4-756.08 do not include any data on the length of time it takes to process ERAP applications and as of the date of this hearing, the ERAP “Storymap” that is supposed to publicly display reports on program operations is not functioning. See *Data and Storymaps: Emergency Rental Assistance Program*, Dept. of Human Services, <https://dhs.dc.gov/page/data-and-storymaps> (last visited Nov. 27, 2024).

<sup>13</sup> *ERAP: Frequently Asked Questions*, Dept. of Human Services, <https://erap.dhs.dc.gov/FAQs> (last visited Nov. 27, 2024).

<sup>14</sup> *DC Council Bill to Reform Emergency Rental Assistance is Light on Supporting Data*, Suzie Amanuel, Washington City Paper (Sept. 30, 2024), available at: <https://washingtoncitypaper.com/article/750612/d-c-council-bill-to-reform-emergency-rental-assistance-is-light-on-supporting-data/> (last visited Nov. 27, 2024).

<sup>15</sup> Philadelphia Code, § 9-811(2)(b), available at: [https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia\\_pa/0-0-0-278160#JD\\_9-811](https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-278160#JD_9-811) (last visited Nov. 27, 2024).

<sup>16</sup> B25-0994, *Emergency Rental Assistance Reform Amendment Act of 2024*, Sec. 2, lines 41-45.

<sup>17</sup> *Id.* at lines 48-52.

<sup>18</sup> See B25-0994, *Emergency Rental Assistance Reform Amendment Act of 2024*, Statement of Introduction.

<sup>19</sup> See Ted Oberg, *DC agency can’t confirm fraud in rental aid program targeted for cuts*, MSN, (May 23, 2024), available at: <https://www.msn.com/en-us/news/us/dc-agency-can-t-confirm-fraud-in-rental-aid-program-targeted-for-cuts/ar-BB1mWkoX> (On May 23, 2024, DHS “told the I-Team it referred 147 cases of suspected fraud to internal investigators over two years and payment was withheld, but it did not forward a single case to D.C.’s Office of the Inspector General for criminal investigation. Using DHS’s numbers, that means it suspected fraud in less than 1% of ERAP applications and didn’t say they definitely found fraud in any of them.”). Additionally, in Fiscal Year 2023, DHS reported that no ERAP applications were denied for including “misrepresentative information” and in FY24, just 12 applications were found to include misrepresentative information. See DHS FY24 Performance Oversight Responses, response to Q45, available at: <https://dccouncil.gov/wp-content/uploads/2024/08/Pre-Hearing-Responses-DHS-02.28.2024.pdf>; see also DHS FY23 Performance Oversight Responses, response to Q99(h), available at: <https://dccouncil.gov/wp-content/uploads/2023/03/Pre-Hearing-Question-Responses-DHS-2.20.2023.pdf>.

<sup>20</sup> Council of the District of Columbia, Committee on Human Services Committee Report on B24-0120, the Emergency Rental Assistance Reform and Career Mobility Action Plan Program Establishment Amendment Act of 2022, p. 4, (Nov. 30, 2022), available at:

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[https://lms.dccouncil.gov/downloads/LIMS/46641/Committee\\_Report/B24-0120-Committee\\_Report1.pdf?Id=151002](https://lms.dccouncil.gov/downloads/LIMS/46641/Committee_Report/B24-0120-Committee_Report1.pdf?Id=151002).

<sup>21</sup> See Claudia Aiken, et al., *Administrative Burdens in Emergency Rental Assistance Programs*, National Low Income Housing Coalition, p. 102, (2023), available at:

<https://www.rsjournal.org/content/rsfjss/9/5/100.full.pdf> (citing Aizer, Anna, *Low Take-Up in Medicaid: Does Outreach Matter and for Whom?*, p. 238-42, (2003); Herd, Pamela, and Moynihan, Donald P., *Administrative Burden: Policymaking by Other Means*, (2018)); Study to Identify Methods to Assess Equity: Report to the President, Office of Management and Budget, pp. 21-29 (July 2021), available at: [OMB-Report-on-E013985-Implementation\\_508-Compliant-Secure-v1.1.pdf \(SECURED\)](https://www.omb.eop.govt.gov/sites/default/files/2021-07/OMB-Report-on-E013985-Implementation_508-Compliant-Secure-v1.1.pdf) (last visited Nov. 27, 2024) (“Research indicates that where there are administrative burdens, they do not fall equally on all entities and individuals, leading to disproportionate underutilization of critical services and programs, as well as unequal costs of access, often by the people and communities who need them most.”).

<sup>22</sup> See Council Office of Racial Equality (CORE), *Racial Equity Impact Assessment*, p. 7, (Dec. 6, 2022), available at: <https://www.dropbox.com/scl/fi/p4wpoeyst8ozh8hw8przg/B24-0120-ERAP-AND-Career-MAP-REIA-signed.pdf?rlkey=slsegwn377x3ocarkvdqb4bb4&e=1&dl=0>.

<sup>23</sup> *Emergency Rental Assistance Program: Promising Practices: Using Fact-Specific Proxies to Simplify Documentation Requirements*, US Dept. of the Treasury, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/promising-practices/fact-specific-proxies> (last visited Nov. 27, 2024).

<sup>24</sup> See *End Rental Arrears To Stop Evictions (ERASE)*, National Low Income Housing Coalition, p. 4, (Aug. 4, 2021), available at: <https://nlihc.org/sites/default/files/End-Rental-Arrears-to-Stop-Evictions.pdf>; Sophie Siebach-Glover, et al., *Implementing Fact-Specific Proxy in Era Programs: Key Considerations and Lessons Learned*, National Low Income Housing Coalition, p. 1, (Feb. 16, 2022), available at: <https://nlihc.org/sites/default/files/Fact-Specific-Proxy-Report.pdf>.

<sup>25</sup> Sophie Siebach-Glover, et al., *Implementing Fact-Specific Proxy in Era Programs: Key Considerations and Lessons Learned*, National Low Income Housing Coalition, p. 12, (Feb. 16, 2022), available at: <https://nlihc.org/sites/default/files/Fact-Specific-Proxy-Report.pdf> (“Program administrators in Denver and North Carolina stated an increase in application accessibility translated into a more equitable process as well.” The administrators in these programs reported being better able to serve low-income households and BIPOC households.).

<sup>26</sup> *Id.* at 11 (“All program administrators interviewed explained that using fact-specific proxies led to faster processing times. . . . Program administrators in Tulsa, OK, observed that expediting applications using fact-specific proxy allow the program to approve funding in as little as two days.”).

<sup>27</sup> *Id.* at 4 (emphasis added).

<sup>28</sup> For example, in Connecticut and Kentucky, administrators of statewide emergency rental assistance programs reported using geographic indicators as fact-specific proxies for income and integrating them into their online application so if a household lists an address within an eligible geographic area, they are not prompted to provide any income documentation during the application process and simply asked to self-attest that their income meets eligibility criteria. *Id.* at 8-11.

<sup>29</sup> For example, North Carolina’s Housing Opportunities and Prevention of Evictions program (HOPE) administrators reported providing a universal option to self-attest household income level and using data from the Department of Housing and Urban Development’s (HUD) Comprehensive Housing Affordability Strategy as “an internal risk control to mitigate potential fraud.” HOPE administrators use the HUD data to estimate the number of households eligible for emergency rental assistance in each county and if the number of applications in a county is more than predicted by the fact-specific proxy, they will conduct a more in-depth review of applications. *Id.* at 7.

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<sup>30</sup> *Id.* at 11.

<sup>31</sup> B25-0994, *Emergency Rental Assistance Reform Amendment Act of 2024*, Sec. 2, lines 48-52 (emphasis added).

<sup>32</sup> *Id.* at lines 41-45.

<sup>33</sup> D.C. Code § 4-753.08(b)(4).

<sup>34</sup> B25-0994, *Emergency Rental Assistance Reform Amendment Act of 2024*, Sec. 2, lines 55-59.

<sup>35</sup> 29 D.C.M.R. § 7500.1 (2022).

<sup>36</sup> AOBA is a membership organization that represents multifamily residential property owners in DC, <https://www.oba-metro.org/>.

<sup>37</sup> *A Looming Crisis: The Residual Impacts of the COVID-19 Pandemic on Rent-Controlled and Market Rate Affordable Rental Housing in the District of Columbia*, Apartment and Office Building Association of Metropolitan Washington (AOBA), p. 20 (June 2024), available at: <https://assets.noviams.com/novi-file-uploads/aoba/FINAL - DC Report - June -b6aade74.pdf> (last visited Nov. 27, 2024).

<sup>38</sup> 30 days (time after missed payment when a tenant is eligible to apply for ERAP) + 104 days (length of time to process an ERAP application under our suggested statutory deadlines) = 134 days from date of missed rent payment that an ERAP application could be pending and trigger a stay.

<sup>39</sup> See *Tenants' Guide to Eviction*, Mass.gov, <https://www.mass.gov/info-details/tenants-guide-to-eviction> (last visited Nov. 27, 2024) (“Even if your landlord takes you to court, you can’t be evicted if you have a pending RAFT application.”); *What Landlords Need to Know About Housing Assistance Programs in MA*, Mass.gov, <https://www.mass.gov/info-details/what-landlords-need-to-know-about-housing-assistance-programs-in-ma> (last visited Nov. 27, 2024) (“You cannot evict tenants who have a pending RAFT application for nonpayment of rent.”); “Statement in Support of the Healey-Driscoll Administration’s Call to Action for Families Experiencing Homelessness, Appeal for Coordinated State Action,” Massachusetts Coalition for the Homeless, Massachusetts Law Reform Institute, and Citizens’ Housing and Planning Association (Aug. 15, 2023), <https://www.mlri.org/2023/08/15/statement-in-support-coordinated-state-action/> (last visited Nov. 27, 2024) (“The fiscal year 2024 state budget, signed into law on August 9<sup>th</sup> . . . reinstates Chapter 257 eviction protections to prevent unnecessary evictions for renters applying for emergency rental assistance.”).

<sup>40</sup> PHL Eviction Diversion: About, City of Philadelphia: Department of Planning and Development, <https://eviction-diversion.phila.gov/#/About> (last visited Nov. 27, 2024) (“Per City Ordinance #240245, landlord good faith participation in [the Eviction Diversion Program] is required before seeking a legal eviction through court.”).

<sup>41</sup> See *Delivering Justice: Addressing Civil Legal Needs in the District of Columbia*, D.C. Access To Justice Commission, p. 129, 133, (2019), available at: [https://dcaccesstojustice.org/files/Delivering\\_Justice\\_2019.pdf](https://dcaccesstojustice.org/files/Delivering_Justice_2019.pdf) (last visited Nov. 27, 2024) (In 2017, 95% of landlords in cases in the Superior Court’s Landlord and Tenant Branch had legal counsel compared to only 12% of tenants.).

<sup>42</sup> *Id.* at 54.

<sup>43</sup> See Council of the District of Columbia, Committee on Human Services Committee Report on B24-0120, the Emergency Rental Assistance Reform and Career Mobility Action Plan Program Establishment Amendment Act of 2022, p. 2, (Nov. 30, 2022), available at: [https://lims.dccouncil.gov/downloads/LIMS/46641/Committee\\_Report/B24-0120-Committee\\_Report1.pdf?Id=151002](https://lims.dccouncil.gov/downloads/LIMS/46641/Committee_Report/B24-0120-Committee_Report1.pdf?Id=151002).