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Testimony Before the District of Columbia Council
Committee on Human Services
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Public Hearing:
Bill 22-293, the "Homeless Services Reform Amendment Act of 2017"

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Introduction

Good afternoon Chairperson Nadeau and members of the Committee on Human Services. My name is Kathy Zeisel, and I am a Senior Supervising Attorney at Children's Law Center,[1] a recently appointed Commissioner to the Access to Justice Commission, and a resident of the District. I am testifying today on behalf of Children's Law Center, which fights so every DC child can grow up with a loving family, good health and a quality education. With 100 staff and hundreds of pro bono lawyers, Children's Law Center reaches 1 out of every 9 children in DC's poorest neighborhoods – more than 5,000 children and families each year.

In our work with our medical legal partnerships, and as guardians *ad litem*, we frequently see families who are at-risk of becoming homeless or are homeless. In our medical legal partnership, we are referred families by their child's pediatrician, because they are doubled up in unsafe and overcrowded housing, their shelter placement is not accommodating the child's disability, or the child's health is being negatively impacted by the conditions in their shelter or housing placement from the Department of Human Services (DHS). We also see young mothers who are unable to access safe housing, including one who was assaulted by her mother after disclosing that she identified as a lesbian and another who was sleeping under her mother's porch because she was locked out of her home. In our guardian *ad litem* work for children in foster care, we see young adults who struggle to prove DC residency after spending years as DC Wards.

The Homeless Services Reform Amendment Act of 2017 (the "Act") does include some positive changes for our homeless residents, but we also have serious concerns about many portions of the proposed bill which we think would fundamentally change the philosophy of our shelter system by closing the door on many at-risk DC residents and by depriving them of impartial due process to challenge DHS decisions. Broadly, we are concerned that provisions in this bill shut the door to safe shelter for too many vulnerable youth and families. The bill also eliminates critical due process protections for individuals who need to challenge wrongful determinations by the DHS in an impartial forum. Lastly, the Act is a critical opportunity to clarify and better define the city's Rapid Rehousing program, which has quickly become the next step after emergency shelter for virtually all of DC's homeless families.

The Enumeration of Specific Rights and Protections in the Act is a Positive Change.

We applaud the DHS for taking community feedback and incorporating specific rights for clients in shelter, including the right to assemble and to participate in case management.[2] We suggest that specific standards for case management should also be incorporated into this legislation. These standards are needed given the widely divergent quality of the current case management and lack of rights of the client to have any level of quality of case management.

We also support the inclusion of the specific definition of and protection from retaliation that community members who reside in shelter sometimes report.[3] In

addition to these rights, the right to organize should also be included to this list of rights, because the right to organize is fundamental and people should not be terminated from shelter for organizing.

We also applaud the addition of specifically enumerated rights for people in permanent housing to clarify that as tenants with a lease, they have more rights than persons residing in congregate shelters.[4]

The HSRA Amendment Act of 2017 Creates Unnecessary Barriers to Entering the System and Makes the System More Difficult to Manage Once in the Shelter System.

I. Definitional changes in the Act create substantial changes in the system that must be addressed.

Turning first to the definitional changes in the Act, these are much more than simply changing DC's definitions to match the definitions in the federal law. DC has chosen, in many instances, to adopt broader definitions than what is in the federal law. Changes to the DC definitions will eliminate the ability to serve many of the most at-risk people.

For example, the definition of "chronically homeless" is changed in the Act from the current working definition to remove eligibility for families with children who have disabilities.[5] We work with many families with children with disabilities who struggle to work because of the enormous amount of time it takes to care for their child—taking them to appointments, managing school services and actually caring for the child.

Changing this definition would make these families immediately ineligible for Permanent Supportive Housing, meaning they could potentially be exited from this program with no due process rights under the proposals in this bill. We suggest that the definition of "chronically homeless" be expanded to include families with children with disabilities, in addition to adults with disabilities.

In addition, the definition of "unaccompanied youth" under the homeless definition has serious problems.[6] The proposed unaccompanied youth definition specifies that it only applies to youth who have not been on a lease or occupancy agreement within the past 60 days, but most runaway youth have been or currently are on a lease, meaning that they are no longer eligible for shelter services under this Act. Given that runaways are at serious risk of trafficking and other serious threats to their health and safety and that LGBTQ youth are disproportionately represented in this population and are at particularly high risk, closing the door to safe housing for them is very concerning.[7] We strongly advocate that the definition be amended to include runaways.

Furthermore, the "unaccompanied youth" definition changes our low barriers model by requiring a psychosocial assessment prior the child receiving services**.** The new definition requires that in order to be considered homeless, an unaccompanied youth must be likely to remain not on a lease and likely to remain in persistently instable housing by assessing various factors. In order to comply with this definition,

providers would have to conduct this assessment prior to admitting a child to shelter or risk not being funded to serve that child. This leaves children on the street while they wait for the assessment. Therefore, we recommend that this part of the definition be struck.

The term "at-risk of homelessness" is also problematic as defined. This is a substantial change that could mean that many people currently eligible for Emergency Rental Assistance (ERAP) will no longer be eligible for ERAP. One of the prongs states that a person must have written notice that they have only 21 days to remain in the unit.[8] While this might be possible in an informal situation, no such notice exists in the landlord tenant context and tenants get only a notice that the *Marshals* will execute the writ of possession within 75 days.

Finally, while the current law defines an adult as an individual,[9] the Act does not define an unaccompanied youth as an individual. This is problematic because the term individual is subsequently used numerous times to describe who is entitled to due process rights, rights in shelter and in other contexts throughout the Act. Failure to specifically state that an unaccompanied youth is an individual could lead to the unintended consequence of denying these youth many of the protections of the Act.

The creation of the definition of "permanent housing" is confusing, as it is written.[10] On the one hand, it does encompass all the forms of housing in the Continuum where a landlord/tenant relationship is established. However, it includes

Rapid Rehousing, even though this program is by definition time limited and not permanent housing assistance. There will be further discussion of our concerns about rapid rehousing below, but by defining it in this way, it eliminates the eligibility of participants to get the Homeless preference with the DC Housing Authority and possibly for other purposes such as McKinney Vento protections for children in schools.

In addition to these proposed changes to the definitions, we also think that several definitions need to be added to ensure clarity and consistency within the Act. The term "domestic violence" is used in the unaccompanied youth section and throughout the document. This term has no legal meaning in the District of Columbia. We recommend that the term domestic violence be defined as interpersonal violence, intimate partner violence and intrafamily violence as defined in DC Code §16-1001(6-9). This will allow for consistency across DC Law.

In addition, the term "affordable" is used in defining appropriate permanent housing, but affordable is not defined in the Act.[11] Further discussion is needed to determine how to define "affordable," but it is exactly because there is a lack of clarity by what is meant that we need a statutory definition.

The term "offer of appropriate permanent housing" is used in the Act as a grounds for potential termination of assistance.[12] Yet, that term is not defined and in public meetings to review this Act with DHS and providers, it became clear that providers use this term in different ways. Some providers consider an offer to be

providing a list of units from Craigslist or a similar source without regard to whether the landlord will actually rent to the prospective tenant or whether the unit is actually safe or habitable. Offer of appropriate permanent housing should be defined as an offer of a unit that is safe and habitable, affordable and which the tenant is actually able to move into and has been approved for.

The word "inspection" is used in the context of the rights of clients in shelter and in permanent housing, yet that term is not defined. The Act says that clients residing in temporary shelter or transitional housing have a right to notice prior to inspection and to be present for it.[13] In the Permanent Supportive Housing rights section,[14] the Act says that clients have the right to be free from inspections by providers more than once a year. In the public meetings, DHS stated that an inspection was akin to a search of the home and differed from a home visit, but that is not clear in the law and the term "inspection" should be defined.

II. The Changes in Residency Requirements are Unnecessarily Burdensome and Do Not Solve Any Systemic Issue

The Act proposes to make proving DC residency significantly harder than in the current version of the law by requiring two forms of documentation to show residency and by eliminating any discretion of DHS to adapt those requirements.[15] The Act requires two forms of documentation from a highly restrictive list, most of which require someone to either have already have proven residency, to have a stable place to

live and/or to be employed. This is a higher burden than homeless families face in areas accessing other DC services, such as to show residency for DC Public Schools (DCPS), to obtain an identification from the DMV and even to obtain public benefits administered by DHS.[16]

In the recent public meetings in May of 2017, DHS representatives stated that these requirements were to send a message to surrounding jurisdictions that we will not accept and shelter their residents. This stated motivation is concerning. There is no data that we are aware of that shows that people from other jurisdictions are successfully gaining access to our shelters under the current residency requirements. Furthermore, the current iteration of the residency requirement could be construed to create an unconstitutional durational residency requirement.

Practically, these requirements are especially problematic for some of the highest risk populations, specifically youth generally, youth aging out of foster care, undocumented people and families with children who are not school age. These populations often have particular problems in obtaining two of the listed documents. The inclusion of the possibility of a written verification to prove residency is not a solution, because many people who become homeless lack the community connections to obtain such a verification.[17]

This section should be significantly changed. If a specific list of documents is included in the law rather than enumerated in regulations or guidance, the proposed

list is insufficient. For instance, a veteran receiving VA Benefits could not use that document to establish residency. However, it would be impossible to come up with an exhaustive list that anticipates all possible documents that could effectively show residency now and in the future. Therefore, while the list should include additional specific documents, a catch-all provision giving DHS the authority to accept other documents at its discretion should be included as well.

Additionally, where an individual or family has already proven residency for a DC agency, such as DCPS, DC's DMV or DHS, within a reasonable time frame, that should be sufficient and they should be exempted from having to provide any additional documents to verify residency.

If the goal of the Act is to keep out non-residents, then the process of proving residency should be as easy as possible for people who actually are residents. Many homeless individuals and families may not have the paper documentation of the relevant residency documents. At the public meetings in May of 2017, DHS representatives stated that they could search databases to find out whether the family receives public benefits in DC, has a child enrolled in DC schools or is enrolled another relevant DC program. The law should affirmatively require DHS to conduct this search when a family is applying for homeless services.

The section also contains a permissive exemption to the documentation requirements for survivors of DV and trafficking, rather than a required exemption

from the residency documentation.[18] This should be a required rather than a permissive exemption.

The grace period included in the residency section is confusing and unnecessary given interim eligibility.[19] If there is an issue with verifying residency, families should be placed in interim eligibility rather than creating a separate process which will be confusing to clients and to front line staff required to administer the Act.

III. Shifting the Burden to Families to Show No Safe Housing Is Available Fundamentally Changes Our Shelter System.

In our current shelter system, we have made the policy decision that we would rather provide safe shelter to individuals and families where there is some question about their eligibility rather than risk that they will sleep on the streets, in cars or in other unsafe housing. This was reflected in the 2015 decisions by the Council about interim eligibility.

Currently, when an individual or family asks for safe housing, the burden is on DHS to show that the family has no safe place to go. In the new Act, DHS proposes that the individual or family must show, by clear and convincing evidence, that they have no safe place to go. The effect of this is that if a family cannot, at the time of their intake interview, demonstrate with a high degree of certainty and clarity that they have no other safe place to go, they will be turned away and not provided any shelter. In addition to the philosophical concerns with this policy generally, clear and convincing

is an extremely high legal standard[20] which would be very challenging for families to meet.[21] No data has been provided by DHS to show that there is rampant fraud in the current process, and the solution proposed could have serious consequences for our extremely vulnerable populations, who are the least likely to be able to provide such evidence. As with other areas where DHS attempts to address a theoretical problem of fraudulent entry into the system, DHS already has the tools to address this by granting interim eligibility to the applicant and continuing to investigate. We strongly advocate that this provision be stricken from the bill.

IV. The Redetermining Eligibility Provision is Unnecessary and Could Create Confusion in the System.

DHS proposes a new section on redetermining eligibility.[22] This provision allows DHS to redetermine eligibility for any reason at any time. Similar proposals have been made in the past by DHS, and the prior compromises around this resulted in the current interim eligibility provisions. This provision is overly broad to address the concerns identified by DHS, which are to be able to transfer people who were no longer eligible for the program they are in due to a change in life circumstances and to help manage hotel stays. To address these issues, appropriate specific provisions could be added to the transfer and termination sections.

Instead, the proposed provision could create absurd results and confusion in the system because as written it proposes to redetermine eligibility based on the original

eligibility requirements for accessing services. Yet, by virtue of now being housed in safe housing by DHS, many clients would no longer be eligible under this provision, because they are in safe housing.

V. Notice of Termination Being Required for Any Absence from Shelter Longer than Four Days Regardless of the Reason Could Lead to Illegal Terminations and Increased Appeals.

In the Notice section, the Act requires providers to provide a notice of termination to clients who are absent from temporary shelter or transitional housing for over four days regardless of the reason.[23] So, for instance, someone hospitalized for five days after giving birth would have to be given a notice of termination even if their case manager was aware of it. To be clear, this would not necessarily be a legal notice of termination, because the grounds for termination do not include this specific basis, but a notice would have to be issued by the providers regardless of this.[24]

It is our understanding that the problem this section was intended to solve was that the current law requires personal service of notice of termination, but that is infeasible if the client is not occupying their unit. This proposal was added to ensure that these clients could be served a termination notice through means other than personal service. If that is the intent, this provision can be corrected to reflect that intent, rather than to create a requirement to issue a notice of termination regardless of the legality of that notice.

VI. The Act Eliminates Bathrooms Previously Required for DC General Replacement Units.

The question of the number of bathrooms needed in the DC General Replacement Units has been discussed at length in the past and settled already by the Council in the current version of this law.[25] Yet, DHS is attempting to restart that debate by eliminating the requirement for two multi-fixture bathrooms per floor.[26] This would leave a requirement of only one bathroom for every 5 units, meaning that 20-30 people could share one bathroom. This is an inhumane plan for how to plan for bathrooms in the new facilities.

The Act Eliminates Critical Impartial Due Process Protections Which Must Be Restored.

In two sections of the proposed legislation, DHS proposes to completely eliminate the possibility of impartial due process review of its decisions. This would leave only DHS to review its own decisions with no avenue for individuals to further challenge that decision. In the current form of due process, DHS already has the opportunity to review its own decisions through Administrative Review. Yet, when DHS Administrative Review hearing officers' decisions are challenged in the Office of Administrative Hearings, they are not infrequently overturned as being in violation of the law.[27]

I. The Program Exits Provision is Simply Termination Without Due Process

DHS proposes to create a new form of termination entitled program exits.[28] This section permits DHS to exit a participant from a program if the person has reached the time limit of the program, does not meet the standards for recertification or is determined to be no longer eligible for services within the Continuum of Care. The last provision is the redetermination of eligibility provision discussed above.

The only mechanism for challenging a program exit under any of these provisions is an appeal to the Director of DHS. This is not an adequate protection and would create a system in which DHS is only accountable to itself.

II. Medical Respite Provisions Eliminate All Due Process Protections.

In the revised medical respite provisions, the law exempts medical respite from all notice and termination provisions and all due process that goes with those.[29] Children's Law Center does not handle and is not expert in medical respite cases. However, we are deeply concerned by the total elimination of all due process protections, and we are hopeful that a solution could be found to address the concerns of DHS while also protecting the fragile clients who require medical respite.

The Rapid Rehousing Program Can be Improved Through this Act, But Proposed Changes Put Families at Risk of Repeated Homelessness

As highlighted below, we have seen numerous problems within Rapid Rehousing, which would be magnified by the proposed inflexible time limit and

program exit provisions. While much more discussion is needed about how the law can protect the rights of participants while also improving the quality of the program, this is an opportunity to make those needed legislative changes.

I. Unaddressed Housing Code Violations in Rapid Rehousing Units

In the past six months, CLC has worked with many families in the rapid rehousing program. Although the law requires that all rapid rehousing participants be placed in appropriate housing, which must be in compliance with the DC building code, many of the clients we work with are in housing that is triggering serious medical concerns for them or their children and which does not meet the standards of the DC Code. These conditions have included mold, no working heat all winter, bedbugs, rodent infestations and other housing code violations that can significantly impact children's health. In some of these cases, providers have assisted families with relocating, but relocation protocols are unclear and we have not seen any consistent interventions. In other instances, caseworkers do not have accurate or complete information or training about tenant's rights to have housing code violations fixed. Caseworker turnover and inadequate training in some contracted organizations mean many of these families' concerns about their housing conditions go unnoticed or unaddressed, and children continue to live in dangerous and unhealthy conditions.

In order to address these issues, the law should include provisions requiring the creation of case management standards and remedies for clients where those case management standards are not met.

We also recommend that a provision be added to provide clients residing in Rapid Rehousing units with the right to housing that is in substantial compliance with the DC Housing Code, and that a protocol be developed for identifying families experiencing housing code violations, and assisting those families with addressing the violations or relocating to another unit that is in substantial compliance with the DC Housing Code.

II. Lack of Screening for Long-term Assistance Programs for Rapid Rehousing Participants

We also work with many families who are being terminated from rapid rehousing assistance without having been appropriately screened for Permanent Supportive Housing or Targeted Affordable Housing, even when they or their children have serious disabilities that present a significant challenge to maintaining stable housing long-term without further financial and casework assistance. We recommend that the law require that families receive such a screening for Targeted Affordable Housing and Permanent Supportive Housing and the written results of the screening, as well as a written eligibility determination, be given to families before they receive a notice that their rapid rehousing assistance is ending.[30]

Families who are approved for Targeted Affordable Housing or Permanent Supportive Housing while they are in the rapid rehousing program should receive an automatic rapid rehousing program extension until they are transferred to the new program, to avoid a gap in housing assistance.

We also recommend that the law require that families' individual circumstances, including their ability to pay full market rent, be considered before rapid rehousing assistance is ended.

III. Percentage of Income Should Be Capped While in the Program

Currently, there is wide variation in the percentage of income paid towards rent by rapid rehousing program participants. For many families exiting shelter and trying to get back on their feet, this leaves them with the choice of feeding their families or paying their rent. Legal services providers who handle landlord tenant cases report seeing evictions of families *while they are participating in the program* because they cannot pay these high levels of rent. As with other subsidized housing programs, the maximum percentage of income should be capped at 30%, including utilities.[31]

IV. Rapid Rehousing Time Limits Should Permit Exceptions

The proposed legislation codifies a twelve month limit without any exceptions in the program exits section.[32] In addition to the serious due process concerns described above, the time limits with no exceptions and no discretion to exempt anyone means that even if the case manager fails to screen or refer the client for longer term assistance,

if there is no hope of the client affording the market rate rent for the unit yet, or even if they are mere months away from getting off the DC Housing Authority waitlist. Expecting most rapid rehousing recipients to go from having rental assistance to having no rental assistance is setting them up for failure and to re-enter the homelessness system.[33] While it is likely that many families would still be rent-burdened upon exiting the program, some families we see are in units which would require that they pay 100% or more of their income towards rent, something that they could never sustain upon exit from the program.

If a specific time limit for rapid rehousing assistance is included in the law, then specific exemptions should be included and due process rights to challenge a termination should be added. At a minimum, these exemptions should give a remedy where a client was not properly assessed for, or referred to, permanent housing programs for which they are eligible; should require that clients not be exited from the program unless they have to pay no more than a specific percentage of their income towards rent; and should provide for extensions where a client has been approved for, or is likely to receive, permanent housing assistance within months.

Conclusion

We believe every person in DC who has no safe place to sleep at night should have access to safe, humane shelter, unfettered by bureaucratic hurdles; that clients in shelter and housing programs deserve due process and fair, transparent policies; and

that the root causes of homelessness, lack of affordable housing, cannot be solved by narrowing the front door to shelter or by imposing arbitrary time limits on housing.

Thank you for this opportunity to testify. Children's Law Center looks forward to collaborating with the Council, DHS, other advocates and the community to improve this legislation. I look forward to any questions.

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[1] Children's Law Center fights so every child in DC can grow up with a loving family, good health and a quality education. Judges, pediatricians and families turn to us to be the voice for children who are abused or neglected, who aren't learning in school, or who have health problems that can't be solved by medicine alone. With 100 staff and hundreds of pro bono lawyers, we reach 1 out of every 9 children in DC's poorest neighborhoods – more than 5,000 children and families each year. And, we multiply this impact by advocating for city-wide solutions that benefit all children.

[2] DC Code § 4-754.11(12);(21).

[3] DC Code § 4-751.01(32A).

[4] DC Code § 4-754.12a.

[5] DC Code § 4-751.01(6B).

[6] DC Code § 4-751.01 (18)(C)(i-iii).

[7] DHS's own Homeless Youth Census of August of 2015 found that 43% of homeless youth identified as LGBTQ, 15% reported family conflict related to their sexual identity and 20% of youth were literally unsheltered. Available at https://dhs.dc.gov/sites/default/files/dc/sites/dhs/release_content/attachments/Homeless%20Youth%20Census%20One%20Pager.pdf.

[8] DC Code § 4-751.01(5a).

[9] DC Code § 4-751.01(2).

[10] DC Code § 4-751.01(27b).

[11] DC Code § 4-751.01(4).

[12] DC Code § 4-754.36(2)(F) and (3)(b).

[13] DC Code § 4-754.12.

[14] DC Code § 4-754.12(3).

[15] DC Code § 4-751.01(32).

[16] Of note, DHS's own rules regarding establishing residency for homeless residents for public benefits require flexibility in proving residency. With DC Alliance, residency requirements are even more flexible, presumably to account for the challenges that undocumented residents face in obtaining documentation of residency. See ESA Policy Manual, Chapter 2, available at: https://dhs.dc.gov/sites/default/files/dc/sites/dhs/page_content/attachments/ESA_Policy_Manual_Combined_Revised.pdf. See, DCPS Parent Handbook, page 40, available at: https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/DCPS%20Parent%20HandbookEnglishweb.pdf; DMV Residency Requirements, available at: https://dmv.dc.gov/node/1115502.

[17] It is our position that it would be inappropriate for us as the attorney to submit such a verification even though we are working with the client because it puts the attorney in the position of being a fact witness in a proceeding where they are the attorney.
[18] DC Code § 4-753.01(c)(3)(B).
[19] DC Code § 4-753.03.
[20] Clear and convincing evidence is a commonly recognized standard of proof in common law. From the Ninth Circuit Model Jury Instructions, When a party has the burden of proving any claim or defense by clear and convincing evidence, it means that the party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt. Available at: http://www3.ce9.uscourts.gov/jury-instructions/node/48.
[21] DHS at the May public meetings represented that a letter from a social worker would be sufficient. However, in addition to the problems with outside verification discussed previously, this would not meet a clear and convincing burden in any legal definition of that standard. Furthermore, in the past six months, Children's Law Center has had at least two clients who provided verifications of homelessness from social workers and those verifications were rejected as insufficient under the current law.
[22] DC Code §4-753.02(b-1).
[23] DC Code §4-754.33(c-1).
[24] At the DHS public review of this bill, there was discussion that providers would not do this or that clients could just appeal. However, the law says "shall", which under the canons of statutory constructions means they must do it. To say that clients can just appeal requires the clients to go through a traumatic and stressful process during which they must worry about whether they will still have a safe place to go.
[25] DC Code § 4-753.01(d)(3).
[26] DC Code § 4-753.01(d)(3).
[27] Children's Law Center is not aware of any other DC agency which reviews its own decisions about benefits funded with public money without any impartial review. For instance, DC Housing Authority has an internal fair hearings process, but it contracts independent hearing officers to review their actions. Similarly, the Office of the State Superintendent runs the Office of Dispute Resolution, which handles complaints regarding special education, but contracts with independent hearing officers to review actions of OSSE and the school districts.
[28] DC Code § 4-754.36b.
[29] DC Code § 4-755.02a.
[30] Another area of confusion with case management is that there no written regulations for admission to these longer term programs. Regulations should be issued for these programs so that there is universal understanding of eligibility that is determined with public input.
[31] "Households that receive assistance are generally required to pay 30 percent of their income toward their housing expenses, a threshold widely described as affordable." Federal Housing Assistance for Low-Income Households , September 9, 2015, available at: https://www.cbo.gov/publication/50782
[32] DC Code §4-754.36b.
[33] According to the National Low Income Housing Coalition, a person would need to earn $33.58 an hour or work 107 hours per week at minimum wage to afford an unsubsidized two bedroom apartment in DC. See, http://nlihc.org/oor.