

WRITTEN TESTIMONY OF LEGAL SERVICES NYC

NYS SENATE

COMMITTEES ON HOUSING, CONSTRUCTION, COMMUNITY DEVELOPMENT, and SOCIAL SERVICES

Implementation of Emergency Rental Assistance Program (“ERAP”)

August 19, 2021

Submitted by:



Raun Rasmussen, Executive Director
Legal Services NYC
40 Worth Street, Suite 606
New York, NY 10013

Paula Arboleda, Deputy Director
Jack Newton, Director
Marie Vaz, Supervising Attorney
Public Benefits Unit
and

Roland Nimis, Supervising Attorney
Housing Unit
Bronx Legal Services
349 E. 149th St., 10th Fl.
Bronx, NY 10451

Please direct inquiries to Jack Newton at jnewton@lsnyc.org

Written Testimony of Legal Services NYC

Legal Services NYC (“LSNYC”) is the largest civil legal services provider in New York City and the country. LSNYC has been dedicated to fighting for racial, social, and economic justice for all New Yorkers for over 50 years. We help with a variety of civil legal services needs, including representation of people facing eviction in housing court in all five boroughs of New York City. In support of our anti-eviction efforts, LSNYC helps clients secure, preserve, or increase access to City, State, and Federal benefits programs, including the Emergency Rental Assistance Program (“ERAP”). We have government benefits advocates in all five boroughs of New York City and as an organization handle one of the largest volumes of cases in New York State.

Each year, LSNYC helps thousands of individuals and families keep their homes and access, increase, or maintain their benefits. LSNYC also assists individuals and families who are not permanently housed. ERAP is a lifeline to keep New Yorkers in their homes, preserving their health and safety while offering a reprieve from economic instability.

In April 2021, the New York State legislature allotted \$2.7B for ERAP across the state to prevent thousands of evictions and alleviate debt accrued during the COVID-19 pandemic. Having ERAP funds distributed *before* the expiration of an eviction moratorium was— and is— a critical component of the program. LSNYC’s housing and public benefits units identified hundreds of clients who contacted us since the onset of the pandemic when they received demands for unpaid rent from their landlords. With ERAP, we knew we would have an opportunity to help these clients stop evictions, prevent homelessness, eliminate their debt, and even avoid a case in housing court. For clients who were already in the midst of a housing court

case, we had an opportunity to stay their proceedings, conclude negotiations with their landlords, and satisfy settlement agreements.

Earlier this month, we provided testimony to the NYS Assembly on different issues with the implementation of ERAP. Below we highlight two additional major issues, explain the issues in more depth, and offer potential solutions. All LSNYC offices are providing ERAP application assistance to our clients, and our Bronx and Queens offices are subcontractors that received funding through the New York City Department of Social Services (“NYC DSS”) to provide direct ERAP application assistance to community members. Consequently, our recommendations are based on our on-the-ground experience helping thousands of individuals access ERAP.

First Issue: ERAP Application Fair Hearing/Denial Process

Problem: OTDA has failed to provide needed details about its ERAP appeal process, and OTDA’s current appeals procedure does not offer sufficient safeguards.

Issue: *Applicants do not receive complete copies of their applications*

As detailed in our NYS Assembly testimony dated August 10, 2021, tenant-applicants do not receive a copy of the application that they submit to the New York State Office of Temporary & Disability Assistance (“OTDA”). The application could be retrieved, at best, online only for people who registered an account, but people who have used the “apply here now” feature would not even have access to their written application. Moreover, applicants do not have access to the documents that the landlord/owner submitted¹ as part of the application. As a result, people appealing the decision may not have access to the entire record upon which the decision was based, depriving them of a full and fair opportunity to contest the decision.

Issue: *Appeals require access to, and understanding of, technology that may not be*

¹ Among other issues, the landlord’s accounting of the arrears owed may vary substantially from the tenant’s accounting.

available to low-income and vulnerable communities

OTDA requires appellants to call the general number to request an appeal. After requesting an appeal, tenants have only 10 days to submit documents or other evidence in support of their appeal, according to OTDA's Website (pictured below).

How to Appeal Your Determination

Tenants or landlords/owners who are denied or disagree with the amount of assistance they were approved to receive have thirty (30) days after receiving their determination to request an appeal. **To appeal, please call 844-NY1-RENT (844-691-7368). For individuals who are hearing impaired, you may call the TTY number at 1-833-843-8829.** You will receive a notification confirming that we have received your appeal request.

You have ten (10) days from the date you receive your confirmation notification to submit any documents or information that explain why you think our decision was wrong or why you received the wrong amount.

Further complicating matters, the notice that clients receive (example below) does not caution about the 10-day deadline, and the only option for appellants to provide supporting evidence in support of their position is by uploading documents to the Website.

If you think this decision is incorrect, you can appeal to have the decision reviewed. If you want to appeal, you must do this within **thirty (30) days** of the date on this letter. **To appeal, please call 844-NY1-RENT (844-691-7368). For individuals who are hearing impaired, you may call the TTY number at 1-833-843-8829.** When you call, please ask for an appeal and tell us why you think our decision was incorrect.

If you want to provide additional documentation about why you think the decision is incorrect, **please click this link to upload the documents: <https://nysrenthelp.otda.ny.gov/en/>.**

Then, under "Upload Required Documents", click on "Upload Owner Documents" on the righthand side of the page. Enter your ERAP owner number and the ERAP application number (optional field), and upload and submit the documents one at a time.

As we explained in our NYS Assembly testimony dated August 10, 2021, many low-income tenants lack reliable, safe access to technology or even an Internet connection. Other vulnerable communities have difficulties accessing technology, such as survivors of domestic violence and sex trafficking. People with certain disabilities or illnesses may not be able to use, understand, or access the upload feature, effectively negating their ability to appeal. All of these issues come at a time when CBOs are already overrun with requests from community members with existing applications due to the ERAP Website's multiple errors, the unnecessarily lengthy application, and the general lack of information about the post-application process.

Issue: *ERAP appeals do not meet procedural due process standards*

As currently administered, the ERAP appeals process does not provide a full, fair opportunity to be heard by failing to provide tenant-appellants with a full record upon which the decision was based and by requiring evidence to be supplied via upload-only. Additionally, tenant-appellants do not have a voice in the appeal, and they do not have a chance to question the validity or accuracy of the evidence adduced. This online-only appeals process with a 10-day time limit is not sufficient to guard against errors and deficiencies, leaving low-income tenants and vulnerable communities with little protection from impending evictions.

Solutions:

1. OTDA must publish and share details about its appeals review process, along with details about the entire ERAP procedure from application to denial/approval.
2. After submission of the application, the portal should generate a complete copy of the application (perhaps as a pdf document) that the client can retrieve and the application should be mailed to applicants post-application.
3. In partnership with CBOs, OTDA must establish a process that gives tenant-appellants an ability to request their complete record when contesting the decision.
4. Allow a paper-by-mail appeal process instead of requiring all documents in support of the appeal to be submitted through the Website.
5. Provide an opportunity for tenant-appellants to be heard on appeal at a hearing, at the tenant-appellant's request.

6. In partnership with CBOs, OTDA must afford tenant-appellants with a meaningful opportunity to be heard and represented in their appeals.
7. Extend the eviction moratorium to allow these changes to take place and to provide a window of time for notices to be mailed to clients.
8. Extend the eviction moratorium to allow all communities the opportunity to apply for ERAP, or contest ERAP denials, without existing barriers in place.

Second Issue: Lack of CBO Portal

Problem: The ERAP Website fails to include a portal designed for CBOs helping tenants, which harms the ability of CBOs to provide the critical assistance we have been contracted to do and that our communities deserve.

Issue: OTDA designed the portal without meaningful input from stakeholders

OTDA created the ERAP portal without input from community stakeholders. Further complicating issues, OTDA launched the Website portal to the public on the same date and time (9am on June 1st) that community-based organizations (“CBOs”) had access – including CBOs that received contracts from NYC DSS for ERAP application assistance. So, since day one, CBOs have been struggling to keep pace with the ERAP portal and application itself, which takes time away from the direct application assistance that is at the heart of ERAP. Even worse, the lack of input has resulted in an ERAP portal that does not meet the needs of tenant-applicants and the CBOs helping them.

Issue: CBOs lack the ability to see information about our clients’ ERAP applications

To provide the ERAP assistance that our clients deserve, CBOs need their own portal that includes relevant details for all of the clients we have assisted in applying for ERAP without having to enter the application number and date of birth for each one of the hundreds of clients we have assisted one at a time.

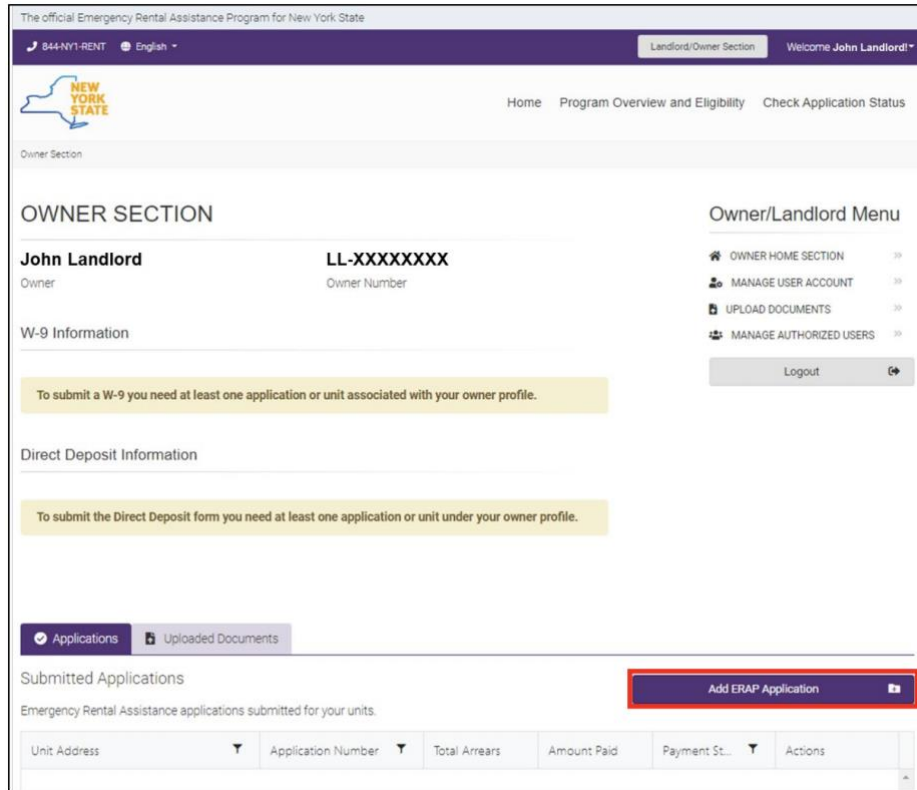
NYC DSS contracted with certain CBOs specifically to provide ERAP application assistance and outreach, and these CBOs are helping thousands of people access, understand, and apply for ERAP. Many other CBOs are also helping people access ERAP. Even though we have helped

thousands of clients, we do not have the ability to see the status of our clients' applications unless we enter their application number and date of birth one at a time.

Without a "CBO portal" on the ERAP Website, we do not know the status of our clients' applications, including whether they have been approved, what amount(s) the approval was for, whether OTDA claims it is lacking information to process the application, or whether the landlord has not provided information, among other things. We do not have a way to track the thousands of clients we have helped in any systematic way as a result of the poorly-designed interface.

OTDA already requires CBOs to provide information in the ERAP application when we are helping clients, such as our mailing address and e-mail address, but OTDA seemingly doesn't use this information in service of the applicants. Furthermore, the CBOs that have a contract with NYC DSS (or other local social services district) to provide assistance also have unique identification numbers that we must enter into the ERAP application when we are assisting. Thus, OTDA has two options: it could organize applications by providers (using the contact information provided) or by unique CBO identification numbers (only to the NYC DSS-contracted providers).

Noticeably, OTDA created a landlord or owner portal, which allows owners the opportunity to see various applications submitted that are connected to their specific properties. OTDA should have given the same consideration to clients working with CBOs as they did for landlord-owners as a matter of equity.



We cannot change how we arrived at this place, but we can improve the portal going forward and expect better in future similar portals, applications, and endeavors. Regardless, we still have months ahead of us in assisting clients with applications and post-application issues, and OTDA needs to make the time to create a CBO portal so we can do the client-level work that our communities deserve.

Solutions:

1. OTDA must pilot applications and programs in the future prior to launching them to ensure better operation of the process from the outset.
2. Schedule weekly meetings between advocates handling ERAP applications and relevant OTDA staff, including the vendor(s) who staff the helpline and who created the Website.
3. In partnership with CBOs, OTDA must create a “CBO portal” on the ERAP Website that collects information about all the clients assisted by the CBO in one place.
4. NYS must extend the eviction moratorium to account for the time lost in those initial days and weeks of the ERAP application process.
5. NYS must extend the eviction moratorium to account for the time taken away from CBOs to handle post-application concerns stymied by a lack of a CBO portal.

In conclusion, we look forward to continuing our work with OTDA and the NYS Senate towards our mutual goal of ensuring that all New Yorkers have equitable, timely, and complete access to ERAP. Please contact Jack Newton, Director of Public Benefits in our Bronx office at jnewton@lsnyc.org, for further explanation or assistance.

Respectfully submitted,

Raun Rasmussen, Executive Director
Legal Services NYC