



## U.S. Department of Justice

Office of the Associate Attorney General

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*The Associate Attorney General*

*Washington, D.C. 20530*

Thursday, June 24, 2021

Dear Chief Justice/State Court Administrator:

The COVID-19 pandemic has exacerbated a housing crisis across the United States. The crisis may be most urgent for renters, millions of whom are behind on rent. According to [recent estimates](#) by the Department of Housing and Urban Development (HUD), over 6 million renter households are behind on rent. More than 40% of adult renters who say they are behind on rent believe they will be evicted from their homes in the next two months. As the public health crisis recedes in the months ahead, and federal and state eviction moratoria begin to lapse, eviction filings are expected to overwhelm courts across the country.<sup>1</sup>

Studies show that women and people of color will be disproportionately affected. Women, particularly Black and Latina women, are evicted at higher rates than men.<sup>2</sup> This disparity has persisted through the pandemic as Black, Latino, and Asian families report that they are behind on rent at roughly double the rate of white families.<sup>3</sup>

As evictions filings increase, there are a number of steps that state and local courts could take to keep families in their homes while protecting landlords' rights. Simply providing additional time to forestall evictions will make a critical difference. Congress has appropriated approximately \$46.5 billion in emergency rental assistance, which is being distributed to states, counties, cities, and tribes to keep families in their homes.

I am writing to encourage you to consider eviction diversion strategies that can help families avoid the disruption and damage that evictions cause and point to federal resources that can help courts navigate this crisis. Courts should consider taking the following steps right now to raise awareness of rental assistance and allow litigants additional time to obtain these funds:

- **Require landlords to apply for rental assistance before filing:** Many landlords may not be aware that they are eligible for the \$46.5 billion in emergency rental assistance Congress has appropriated. Courts could issue a temporary administrative order that requires landlords to apply for rental assistance prior to filing for eviction for nonpayment of rent, and which allows sufficient time for processing those applications. In Philadelphia, the Municipal Court issued an [order](#) requiring landlords to apply for rental assistance 45 days before filing a complaint.
- **Extend time in pending cases:** For pending cases, courts might postpone any pending eviction cases for a period of time, perhaps 30 to 60 days, to allow litigants time to apply

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<sup>1</sup> See Hepburn et al. *U.S. Eviction Filing Patterns in 2020*, 7 SOCIUS 1 (Jan. 2021) (noting that eviction filing rates exceeded historical averages when moratoria lapsed).

<sup>2</sup> See Hepburn, et al., *Racial and Gender Disparities Among Evicted Americans*, 7 SOCIOLOGICAL SCI. 649-662 (2020).

<sup>3</sup> See Center on Budget and Policy Priorities (CBPP), *Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships*, at Fig. 3, available at <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and> (last visited June 22, 2021).

for rental assistance. Where rental assistance applications have been filed, courts might consider placing those cases on a slower track to allow the application to be processed and the funds to be received. For example, the Michigan Supreme Court issued an [order](#) requiring courts to stay proceedings for a period of up to 45 days after the pretrial hearing if a tenant applies for emergency rental assistance and notifies the court of their application.

- **Modify summonses and other form filings:** Courts could modify summons documents, court notices, and form filings to alert litigants to the availability of eviction diversion programs and rental assistance and encourage them to apply. The Texas Supreme Court, for example, issued an emergency [order](#) that modified the notices that are sent to tenants who are sued for eviction to make sure they are aware of the benefits available under the State’s rental assistance program.
- **Partner with Community-Based Organizations (CBOs) and Legal Services Providers:** Courts could work with CBOs and legal service providers in their jurisdiction to raise awareness about the availability of rental assistance funds. Courts might make space available, whether virtual or physical, to CBOs and legal service providers to allow them to offer assistance to parties and maximize the chance for successful diversion.

Over the longer term, jurisdictions could consider building more robust eviction diversion programs. [As HUD has stated](#), recent studies have shown that “eviction diversion programs succeed when they provide comprehensive, supportive services to tenants and are designed to avoid evictions.” Such comprehensive programs could include a combination of rental assistance, mediation, social services, and legal assistance. Where alternative dispute resolution is offered, whether pre- or post-filing, jurisdictions should consider providing access to counsel for unrepresented parties from the outset to ensure that these programs promote just outcomes and do not perpetuate structural advantages typically held by landlords.<sup>4</sup>

Eviction diversion strategies like these encourage landlords and tenants to resolve disputes without formal adjudication and increase the chance that tenants can stay in their homes. A 2017 study of a diversion program in Michigan found that the program resulted in a 12% decrease in the rate of evictions.<sup>5</sup> Diversion also removes added stress on court dockets already facing challenges caused by the pandemic. Early indications from Philadelphia showed that its program had helped reduce caseloads as significant numbers of litigants have chosen to resolve their disputes through mediation.<sup>6</sup>

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<sup>4</sup> Cynthia Whitman Daley, Regional Housing Legal Services, *Achieving Housing Stability with Eviction Diversion Programs*, at 8 (Nov. 2020), available at <https://rhls.org/wp-content/uploads/Achieving-Housing-Stability-with-Eviction-Diversion-Programs-during-COVID-and-Beyond.pdf> (noting that, absent legal and financial services, mediation may “simply perpetuat[e] the power imbalance between landlord and tenant”).

<sup>5</sup> National Center for State Courts, *An Analysis of the Eviction Diversion Program at the 54-A District Court*, available at <https://nationalcenterforstatecourts.app.box.com/s/n7w8zu89tbayfjr0qz6h7mn6nrg0x6qh/file/679673021905>.

<sup>6</sup> Taylor Allen, *‘It’s a conversation’: Philly’s alternative to landlord-tenant court is preventing eviction*, National Public Radio, available at <https://why.org/articles/its-a-conversation-phillys-alternative-to-landlord-tenant-court-is-preventing-eviction/>.

Each jurisdiction is different, and no single diversion program will work for every court. The National Center for State Courts has created an online [assessment tool](#) for courts to determine what makes sense for them. The tool provides a model eviction diversion program that courts could implement, along with guidance, best practices, and sample forms from other jurisdictions with a similar profile. The tool also provides a sample bench card that can help guide housing courts as they assess whether diversion might be appropriate.

The federal government stands ready to provide resources to jurisdictions that invest in eviction diversion. Possible sources of funding include:

- **COVID-19 State and Local Relief:** The American Rescue Plan allocated \$350 billion to state and local governments. The Treasury Department has clarified that these funds can be used for diversion programs that “prevent eviction or homelessness.”
- **Emergency Rental Assistance Program:** In addition to providing rental assistance for landlords and tenants, the \$46.5 billion Emergency Rental Assistance (ERA) Program can be used to support court-led housing stability programs. Courts can access ERA funding for housing stability services through their state or local ERA Program.
- **State Justice Institute:** In response to the COVID-19 pandemic, the State Justice Institute (SJI) provided support to the Pandemic Rapid Response Team established by the Conference of Chief Justices and Conference of State Court Administrators. SJI is continuing to support projects that will help courts respond to the pandemic, including, for example, by helping to sponsor online dispute resolution initiatives or court navigator programs.
- **HUD Legal Assistance Grant:** Within the next couple of months, HUD’s Office of Policy Development and Research expects to publish a notice of funding opportunity on grants.gov to support nonprofit and governmental entities who seek to provide legal assistance (including assistance related to pretrial activities, trial activities, post-trial activities and alternative dispute resolution) at no cost to eligible low-income tenants at risk of, or subject to, eviction.

Employing diversion strategies can help ensure access to justice and due process for renters faced with the prospect of eviction. And, as the number of eviction filings rise, the Justice Department will ensure that the civil rights protections that federal law affords tenants are not diluted. The Fair Housing Act (FHA) prohibits housing providers from denying rental housing or discriminating in the terms, conditions, or privileges of rental housing based on race, color, sex (including sexual orientation and gender identity), national origin (including limited English proficiency), religion, familial status (having children under 18), or disability. As [guidance issued by HUD makes clear](#), evictions motivated by bias or discriminating against persons based on their membership in a protected class can violate the FHA even when the eviction might otherwise have been justified. HUD has also reminded recipients of federal funds of their affirmative obligations to ensure meaningful language assistance for limited English proficient tenants and to communicate effectively with tenants with disabilities.

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Losing one's home can have catastrophic economic and psychological effects.<sup>7</sup> The entire legal community, including the Department of Justice, the bar, and the judiciary, has an obligation to do what it can to ensure that each and every individual has meaningful and equal access to justice before facing such consequences. I strongly encourage you to engage with other state and local actors to employ eviction diversion strategies in your jurisdiction.

Respectfully,

A handwritten signature in blue ink, appearing to read "Vanita Gupta", with a long, sweeping flourish extending to the right.

Vanita Gupta  
Associate Attorney General

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<sup>7</sup> See Emily A. Benfer et al., *Eviction, Housing Equity, and the Spread of COVID-19*, 98 J. URBAN HEALTH 1-12 (2021), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7790520/>.