

December 10, 2020

Governor Charlie Baker
Massachusetts State House
Office of the Governor
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Boston, MA 02133

Secretary Mike Kennealy
Executive Office of Housing and Economic Development
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Undersecretary Jennifer Maddox
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Re: Urgent Need to Fix Problems With RAFT Program Administration

Dear Governor Baker, Secretary Kennealy, and Undersecretary Maddox,

We write to urge the Commonwealth of Massachusetts to take immediate action to fix problems that are plaguing the Residential Assistance for Families in Transition (RAFT) program, which is critical to providing emergency housing stability during the COVID-19 pandemic. The coexistence of housing instability during a public health crisis places Massachusetts tenants in an incredibly dangerous position—particularly low-income families and tenants of color—and threatens to undermine other public health measures that the Commonwealth has taken to stem the spread of the coronavirus. As outlined below, the systemic failures of the RAFT program are causing significant harm and distress to the very people that the program is supposed to be helping, in a manner that raises significant legal concerns, particularly surrounding due process and Equal Protection. Given the urgent nature of this situation, we respectfully request an emergency meeting with the appropriate members of state leadership to discuss our legal concerns in greater detail and to explore whether an amicable, expedited and forward-looking solution is possible.

Lawyers for Civil Rights is a non-profit, non-partisan organization formed to marshal the resources of the legal community to address racial and national origin discrimination. We engage in impact litigation as well as policy advocacy. We also run a medical-legal partnership with Massachusetts General Hospital (MGH), where we see many clients affected by RAFT, particularly from immigrant communities and communities of color.

I. Increasing Housing Instability in Massachusetts Will Exacerbate the Current Public Health Crisis, Particularly for Communities of Color

Escalated housing instability during the COVID-19 pandemic threatens Massachusetts renters, families, and public health. When the CDC moratorium is lifted at the end of this year, more households will face impending homelessness—forcing people to try to “double up” with family, friends, or seeking emergency shelter. This will decrease necessary social distancing and increase risk of exposure and subsequent transmission of COVID-19. Increased chronic stress, which is associated with worse health outcomes if the virus is contracted, will be inflicted on those evicted.¹ Furthermore, the ability for children in Massachusetts to receive a proper education—now being conducted virtually in a number of school districts—will be all the more difficult to access while navigating homelessness.

These effects will be felt most profoundly by communities of color—who are also bearing the brunt of the health effects of the pandemic. City Life/Vida Urbana and MIT have documented that as many as 1 in 3 Massachusetts tenants are presently at risk of eviction—over 300,000 renters.² Communities of color will be the hardest hit when this occurs. City Life/Vida Urbana and MIT have found that 78 percent of eviction filings in Boston were in communities of color during the first month of the Massachusetts state of emergency.³ They also analyzed eviction records in Boston from 2014 to 2016 and confirmed that evictions are filed up to seven times as often in communities of color compared with predominantly white communities.⁴ This is on top of the significant health disparities surrounding the coronavirus which are well-documented. Data from the Massachusetts Department of Public Health’s COVID-19 Equity Advisory Group found that Black and Latinx residents have contracted the coronavirus at a rate that is three times higher than white residents.⁵ The Advisory Group also noted that nine out of 10 of the towns and cities with the highest rates of COVID-19 in the state were in communities where more than half of the residents identify as a person of color.⁶

With the CDC eviction moratorium set to expire on December 31, 2020, the issue of housing instability is urgent, particularly for communities of color.

¹ *Why Researchers Are Worried about Chronic Stress and COVID-19*, Vox (September 3, 2020) (retrieved from <https://www.vox.com/2020/9/3/21419902/covid-19-risk-factors-chronic-stress-racism-immune-system>).

² *Estimating Evictions in Massachusetts during COVID-19*, City Life/Vida Urbana and MIT (August 2020) (retrieved from https://d3n8a8pro7vhmx.cloudfront.net/clvu/pages/2727/attachments/original/1596574636/August_eviction_estimates_report.pdf?1596574636).

³ *Evictions in Boston: The Disproportionate Effects of Forced Moves on Communities of Color*, City Life/Vida Urbana and MIT (June 2020) (retrieved from <https://www.bostonevictions.org/>).

⁴ See *Evictions in Boston: The Disproportionate Effects of Forced Moves on Communities of Color*, *supra* n. 3.

⁵ *New Data from State Advisory Group Shows Communities of Color Disproportionately Affected by COVID-19*, Boston.com (June 20, 2020) (retrieved from <https://www.boston.com/news/coronavirus/2020/06/20/massachusetts-coronavirus-health-equity-group-findings>).

⁶ See *New Data from State Advisory Group Shows Communities of Color Disproportionately Affected by COVID-19*, *supra* n. 5.

II. The RAFT Program Is Supposed To Be Alleviating These Issues, But Is Plagued By Problems That Are Instead Causing Significant Distress

In the Commonwealth, RAFT is the critical lifeline that is supposed to help individuals and families stay in their homes during this unparalleled intersection of public health and housing crises. RAFT has historically been an emergency rental housing assistance program in the Commonwealth—and has drastically and urgently expanded since the beginning of the COVID-19 pandemic.⁷ There have been several separate instances since the onset of the pandemic in March where Governor Baker has infused the RAFT program with highly needed funds—with the most recent being \$100 million in mid-October via the Eviction Diversion Initiative. At almost twice as much funding received as the second most well-funded eviction defense initiative, this dramatic increase has clearly made RAFT the primary source of desperately needed housing aid during a once-in-a-lifetime pandemic.

As expected, the need for RAFT funds has been overwhelming. Since July 1, 2020, more than 25,000 requests for housing aid in the Commonwealth were submitted to the 9 Housing Consumer Education Centers (HCECs) that administer the RAFT program for the Department of Housing and Community Development (DHCD). This was more than four times the number of emergency rental assistance applications approved for the entire 2019 fiscal year.

Yet precious little of those funds are reaching the families that the RAFT program is intended to protect. Since April, only 5,169 households have received \$15.5 million in aid.⁸ Instead, applicants have experienced a never-ending series of delays, with often no communication from the State at all about the status of their applications. For example, one of the 9 HCECs, Metro Housing Boston, serves 29 communities in Greater Boston—where the critical mass of the state’s population resides. On November 25, 2020, the agency issued a public statement acknowledging there is presently a backlog of around 8,000 RAFT applications.⁹

Not only is the backlog immense, applicants are left in the dark as to the status of their applications. At Lawyers for Civil Rights, we have worked directly with many RAFT applicants who have experienced problems regarding lack of proper notice and significant delay with their applications.

The following examples are illustrative of the problems that applicants are experiencing:

- **Maria R.** is a 63 year old Latina woman who lives in Chelsea. She primarily relied on her adult children for financial support, but both of them have since lost their jobs due to the pandemic. Maria applied for RAFT with the assistance of a volunteer on September 29, and was not assigned a caseworker by Metro Housing until our volunteer followed up

⁷ We are concurrently filing a Public Records request to gain more information regarding the depth of the problems with RAFT program administration, the demographics of those most impacted by the delays and lack of notice, and the extent to which the Commonwealth has had ongoing knowledge of these problems.

⁸ See *Delays and Debt Mount as State Rent Relief Program Strains to Meet Demand*, Boston Globe (October 20, 2020) (retrieved from <https://www.bostonglobe.com/2020/10/24/business/delays-debt-mount-state-rent-relief-program-strains-meet-demand/>).

⁹ See *Statement on the Current Status of RAFT Applications*, Metro Housing Boston (November 25, 2020) (retrieved from <https://www.metrohousingboston.org/raft-app-status/>).

nearly a month later on October 28. A caseworker was then assigned, but since then, Maria has not heard anything from her caseworker nor about the status of her RAFT application. We contacted Metro Housing for an update on December 4, and as of today Maria's case is still pending review.

- **Tery M.** is a 31 year old Latina woman who lives in Revere with her 7 year old son, is 4 months pregnant, and suffers from preeclampsia. She lost her job as a babysitter in March at the beginning of the pandemic. Tery applied for RAFT with an LCR advocate on September 9, and was assigned a Metro Housing caseworker shortly thereafter. In the interim, the LCR advocate increased the amount of RAFT funds requested on November 17, which was confirmed by Metro Housing 5 days later. After again inquiring about the status of her case on December 4, Tery's RAFT application was finally approved for deposit on December 15. However, she will only receive the initial amount requested, not the increased amount, and no explanation was provided as to why.
- **Juanita W.** is a 32 year old Black woman who lives in Roxbury with her 9 and 10 year old daughters. She has been unable to work at her job as a manager at Wing Stop during the pandemic because she suffers from severe asthma and is unable to wear a mask for long periods of time. Juanita applied for RAFT with an LCR advocate on September 30 but was never assigned a Metro Housing caseworker. As of today, her case is still pending assignment to a caseworker for eligibility review.
- **Carlos P.** is a 33 year old Latino man who lives in Revere. He owns a trucking company that has lost significant business due to the pandemic, and he has since struggled to pay his rent. Carlos applied for RAFT with an LCR advocate on September 9, and his case was assigned to a caseworker on September 11. Despite following up with the caseworker on three occasions and not being informed of any missing documents, Metro Housing management informed the advocate on December 4 that the case was pending due to missing documents. After inquiring which documents were missing, it was confirmed that no documents were missing and that the application was sent for final approval. As of today, the application still has not been approved.

Media have reported on many other similar stories.¹⁰ With 8,000 cases backlogged in Greater Boston alone, and the CDC moratorium expiring this month, the situation has reached crisis proportions.

¹⁰ For example, on November 3, 2020, WBUR reported on Lawyers for Civil Rights client, Margareth Joseph, a 60 year-old Haitian-American tenant who has been living at the Archdale Village public housing development in Roslindale for 30 years. *See State's Emergency Rent Program is Understaffed and Overwhelmed, Housing Advocates Say*, WBUR (Nov. 3, 2020) (available at <https://www.wbur.org/news/2020/11/03/raft-eviction-prevention-program-understaffed-delays>). At the time of the report, Ms. Joseph owed \$6,000 in back rent, and had been waiting a couple months to hear whether she would receive RAFT assistance. After investigating and inquiring about Ms. Joseph's case to a Metro Housing spokesperson, WBUR journalist Simón Rios discovered that the tenant was approved to receive \$2,400—a different amount than originally requested—and that the money already went out to the landlord in late September. However, Ms. Joseph did not receive any notice of the above. Additionally, her landlord received the sum of \$2,400 without any information concerning who it was for. But for WBUR's investigative journalism neither Ms. Joseph nor her landlord would have learned that the RAFT funds had been dispersed. Countless similarly situated RAFT applicants remain in administrative and procedural limbo.



III. The Manner In Which RAFT Is Being Administered Creates Significant Due Process And Equal Protection Concerns

DHCD’s statutory authority allows the agency to create emergency housing assistance programs, which presently includes: Emergency Assistance (EA), HomeBASE, and RAFT¹¹ (M.G.L. c.23b § 30). M.G.L. c.23b § 30 mandates that emergency housing assistance programs be administered “in a fair, just, and equitable manner....”

Moreover, the due process protections of both the U.S. Constitution and the Massachusetts Constitution also require basic due process in administration of the RAFT program, including meaningful notice and reasonable procedures that do not unlawfully deprive applicants of benefits. *See Fuentes v. Shevin*, 407 U.S. 67, 96 (1972) (noting that no notice is a *per se* violation of due process); *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 315 (1950) (clarifying that Due Process affords the right to meaningful or “actual” notice); *Town of Andover v. State Financial Services, Inc.*, 736 N.E.2d 837, 839 (Mass. 2000) (“An elementary and fundamental requirement of due process...is notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”).

As described above, the manner in which the RAFT program is currently being administered runs afoul of well-established core due process protections. Many RAFT applicants do not receive any notice at all about the status of their application. Others only receive notice if they are fortunate enough to have an advocate such as Lawyers for Civil Rights who can proactively push for answers. And any communication that has sporadically occurred while an application has been pending for multiple months—has not been sufficient to meaningfully apprise impacted parties about the status of their application.¹² Particularly in light of the emergency nature of the program, this lack of notice and extreme delay is highly problematic from a legal perspective. Moreover, many RAFT applicants/tenants have relied upon the assurance that funds would be distributed in a fairly timely manner and have utilized this assurance to negotiate with their landlords to ensure housing stability as a cold winter approaches in the midst of COVID-19 infection, illness, and death. With no RAFT funds received—many landlords are increasingly turning to the eviction process after months of waiting on state action. These facts amplify the serious due process concerns at issue here.

RAFT program management also raises serious Equal Protection concerns. At the same time that many RAFT applicants experience long delays, other similarly-situated applicants appear to receive more expedited treatment, rendering the process extremely arbitrary and capricious. The fact that the flaws in program administration appear to be falling most heavily on tenants of color—who are the hardest hit by the COVID-19 pandemic and the impending wave of evictions—underscores the equal protection problems even further.

¹¹ The statutory authorization for RAFT is also derived from state budgetary legislation, with the FY21 RAFT Administrative Plan currently governing how the program is managed within DHCD. *See* FY21 RAFT Administrative Plan, <https://www.metrohousingboston.org/wp-content/uploads/2020/07/RAFT-Administrative-Plan-07.01.2020.pdf>.

¹² *See State’s Emergency Rent Program is Understaffed and Overwhelmed, Housing Advocates Say*, *supra* n. 10.



IV. Requested Action/Conclusion

In light of the foregoing problems, in particular with the CDC eviction moratorium set to expire at the end of December, the Commonwealth must take the following steps to ensure immediate compliance with well-established legal protections and requirements:

- Issue notice to all existing RAFT applicants by December 31, 2020 informing them of the status of their application. The notice must comport with due process principles and either: a) approve the applicant for assistance; b) notify the applicant if any additional information or documentation is required, and specify what that information is; or c) deny assistance if the application is complete and the applicant has been determined to be ineligible, and provide appeal rights with clear guidelines.
- Going forward, any new RAFT applications should be processed within 10 days. Within that time period, applicants must receive notice of the status of their application, as set forth above.

Given the urgent nature of this situation, we respectfully request an opportunity to meet with you and the appropriate members of state leadership at the earliest possible opportunity, to discuss our concerns in further detail and to actively explore solutions.

In the Commonwealth, there is an intersectional crisis between civil rights and public health that is disproportionately affecting our communities of color. For the good of us all, it is imperative that the state take necessary, urgent action to immediately fix the problems in the administration of the RAFT program, to ensure that eligible tenants are protected where they are the most vulnerable: in their homes.

Sincerely,

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Oren Sellstrom, Esq.

Laura Maslow-Armand, Esq.

Iván Espinoza-Madrigal, Esq.