



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

MEMORANDUM

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DATE: April 25, 2023

TO: Board of Supervisors, Alameda County
Susan Muranishi, County Administrator

FROM: Sandra Rivera, Director, Community Development Agency
Michelle Starratt, Director, Housing & Community Development Department

SUBJECT: Update on the Programs and Available Resources to Support the Rental Housing Market at the End of the Eviction Moratorium

SUMMARY

At your March 21, 2023, Regular Meeting, your Board received an informational update (Item 24) from the Community Development Agency (CDA) regarding the Alameda County rental housing market, the creation of Alameda County Housing Secure (AC Housing Secure), COVID-19 pandemic response programs, and considerations for your Board as the eviction moratorium ends. CDA has identified funding to implement the following programs:

1. Countywide Foreclosure Prevention (Exhibit A) for small and low-income landlords (Countywide) - \$4.7M total:
 - a. \$1.7M of American Rescue Plan Act (ARPA) Tranche 2 for the Unincorporated County - 50-60 rental housing providers are estimated to receive services.
 - b. \$1.0M of CDBG-CV funding for Urban County Cities (Albany, Emeryville, Piedmont, Newark, & Dublin) - 35-40 rental housing providers are estimated to receive services.
 - c. \$2.0M of 'Boomerang' (residual property tax receipts associated with former Redevelopment Agency projects) - 65-75 rental housing providers are estimated to receive services.
2. Unincorporated Tenant Emergency Financial Assistance (Exhibit B)
 - a. \$5.0M funding from ARPA Tranche 2 for the Unincorporated County.
 - b. 300-325 low-income renters and their rental housing providers are estimated to receive services.
3. Unincorporated Negative Economic Impact Grants for Rental Housing Providers (Exhibit C)
 - a. \$1.0 funding from ARPA Tranche 2 for the Unincorporated County.
 - b. 150-180 rental housing providers are estimated to receive services.

In total, these programs will provide an additional \$10.6 million in assistance to approximately 600 - 680 additional tenants and property owners.

To implement these programs, staff will bring contracts to your Board for consideration as they are finalized, approved by County Counsel, and ready for approval.

Your Board also requested additional information regarding outstanding rental market debt, the small claims court process for landlords seeking payment of outstanding rent, and existing resources the County has available to assist landlords and tenants. This additional information is below.

Rental Market Debt

On March 21, HCD presented information from a survey conducted in Fall 2022, which indicated approximately \$120 million in rent debt existed in Alameda County. Your Board requested additional details on how this amount was calculated, as well as additional research to corroborate the amount of rent debt and who it was owed by. As a result, HCD conducted an additional survey and identified other resources to determine the size of the rental debt (detailed in Exhibit D).

This research discovered a wide range of estimates of the scale of rental arrears in Alameda County. However, even with the additional research, without a county-wide rental registration system, tracking and understanding the full extent of the impact of lost rent in Alameda County is impossible.

Staff recommends utilizing the National Rent Atlas and Spring Survey (detailed in Exhibit D) as lower and upper limits, respectively. The ranges are noted below:

- \$125 million - \$369 million in countywide rental arrears with \$12 million of which \$37 million is in Unincorporated County;
- 33,000 - 72,000 households in arrears countywide of which 3,000 - 7,000 are in Unincorporated County; and
- \$3,800 - \$8,200 owed per unit on average.

Information gathered in the County's Spring Survey indicated that rental housing providers with larger portfolios reported receiving Emergency Rental Assistance Program (ERAP) payments at higher rates than smaller rental housing providers. In addition, respondents indicated how they plan to proceed to collect rent arrears and the financial impact. Key survey highlights include:

- 67% of Spring Survey respondents said they would pursue an eviction after the moratorium expired.
- 57% of Spring Survey respondents said they would pursue small claims court to access rent debt.
- 12.5% of Spring Survey respondents with 4 or fewer units reported they were in, or very near to, entering foreclosure.

One of the questions to highlight from the additional Spring Survey conducted by County staff in partnership with the East Bay Rental Housing Association (EBRHA) and the Rental Housing

Association of Southern Alameda County (RHA) shows that half of all arrears are from low-income renters, and half are from renters over 80% of AMI. Unfortunately, there have been no new or ongoing state or federal rental assistance programs to support the rental debt of low-income renters. Additional findings are below:

- Approximately \$62-\$180 million is owed by low-income tenants and will likely be difficult to collect as these low-income households may not have recovered from the COVID-19 Pandemic.
- Rental housing providers need assistance obtaining back owed rent from over-income tenants who owe up to \$180 million and were ineligible for Emergency Rental Assistance Program (ERAP).
- The Alameda County ERAP paid 70%-85% of arrears owed by low-income residents countywide (except for Oakland and Fremont) through March 31, 2022.
- 10-15% of renter households are still behind on rent and therefore at risk of eviction.

Small Claims Court

The Eviction Moratorium did not eliminate the requirement to pay rent and both the state and county indicated that small claims court was the method to collect rental arrears. There are insufficient resources to cover all rental debt without over income tenants paying the rent that they owe. Federal rental relief programs assumed a COVID-19 impact for low income tenants and designed program eligibility requirements under that assumption. Tenants who were not low income did not qualify.

If a tenant owes a rental debt and refuses to pay or is unable to pay, rental housing providers can pursue those arrears in small claims court, which is the indicted method by both the State and the County's eviction moratoria. From discussions between county staff and staff at the Alameda County Superior Court, the small claims court process has been under-utilized. As noted above, over half of the property owners expressed plans to pursue rental arrears in small claims court. With average per-unit arrears below \$10,000, this process provides a pathway for most owners to receive a judgment for most of their arrears in court. The statute of limitations in small claims court for written contracts, such as leases, is four years from the day the contract was broken, i.e., from the day rent, was first not paid. (Cal. Civ. Proc. Code §337)

https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=337

Key facts about the small claims court process include:

- The cost to file a small claims court action is significantly less than an unlawful detainer.
- Owners may pursue a small claims case regardless of the income of their tenants.
- Owners need not be represented by counsel.
- Rental property owners must pursue debt on a tenant-by-tenant basis

- If the rent owed was accrued between 3/1/2020 and 9/30/2021, rental property owners are not subject to normal small claim court caps (less than \$10,000).
- For arrears accrued after 9/30/2021, the Alameda County small claims limit is \$10,000 if suing as an individual and \$5,000 if suing on behalf of a corporation.
- Small claims court may not fully compensate owners with unusually high arrears on a per unit basis.

In the small claims process, plaintiffs are responsible for recovering their own funds. If a property owner receives a favorable judgment and the tenant is unable or refuses to pay, plaintiffs may pursue repayment through the following remedies:

- A wage garnishment or attaching their wages with the assistance the sheriff or other "levying officer" who works with the employer.
- A bank levy with the assistance the sheriff or other "levying officer" who works with the bank with a writ of Execution from the court.
- A lien on their property, if they own any real estate.

Staff recommends supporting the requirement that rental housing providers use the small claims court process to obtain back owed rent in order to obtain a Foreclosure or Fiscal Impact grant.

Existing Resources

The Alameda County Housing Secure program (www.ac-housingsecure.org) is the main resource for tenants and homeowners at risk of displacement due to eviction or foreclosure. The online portal provides information on how to access services. In addition, legal assistance and how to reach those providers is available, as is a newly created video, in multiple languages, which provides information on how to respond in emergency situations.

In addition to the regular legal services, additional funding will allow the program to expand into the types of supportive services and case management to support tenants at the end of the County Eviction Moratorium. Centro Legal has completed a competitive procurement process for up to \$1.8 million of the AC Housing Secure program to subcontractors for social services, mediation, case management, and expanded legal services for low-income tenants. This funding increases program capacity to create training and educational materials and manage the influx of tenants who require services that is expected to come with the end of the eviction moratorium in May. It also expanded on the resource provided on the AC Housing secure website. Thus far, Centro Legal has created video content for online resources and is ready to service the anticipated increased need for services from low-income tenants that will come with the end of the eviction moratorium.

The types of ongoing training provided by the program include:

- 1) Eviction Defense workshop for all Alameda County tenants – Online and held regularly
- 2) Know Your Rights workshops – Online and held regularly
- 3) Train the Trainer event for service providers working with low-income households
- 4) Tabling at public events to assist with information regarding the end of the eviction moratorium

Conclusion

The total amount of rental debt owed is substantial and resources available now to support the rental housing market programs will meet a small amount of the identified need. It is important that tenants, especially those over-income and did not qualify for ERAP, pay the back-owed rental debt as their payments are needed to reduce the overall impact on the rental market.

Exhibit A - Rental Property Owner Foreclosure Prevention

Problem

Rental housing providers have been unable to pay their mortgages due to lost rental income during COVID-19 which ERAP did not cover, and many are at risk of foreclosure.

Purpose

The Foreclosure Prevention Program (FPP) seeks to ensure these property owners retain ownership of their rental property as the negative impacts of the pandemic abate.

Program

The FPP, developed in conjunction with EBRHA and RHA, will provide financial assistance to eligible small property owners that are at risk of foreclosure or in foreclosure as a result of nonpayment of rents during the COVID-19 pandemic. Financial assistance will only be used to pay the costs associated with bringing their loan current and in good standing. Given the limited pool of funds, the program will prioritize property owners with the greatest needs and fewest resources to assist.

Eligibility

Eligible applicants will be Alameda County residents who own no more than ten rental units in Alameda County and provide evidence of foreclosure action or at risk of foreclosure/ in default.

Priority will be given to property owners whose foreclosures will occur the soonest, who are low-income, seniors, disabled, or reside in a property with their tenants.

Rental housing providers whose tenants qualified for ERAP will be required to submit a statement that they will reduce the amount of rental debt owed by the tenant in equal measure to the amount provided to stop the foreclosure.

Rental housing providers whose tenants did not qualify for ERAP (earning more than 80% AMI) will be required to sign a letter of commitment to pursue rental arrears recovery through small claims court. Awards will be given in the form of a forgivable loan. Property owner will commit to repaying an amount equivalent to the grant amount from any amount recovered by the tenant (less collection costs), proceeds in excess of that amount are to be retained by the property owner.

Exhibit B – Expansion of ERAP and Financial Assistance in the Unincorporated County

Problem

State and Federal ERAP funding were insufficient to meet demand for funding for rental arrears in the Unincorporated County.

Purpose

The Unincorporated County Emergency Financial Assistance will provide emergency rental housing assistance and help to cover additional household costs for lower-income renter households.

Program

The Unincorporated County ERAP was insufficient to cover all outstanding rent debt. These additional funds will be modeled on the Countywide Alameda County Housing Secure (ACHS) ERAP but funded with ARPA funds available for the unincorporated areas of the County. The program would provide emergency rental housing assistance for arrears payments for a 12-months of rental assistance to cover rent debt accrued after April 1, 2022, when the State program capped ERAP payments.

The program will conduct an upfront, robust application intake process to identify specific vulnerabilities of the household and their service needs (e.g., rental assistance, other financial assistance, food security, benefits advocacy, employment training, transportation assistance, childcare assistance, baby supply needs, medical needs, and other support services information and referral) and to identify the households most at risk of becoming homeless for prioritization. Intake specialists will provide limited case management, information, and referral to assist households in identifying ways to sustain their housing or rapidly be rehoused, or to determine other areas of support services need to promote housing stability

The program is proposed to be undertaken through a contract amendment with Centro Legal de la Raza, which the County already engages to provide legal services and housing stability services in the unincorporated areas and was competitively procured last year as part of ARPA 1. Through its Unincorporated Area Services contract with the County, Centro subcontracts with My Eden Voice (MEV) to provide door-to-door community outreach and Eviction Defense Center (EDC) to provide legal and housing stability services to prevent homelessness and displacement. Outreach and engagement for the Unincorporated Areas ERAP would utilize the existing subcontracts in place; and the County would explore with Centro opportunities for subcontracting with community-based organizations working with lower income communities in the unincorporated areas to provide additional services and assistance beyond rental assistance.

Eligibility

Eligible applicants must be low-income renters in unincorporated areas of Alameda County earning at or less than 80% AMI. Households that are “extremely low-income” with incomes less than 30% AMI will be prioritized. Renters will be required to demonstrate a risk of housing instability or experiencing homelessness during the period for which financial assistance is requested. Renters must have experienced a reduction in household income, qualified for unemployment benefits, and/or otherwise experienced a financial hardship during the period for which financial assistance is requested.

Exhibit C – Economic Impact Grants to Low Income or Small Landlords

Problem

Rental housing providers are faced with debt and need relief. Insufficient funds exist to solve all rental debt without expecting over income tenants to make payments.

Purpose

In the Spring Survey, the average rental debt owed is approximately \$9k per rental unit. Economic Impact Grants to low-income or small landlords will immediately reduce the rental debt amount, while continuing to support tenants. These grants are intended to assist with immediately deploying funds into the rental market, while also assisting rental housing providers in accessing small claims court to obtain rental debt.

Program

Rental housing providers who own property in the Unincorporated County and whose tenants did not qualify for ERAP are eligible to request up to \$5k in grant funds. These funds will introduce funding into areas of the rental market that were not supported by ERAP.

Using prior ERAP application status as a proxy for level of income, small rental housing providers who are in need may apply for a grant. Priority will be given to low-income, seniors and disabled property owners whose rely on this income to support their households. If funds remain, applicants will be sorted on a first-come, first-served basis. A lottery may be held if needed given the level of application. If the tenant in the unit is low income, then these funds will be required to reduce the tenant's debt. Property owners will be required to sign documentation to enforce this.

If the tenant did not qualify for ERAP, that is a proxy for over-income status, and the landlord must commit to pursuing this debt in small claims court.

If collected, the grant is owed back to the county, less any costs of collection.

Eligibility

Small Rental Housing Providers (less than 10 units owned county-wide) who have had a negative Covid impact from lost rent due to the eviction moratorium and whose debt is not less than the grant provided.

Rental property owners whose tenants did not qualify for ERAP (earning more than 80% AMI or other federally funded assistance) will be required to sign a letter of commitment to pursue rental arrears recovery through small claims court. Awards will be given in the form of a forgivable loan. Property owner will commit to repaying an amount equivalent to the grant amount from any amount recovered by the tenant (less collection costs), proceeds in excess of that amount are to be retained by the property owner.

Exhibit D – Research on Rental Debt in Alameda County

Fall 2022 Survey: HCD developed and released an in-depth survey to evaluate the impact of ERAP relative to arrears still owed to property owners and the impact of the Eviction Moratorium on the rental market. The survey was sent to the Rental Housing Association of Southern Alameda County (RHA), the East Bay Rental Housing Association (EBRHA), and city housing staff to distribute and publicize, Board members also circulated the survey in newsletters and other forms of outreach. In all, 157 responses were received from rental housing providers and results indicated:

- 61% of delinquent units countywide had received related ERAP payments and 39% did not.
- Average reported per-unit arrears from the 157 respondents, including net impact of ERAP, were \$23,000
- Average ERAP payments were \$13,000
- Based on these results and data from the ERAP application portal, staff extrapolated an estimate of total County arrears of approximately \$120 million as of December 2022.
- Approximately \$70 million is estimated to be owed by low-income (ERAP eligible) renter households.

Staff then looked at additional resources and conducted an additional survey in partnership with EBRHA and RHA to supplement the data presented on March 28.

Spring 2023 Survey: HCD collaborated with EBRHA and RHA to distribute an abbreviated survey in early March 2023. While the survey is ongoing, HCD has received 334 responses representing 24,521 rental units, or approximately 8.5% of the 290,000 rental units in Alameda County. This is both a highly representative sample, including 54 single-unit owners, and represents a high level of response from larger rental housing providers who own on average 70+ units each. All figures are rough estimates.

- Owners reported a 15.5% delinquency rate in their portfolios, which if extrapolated using a straight-line method would indicate up to 72,000 delinquent households countywide as compared to the National Equity Atlas' estimate of 33,000 households.
- Average reported per-unit arrears were \$8,200 as compared to the National Equity Atlas estimate of \$3,200, both of which are within small claims court maximums.
- Estimated rent debt from these responses is between \$300-\$379 million.
- 39 rental housing providers representing 161 units indicated that no rent was owed.

This Spring Survey estimates a much higher amount of rental debt than the Fall Survey. Owners with a grievance or high rental arrears are more likely to respond to surveys, which may lead to overestimates of the delinquent rent debt as Rental Housing Providers who do not have rent debt are less likely to respond. While this is ameliorated somewhat by responses from owners with large portfolios, the estimates above represent an upper limit to staff estimates based on data from the Spring Survey.

My Eden Voice Survey of Unincorporated County Renters: In April 2023, My Eden Voice (MEV) distributed a survey to renters in the Urban Unincorporated Area (Ashland, Castro Valley, Cherryland, Fairview, Hayward Acres, and San Lorenzo). While this survey is also ongoing, 53 tenant households responded by April 18, 2023:

- 80.7% of respondents are not behind on rent payments, though 11.5% of those households are not behind because they borrowed money to pay their rent
- 73.1% of households earn less than \$60,000/year
- 64.2% of respondents have received at least one rent increase since 2020
- 30.2% of households live in single-family homes and are concerned that they do not have Just Cause protections
- 28.3% of respondents have received an eviction notice or are in fear of being evicted (or know someone who is)

MEV found that a high percentage of the respondents to this survey needed to be connected to the ongoing resources of AC Housing Secure to learn about their legal rights and how to respond to their rental housing provider if they receive an eviction notice. MEV has a contract under the Unincorporated County Housing Legal Services ARPA funded award to perform outreach and engagement with the community.

National Equity Atlas Rent Debt Dashboard: This data source used US Census Pulse data, historic American Community Survey data, Federal ERAP data, and historic court data to estimate rental arrears at the County level. The National Equity Atlas (NEA) notes that these should be considered ‘conservative’ estimates due to the use of lower 2019 rents and use of an 8-month delinquency cap, which does not reflect the duration of Alameda County’s moratorium. Using this information, staff extrapolated the following estimates as of December 2022, supporting results of the Fall 2022 detailed survey:

- Estimated renter households with rent debt: 33,000 (compared to the 72,000 estimated renter households in the County’s Spring survey with rent debt)
 - Half of these households are low-income, and half earn over 80% of Area Median Income (AMI) and therefore did not qualify for ERAP
- Estimated Rent Debt per Household: \$3,800
 - Estimated debt is based on comparing 2019 ACS rents and income data to delinquency reported in the Pulse data divided by renting households
- Estimated Rent Debt in Alameda County: \$125,400,000
 - Estimated debt is based on comparing 2019 ACS rents and income data to delinquency reported in the Pulse data

Given the uniqueness of the Alameda County eviction moratorium, statistical models such as the National Equity Atlas Dashboard are likely less predictive than in most areas of the country where local eviction moratoria were not extended beyond the state or national moratoria. As noted above, the National Equity Atlas model caps estimated monthly arrears at 8 months (to limit the impact of outliers) far below the 36 months of arrears that tenants may potentially owe. Estimates from that source should be considered lower limits. On the opposite end, County-administered surveys are at high risk of over-sampling property owners with rental arrears relative to their true proportion in the County.