



**VIA FIRST CLASS MAIL AND EMAIL (Jbowers@islipcda.org, info@islipcda.org)**

April 27, 2021

Mr. James Bowers  
Executive Director  
Town of Islip Community Development Agency  
15 Shore Lane  
Bay Shore, NY 11706

**Re: Imposition of Citizenship and Other Burdensome Requirements for Federally Funded Emergency Rental Assistance Program (“ERAP”)**

Dear Mr. Bowers:

We, LatinoJustice PRLDEF (“LJP”), Empire Justice Center (“EJC”) and Long Island Housing Services, Inc. (“LIHC”)<sup>1</sup>, write to you regarding the Town of Islip’s (“Town”) guidelines for issuing emergency rental assistance pursuant to § 501, Division N of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (“the Act”) and 2021 NY Senate-Assembly Bill 2506c, A3006C (Apr. 6, 2021) (“NYS 2506c”). Consistent with the purpose and language of the Act and NYS 2506c, keeping families in their homes, we urge you to promptly amend said guidelines to:

1. clarify the effective date of the guidelines, provide said guidelines in Spanish and other preferred languages, and provide uniform information across the Town’s websites;
2. provide language access for limited English speakers;
3. rescind the citizenship or qualified resident alien requirement and explicitly state that there is no immigration status requirement;
4. unambiguously state that the Town will process applications unilaterally initiated by a tenant-applicant, and that a landlord may initiate an application on behalf of their tenant;
5. remove the requirement that an applicant “be in good standing on their lease prior to the loss of income;”
6. clarify whether the “Landlord Eligibility Requirements” section is applicable to landlord applicants to the ERAP;
7. modify the required documentation for proving program eligibility by, including but not limiting to,
  - o eliminating the driver’s license or valid photo ID requirement;
  - o accepting a household’s attestation of loss of income in 2020 due to the COVID-19 outbreak;

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<sup>1</sup> LJP is a national civil rights organization engage in advocacy and impact litigation on behalf of underserved Latinx communities. EJC, a statewide organization working for social and economic justice for New Yorkers who are poor, disabled or disenfranchised. LIHC is a an over half-century-old civil rights organization focused on Fair Housing. Their mission is the elimination of unlawful housing discrimination and promotion of decent and affordable housing through advocacy and education.



- expanding the acceptable documentation for proof of income to include employer attestations, banking statements in lieu of the request for 2020 federal tax return, W-2 or 1099 forms and/or four consecutive paystubs;
  - permitting alternative forms of documentation other than a lease to prove the applicant's landlord tenant relationship, such as proof of utility payments or banking statement that demonstrate rental payments;
  - removing documents under "additional required documents" like "Town of Islip Rental Permit" and "Completed and signed W9 form"; and
8. clarify the privacy and security policy.

It is highly likely that a failure to implement these amendments will negatively impact the Town's Latinx residents' (32%) ability to access crucial funds in response to a pandemic that has ravaged their communities.<sup>2</sup> For example, in the spring of 2020, at the peak of the pandemic's first wave, Latino unemployment reached 18.9 % – the highest rate for any racial or ethnic group.<sup>3</sup> "About half (49%) of Latinos say someone in their household has taken a pay cut, lost a job, or both due to COVID-19, compared to one-third (33%) of all U.S adults.<sup>4</sup> According to the American Medical Association, New York Latinxs makeup 19.2% of the population, but account for 34% of the state's COVID-19 deaths."<sup>5</sup>

Further, "The State of the Nation's Housing" Report found that, "Renter households of color have also suffered disproportionately from the pandemic's impacts. Even before the COVID-19 outbreak, the cost-burdened shares of Black and Hispanic renters, at 54 percent and 52 percent, were already more than 10 percentage points higher than that of white renters."<sup>6</sup> By late September 2020, 20% of Hispanic renters were behind on their rent, compared to 10% of white renters.<sup>7</sup>

Importantly, this data demonstrates a serious threat to the public's health, particularly during a pandemic because of the highly contagious nature of COVID-19. It is the seriousness of this threat that emboldened the U.S. government, states, localities and eventually the U.S. Department of Health and Human Resources' Center for Disease Control and Prevention ("CDC") to issue eviction moratoriums since March 2020 to date, with moratoriums extended through June 30, 2021.<sup>8</sup> The threat of COVID-19 and the vulnerability of populations

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<sup>2</sup> United States Census Bureau, "Quick Facts: Islip Town, Suffolk County, New York" July 1, 2019, available at <https://www.census.gov/quickfacts/isliptownsuffolkcountynewyork>, last accessed April 22, 2021.

<sup>3</sup> Hispanic Federation et al., "Overcoming Covid-19 Economic Barriers For Latino Communities" at 7, April 1, 2021, available at <https://hispanicfederation.org/covid19summit/Report - Overcoming COVID-19.pdf> last access April 22, 2021.

<sup>4</sup> *Id.*

<sup>5</sup> AMA Center for Health Equity, "Latinx COVID-19 Health Inequities Report: Insights for the Health Care Field," October 23, 2020, available at <https://www.ama-assn.org/delivering-care/population-care/why-covid-19-hits-latinx-nearly-double-overall-us-rate>, last accessed April 22, 2021.

<sup>6</sup> Joint Center for Housing Studies at Harvard University, "The State of the Nation's Housing," at 1, 2020, available at [https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard\\_JCHS\\_The\\_State\\_of\\_the\\_Nations\\_Housing\\_2020\\_Report\\_Revised\\_120720.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2020_Report_Revised_120720.pdf), last accessed April 22, 2021.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> See 42 U.S.C. § 264; See also Center for Disease Control and Prevention, "Temporary Halt in Residential Evictions to Prevent the Further Spread of Covid-19" March 29, 2021, available at <https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/CDC-Eviction-Moratorium-03292021.pdf> last accessed April 22, 2021.



like Latinx communities makes it imperative that the Town identify and implement the least restrictive application requirements for its residents.

## **1. The Town Must Clarify Which Guidelines Are Currently In Effect**

The Town must clarify which guidelines are in effect for applicants of the ERAP. The Town has issued two similar sets of guidelines but because the guidelines are undated it is difficult to confirm which are currently in effect.

Further, the Town's website, <https://islipny.gov/town-news/covid-19/1111-town-of-islip-emergency-rental-assistance-program> and the Town's Community Development Agency's website, <http://www.islipcda.org/default.asp>, provide different information for accessing program eligibility requirements. The differences between the websites causes confusion for constituents and where they must access the information to apply for the ERAP. The Town's website also currently requires constituents to register before they can even review the guidelines. Pre-registration on government websites is a cumbersome task to simply establish whether someone may be eligible and may serve as a barrier because of language access issues or concerns of needlessly registering with the government.

## **2. Town Is Obligated to Comply with Title VI of the Civil Rights Act**

Title VI of the Civil Rights Act of 1964 provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." This includes programs, including state entities, who receive funding from the Treasury.<sup>9</sup> As a grantee under the Act the Town continues to be subject to Title VI. Furthermore, providing vital materials in a resident's preferred language is consistent with the purpose New York Executive Order 26.1 and Suffolk County Local Law No 25 of 2020. Review of Town's website and Town's Community Development Agency website, the guidelines have yet to be provided in Spanish and the websites are not consistently provided in Spanish. Notably, on the CDA website when you click the hyperlink "Spanish" constituents are told to call the CDA for assistance. A system reliant on discretionary advice provided by whomever answers the CDA telephone is subject to inconsistencies and potential abuse. We ask that the Town immediately issue the effective guidelines in Spanish and other requisite language to assist their Limited English speakers access this vital resource. The Town's failure to do so may be in violation of Title VI that ensures language access to Limited English speakers.

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<sup>9</sup> U.S. Department of Treasury, "Federally Assisted Programs and Federally Conducted Programs," available at <https://home.treasury.gov/about/offices/management/civil-rights-and-diversity/federally-assisted-programs-and-federally-conducted-programs> last accessed April 27, 2021.



### **3. Immigration Status Is Not A Barrier To Applying To The ERAP**

The Act requires that an eligible grantee, like the Town of Islip, shall use funds appropriated under the Act for emergency rental assistance to provide financial assistance and housing stability services to eligible households for payment of rent or utilities and home energy costs or their arrearage. At § 501(k), the Act defines an eligible household as one in which

- (i) 1 or more individuals within the household has
  - I qualified for unemployment benefits or
  - II experienced a reduction in household income, incurred significant costs or experienced other financial hardship due, directly or indirectly to the novel coronavirus disease (COVID-19) outbreak which the applicant shall attest in writing;
- (ii) 1 or more individuals within the household can demonstrate a risk of experiencing homelessness or housing instability, which may include...
  - I past due utility or rent notice or eviction notice;
  - II unsafe or unhealthy living conditions; or
  - III any other evidence of such risk, as determined by the eligible grantee involved; and
- (iii) the household has a household income that is not more than 80% of the area median income from the household.

Nothing in the cited definition mandates citizenship or qualified resident alien status, or provision of driver's license or valid photo ID. Indeed, nowhere in the Department of Treasury's (the "Treasury") (the federal agency charged with oversight of the Act) Frequently Asked Questions (the "FAQ") website posting is there a requirement to show citizenship or immigration status.<sup>10</sup> Importantly, New York State and other states, such as Indiana and California, have issued guidance which make abundantly clear that citizenship is not a requirement for receipt of federally funded emergency rental assistance.<sup>11</sup>

Further, § 501(g) of the Act, which imposes reporting obligations on the Department of Treasury and the Department of Housing and Urban Development, seeks data on the number of eligible households who received assistance, acceptance rate, average amount of funding provided, household income level, gender, race and ethnicity of the primary applicant. Again, nothing in this section requires proof of citizenship or qualified resident alien status.

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<sup>10</sup> U.S. Department of Treasury, Emergency Rental Assistance Frequently Asked Questions, March 26, 2021 available at [https://home.treasury.gov/system/files/136/ERA-Frequently-Asked-Questions\\_Pub-3-16-21.pdf](https://home.treasury.gov/system/files/136/ERA-Frequently-Asked-Questions_Pub-3-16-21.pdf) last accessed April 22, 2021.

<sup>11</sup> See NYS 2506c Subpart A (5)(1)(a) and (6)(4)(a)"; See also State of California Department of Housing and Community Development, Memorandum State Rental Assistance Program, February 9, 2021 available at <https://www.hcd.ca.gov/grants-funding/active-funding/erap/docs/state-rental-assistance-program-general-info-and-guidance-to-web.pdf> last accessed April 22, 2021; See also Indiana Community Development and Housing Authority, "Indiana Emergency Rental Assistance Policy Manual" February 2021, available at <https://www.in.gov/ihcda/files/IERA%20Manual%20-%20For%20Comment.pdf> last accessed April 22, 2021..



Moreover, to the extent that the Town of Islip has a foreign-born population that is 21%, some of whom may not have attained citizenship or qualified resident alien status, the citizenship requirement could run afoul of constitutional and statutory protections. Specifically, mixed immigration status households could be denied emergency rental assistance in violation of their constitutional right to familial integrity. Additionally, the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, which HUD enforces, proscribes disparate impact discrimination on account of race and national origin. Accordingly, we urge you to rescind the citizenship and qualified resident alien requirement.

#### **4. The Town Should Process Applications Unilaterally Initiated By The Tenant**

According to the FAQ at #12, the Treasury contemplates the participation of the landlord in the application process however, assuredly does not require the landlord's participation in order for a grantee to initiate process a tenant's application for funds. In fact, the FAQ at #12, elaborates on the many ways a grantee must conduct outreach to an absentee landlord. NYS 2506-c Subpart A §5 clearly contemplates that a tenant may make an independent application for ERAP funds. Moreover, §§8 and 9 (2)(b-c) of Subpart A anticipate unilateral application by a tenant, and further protect such tenants from absentee landlords who attempt to evict tenants on the basis of non-payment of funds offered by grantee to pay the tenant's rental arrears.

Currently, the Town's guidelines state that a "Tenant and Landlord must complete an online application in order for a final determination of eligibility to be made." As written, this statement may confuse a tenant-applicant that they must simultaneously file an application with their landlord to be considered for the ERAP. This is problematic because some tenants may delay their application trying to provide a simultaneous filing with their landlord or landlords may deter their tenants from making applications. We urge the Town to clarify and affirmatively state that a tenant may initiate their application independent from their landlord.

#### **5. The Town's Guidelines Should Clarify That Tenants And/Or Landlords May Apply To The ERAP For Funds.**

According to the Act and NYS 2506c, a landlord may seek ERAP funds on behalf of tenants who were unable to pay their full rent payment. The Town's guidelines do not inform applicants that landlords may unilaterally initiate an application for ERAP funds. It is unclear whether the "Landlord Eligibility Requirements" subsection of the guidelines are applicable to a tenant-applicant, a landlord-applicant or both. In either case, the documents sought are overburdensome for a tenant and a landlord. The FAQ at ## 1 and 5, provides language that states a landlord's attestation and proof of ownership should be sufficient for landlord eligibility. The Town guidelines do not even indicate that a landlord attestation would satisfy the landlord eligibility requirement. Furthermore, requirements such as "valid rental permits" and "lead-based paint inspections" are already enforceable pursuant to the Town's code, e.g. §68-653, and serve as a burden to the tenant applicant seeking emergency funds to avoid eviction. The Town should immediately clarify their dual application language to inform residents that they may initiate the application process independent of their landlord.



## **6. Good Standing On A Tenant’s Lease Prior To Loss Of Income Is Restrictive And Baselessly Excludes Tenants For Applying For Funds**

Both, the Act and NYS 2506c, does not provide language restricting an applicant from applying for the ERAP because of failure to be in “good standing on their lease prior to the loss of income.” In fact, this requirement seems to directly contradict the purpose of the Act, which is to target assistance to those in most need. As stated above, “Even before the COVID-19 outbreak, the cost-burdened shares of Black and Hispanic renters, at 54 percent and 52 percent, were already more than 10 percentage points higher than that of white renters.”<sup>12</sup>

The data implies that this requirement would harm communities of color within the Town. It also will act as a deterrent to applicant’s who may be able to come to an agreement with their landlord about satisfaction of all rental arrears. It is difficult to see that this requirement furthers a government’s interest in reducing homeless and furthering the public’s health. We ask the Town to rescind this requirement.

## **7. Current Documentation Requirements Create An Undue Burden For Latinxs**

Historically, Latinx and other communities of color have had difficulty accessing certain documentation like driver’s license and photo identification, leases, tax forms and paystubs.<sup>13</sup> Here, the Town guidelines not only seek documents such as these but fail to provide the less burdensome alternatives provided in the Treasury’s FAQ regarding the Act.

Regarding the requirement to produce 2020 federal tax return, W-2 or 1099 forms, the FAQ is clear that grantees should extend “emergency assistance to vulnerable populations without imposing undue documentation burdens.”<sup>14</sup> While FAQ #4, permits a grantee to request documentation such as “pay stubs, W-2 or other wage statement, tax filing, bank statement” to demonstrate regular income, it also states “to the extent that a household’s income or a portion thereof, is not verifiable due to the impact of COVID-19... or has been received in cash or if the household has no qualifying income [which is likely the case for renters who will be unable to produce a 2020 federal tax return], a grantee may accept a written attestation from the applicant regarding household income.” The grantee may also rely on attestation from other professionals knowledgeable

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<sup>12</sup> Joint Center for Housing Studies at Harvard University, “The State of the Nation’s Housing,” at 1, 2020, *available at* [https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard\\_JCHS\\_The\\_State\\_of\\_the\\_Nations\\_Housing\\_2020\\_Report\\_Updated\\_120720.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2020_Report_Updated_120720.pdf), last accessed April 22, 2021.

<sup>13</sup> See Johnson, Akilah, The Washington Post, “For Immigrants, Ids Prove To Be A Barrier To A Dose Of Protection,” April 10, 2021 available at <https://www.washingtonpost.com/health/2021/04/10/covid-vaccine-immigrants-id/> last accessed April 22, 2021. See also e.g. N.Y. Real Prop. Acts. Law § 711 (McKinney) recognizing the existence of a landlord tenant relationship even when there is no written lease.

<sup>14</sup> See FAQ at 1.



about a household’s circumstances. We ask that these alternative modes of documenting 2020 income also be set forth on your eligibility guidelines.

The Town should reconsider these restrictive document requirements as they are inconsistent with language and interpretations of the Act and NYS 2506-c.

**8. Privacy And Security Policies Must Be Included In The ERAP Application Process.**

As stated above, there are multiple Town guidelines for applying to the ERAP in circulation that can lead to confusion and costly errors for an applicant in need. The application process for ERAP will undoubtedly seek an applicant’s personal information. Subsection (g) (4) of the Act mandates that a grantee establish privacy policies when collecting information while distributing the contemplated funds. It is important for Latinx applicants to be made fully aware of their privacy rights and any waiver of said rights when applying for funds from the ERAP.

We respectfully, again, request that the Town clarify points of ambiguity raised in this letter such as the effective date of the guidelines, tenant-applicants ability to unilaterally initiate applications for funds and to the “Landlord Eligibility Requirements.” Moreover, we urge you to rescind the citizenship or qualified resident alien requirement as is not mandated under the Act and NYS 2056c bans immigration status as an eligibility requirement and we respectfully request that the Town of Islip affirmatively state that there no such immigration requirement. We also urge you to eliminate the driver’s license and photo ID requirement, and that onerous documentation, such as provision of 2020 federal tax return, be substituted for applicant attestation as proof of income documentation. We ask that you provide the requisite privacy and security policies governing the distribution of funds under the Act.

Thank you for your attention in this regard. Please do not hesitate to contact me should you wish to discuss this or have any questions.

Sincerely,

LatinoJustice PRLDEF

Empire Justice Center

Long Island Fair Housing Inc.

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/s/ Kristin Brown  
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