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***Before the Committee on Housing
Council of the District of Columbia***

Performance Oversight Hearing Regarding the District of Columbia Housing Authority

March 2, 2023

Legal Aid of the District of Columbia¹ submits the following testimony regarding the DC Housing Authority (DCHA). A lot of what we address in this testimony should sound familiar, and that is because we have been concerned for years about the mismanagement, high turnover, and scandal that has plagued an agency that could not have a more important mission: to safely and stably house DC residents living at or below 30 percent Area Median Income (AMI). Unfortunately, we still have not seen the changes needed to address the agency's problem.

¹ Legal Aid of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 91 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org.

DCHA's dysfunction and mismanagement – evident from the Board of Commissioners all the way down to its program offices – impacts its large-scale redevelopment efforts as well as its day-to-day operations. As in past years, DCHA has failed to timely process transfer requests, reasonable accommodation requests, and recertifications. DCHA has made little progress on public housing repairs, having only just started an audit of every unit this year. DCHA is moving through its public housing waitlist at a clip that should make us all stop and think: How are they doing this? And are there enough safeguards in place to ensure that people who have waited for years are not now being passed over? And finally, in response to the U.S. Department of Housing and Urban Development (HUD) report, DCHA is proposing unnecessary changes to its program rules that will hurt tenants and giving stakeholders an inadequate amount of time to review and provide meaningful comment on over one thousand pages of regulations.

In short, DCHA has strayed from its central mission to provide safe, stable housing for DC's lowest income residents. The task before this committee is monumental, and we implore the Council to take an active and heavy-handed role in refocusing and redirecting this failed agency. Our testimony will focus on three main areas.

- Oversight – The Council should conduct more rigorous oversight and hold regular public hearings to ensure that DCHA makes progress towards running fully functioning housing programs, including by timely leasing up voucher holders, issuing transfer vouchers, granting reasonable accommodation requests, recertifying residents, and making repairs.
- Repairs and Rent Forgiveness – The Council should fund DCHA so that it can complete necessary repairs on all its occupied and vacant public housing units, and make sure that there are reporting requirements that force DCHA to demonstrate it is using the money appropriately to *preserve* (not privatize) traditional public housing. Additionally, in recognition of the deplorable condition of DCHA properties, DCHA should, at a minimum, forgive all rental balances that have accrued.
- Harmful Proposed Changes to Program Rules – The Council should use all available measures to ensure that DCHA gives stakeholders – tenants, tenant advocates, and the Council itself – adequate time to respond to the sweeping and lengthy changes it is proposing to its housing programs. This testimony will address proposed changes to waitlist procedures, rent reasonableness, and minimum rent requirements, but we know there is more to be concerned about, there has just not been adequate time for us to read through the thousands of pages.

The Council Should Perform Regular and Rigorous Oversight Until DCHA is Able to Demonstrate That its Housing Programs are Fully Functioning.

Over the last five years DCHA has had a destabilizing amount of turnover throughout the agency. Long-time leaders in the Housing Choice Voucher Program, Public Housing Program, eligibility department and Office of Fair Hearings have left, often with little or no notice. There have been at least five acting or permanent general counsels during that same time period and an executive director has come and gone. It is no surprise then that DCHA is not meeting the needs of low-income District residents and its housing programs are flailing. Here is just a brief list of issues our clients regularly experienced over the last year:

- DCHA not responding for months when they attempt to recertify.² This means that residents are falling behind on rent while they wait and hope that DCHA will eventually lower their rental obligation in accordance with the law.
- DCHA taking many months to issue transfer vouchers to program participants. This means that voucher holders who need to move because of housing code violations or their family's needs have to wait months before they can even start the process.
- DCHA taking many years to transfer public housing residents in response to reasonable accommodation requests and/or public safety requests.
- DCHA making it impossible for program participants to reach the right person, or even figure out who the right person is, when they call DCHA's main number. This makes it nearly impossible for tenants to conduct necessary day-to-day business with the agency and puts their subsidies and affordable housing at risk.

The Council should conduct regular public oversight of DCHA, and require that its leaders show up and testify, until it can demonstrate that its various housing programs are functioning properly and meeting the needs of program participants. Public housing residents and voucher holders rely on DCHA to ensure that they can keep their families housed. They need reliable ways to reach this currently intractable agency and resolve the many issues that arise as they navigate what should be regular processes to maintain their housing.

² DCHA's Fiscal Year 2022-2023 Performance Oversight Pre-Hearing Questions (not yet available online) indicate that they have no way of tracking how long these requests take. See p. 43.

The Council Should Ensure that DCHA Does not Just Inspect, but Actually Follows Through and Repairs, all Public Housing Units so That Residents are Living in Safe and Dignified Housing.

The deplorable conditions of DCHA's public housing stock have been talked about for decades by tenants, tenant advocates, and reporters. These conditions have been reported over and over again to DCHA itself, the Council, and DCHA's Board. Yet little, if any, progress has been made to date. The HUD report has spurred the agency to do the same thing it did just a few years ago, inspect and audit every public housing unit to figure out what repairs are needed. The Council's job now is threefold.

First, the Council must allocate enough funding to DCHA so that *all* repairs can be made and be made well. The Council must press DCHA for an accurate assessment of how much money it needs to bring all of its public housing units up to code. Getting this data has proven to be impossible over the years, but now the Council has a renewed chance. If DCHA is auditing every one of its properties and units to identify all needed repairs, surely it can tell us what amount of money it needs to do the work at the end of that process. Legal Aid feels confident that amount is at least the \$500 million Councilmember Robert White has requested, and we support that ask, but we also know the need is likely far higher.

Second, the Council must obligate DCHA to disclose regularly how it is spending local money and ensure that the money is used to *preserve* (not further the privatization of) public housing. This means requiring DCHA to submit regular and detailed spending plans, and also requiring DCHA to guarantee that it will keep public housing public, not sell it off to developers who do not have the same mission and dedication to residents that a public housing agency should and must have by law.

Third, the Council should require DCHA to begin making things right with DCHA residents by, at the very minimum, forgiving all accrued rental balances. DCHA's oversight responses indicate that public housing residents "owe" the agency \$11.8 million in back rent.³ These responses acknowledge that DCHA's procedures (or lack thereof) are partly responsible for these delinquencies.⁴ But they do not acknowledge that this is rent that accrued during a time we know public housing residents were living in deplorable and unsafe conditions. Why should anyone have had to pay rent? Why should anyone face eviction for rent that accrued while public housing was crumbling, when we know DC law provides for rent abatements under these circumstances? The answer is tenants should

³ DCHA's Fiscal Year 2022-2023 Performance Oversight Pre-Hearing Questions (not yet available online), at p. 46.

⁴ *Id.*

not have had to pay rent and that no one should be evicted for nonpayment knowing what we know about DCHA's failures.

The Council Should Use All Available Measures to Ensure That DCHA Gives Stakeholders – Tenants, Tenant Advocates, and the Council Itself – Adequate Time to Respond to the Sweeping and Lengthy Changes it is Proposing to its Housing Programs.

When the HUD report was released and shed more daylight on the myriad problems that tenants have been reporting for years, Legal Aid and other tenant advocacy groups warned that this report should not lead to changes that hurt DCHA's program participants.⁵ Unfortunately, it appears that DCHA did not heed this warning. Instead, last month it released over 1,000 pages of rules and regulations for the public housing and voucher program combined. It then gave stakeholders 45 days – until the end of March – to respond. This is not nearly enough time to read through these documents and provide meaningful feedback, especially when a cursory review indicates that there are big changes being proposed. This testimony will address a few of those changes, but there has simply not been enough time for anyone to do a thorough review of all the proposed changes.

The Waitlist

DCHA's public housing waitlist has been getting a lot of attention. There has even been talk that it may be able to open again sometimes this year for the first time since 2013. While this sounds exciting on its face, it warrants taking a beat and asking some questions. According to DCHA's oversight responses, in February 2022 there were 22,000 people on the waitlist.⁶ That number dropped to a miraculous 12,921 by February 1, 2023. Yet, only 58 families were leased up in public housing units in FY 22, and 27 have been leased up to-date in FY 23.⁷ So, what happened to those other 8,994 families that were on the waitlist as of February 2022, but aren't on it today?

All of this is to say what we all know: simply "getting through the waitlist" is not a success. It is an example of DCHA's incredible failure over the years. It means that people on the

⁵ Statement on the US Department of Housing and Urban Development's Scathing DC Housing Authority Audit, *available at* <https://www.legalaiddc.org/blogs/statement-us-department-housing-and-urban-developments-scathing-dc-housing-authority-audit>

⁶ DCHA's Fiscal Year 2022-2023 Performance Oversight Pre-Hearing Questions (not yet available online), at p. 31.

⁷ *Id.* at p. 32

waitlist have died, been displaced, or are not responding to DCHA's letters for other unknown reasons (perhaps because they had given up hope of ever getting help).

In the face of this depressing reality, DCHA is proposing to make it easier to remove families from its waitlists. This is unconscionable. Currently, if a family does not respond to a letter from DCHA, they are placed on inactive status. If they later contact DCHA, they are restored to their prior place in line. Now, DCHA is proposing that anyone who does not respond to its outreach within 15 days will be removed from the waitlist.⁸ DCHA is giving District residents *15 days* when it has taken on average *16.2 years* to move people off the waitlist and into public housing.⁹

DCHA explains that it is incumbent on people on the waitlist to update the agency about how best to contact them.¹⁰ What they do not acknowledge is how impossible it is to get in touch with anyone at DCHA. DCHA's offices were closed to the public during the pandemic, and it was impossible (and continues to be impossible) to reach helpful staff by phone. Residents still cannot walk into DCHA but must make appointments to meet with anyone in person. How then, can anyone be expected to reliably update their information with DCHA to ensure they keep their spot on the waitlist? The simple answer is they cannot. DCHA's new policy will harm District residents who have been waiting decades for affordable housing while doing nothing to address the agency's own failures.

Rent Reasonableness

It is important to explore the history of the rent reasonableness scandal that was recently covered by the Washington Post.¹¹ This issue was first brought to light by former DCHA Commissioner Bill Slover.¹² The prior executive director pledged to fix it and was

⁸ DCHA's Fiscal Year 2022-2023 Performance Oversight Pre-Hearing Questions (not yet available online), at p. 45.

⁹ DCHA's Fiscal Year 2022-2023 Performance Oversight Pre-Hearing Questions (not yet available online), at p. 32.

¹⁰ DCHA's Fiscal Year 2022-2023 Performance Oversight Pre-Hearing Questions (not yet available online), at p. 45.

¹¹ DC is Overpaying Landlords at a Damaging Cost to City Residents, The Washington Post, available at <https://www.washingtonpost.com/dc-md-va/2023/02/18/dc-overpays-landlords-costs-residents/>

¹² *Id.*

soon after discharged from his position.¹³ The current executive director raised the same issue publicly in mid-2022, and the agency told advocates it had evidence it was overpaying landlords. Inexplicably, by the Fall of 2022, the agency changed its tune and said it was mistaken and it had made no overpayments. Then, at the end of 2022 DCHA lobbied the Council to have Bill Slover, and other nonmayoral appointees, removed as DCHA Commissioners. Now, because of the HUD report, DCHA is forced to address what has been a known problem and acknowledge that this problem is very real and very costly. To state it plainly, DHCA was overpaying landlords at the same time it claims it does not have enough money to make repairs to its public housing units and that it must begin collecting rent from public housing residents. It also means that DCHA has been issuing fewer vouchers to families than it otherwise could when the waitlist is 37,000 families long.

That brings us to today. While Legal Aid is happy to see that DCHA is finally acknowledging that it must start conducting rent reasonableness reviews for each unit that a voucher holder tries to lease up in,¹⁴ the agency's proposed rules are simply not adequate.¹⁵

The guidelines say that DCHA *may* require landlords to submit the rent charged for unassisted units at the premises if the premises has more than 4 units.¹⁶ Given how badly a job DCHA has done administering vouchers and evaluating rent levels over the last few years, this should be a mandatory requirement, not optional, and should apply to all multiunit buildings (whether they are two-unit buildings or one-hundred-unit buildings). The regulations should specify how many comparable units DCHA staff need to look for/find in the neighborhood. Additionally, the regulations should spell out some factors that generally always will require an upward or downward adjustment in rent level. For example, the square footage of the unit, the amenities (if any) in the building, whether there is a washer/dryer in the unit or in the building, the year the building was built, and whether the unit was recently renovated. It is important that DCHA account for these types of differences in a market like DC, where a luxury building built in 2022 could stand

¹³ *Id.*

¹⁴ DCHA's Fiscal Year 2022-2023 Performance Oversight Pre-Hearing Questions (not yet available online), at p. 48.

¹⁵ DCHA's Proposed Administrative Plan, *available at* https://www.dchousing.org/wordpress/wp-content/uploads/2023/02/Administrative-Plan_2.14.23.pdf, at p. 298.

¹⁶ *Id.*

right next to a building built in 1965. Finally, DCHA should always be required to ask if the unit is rent controlled, and if so, what the rent-controlled rent is.

Minimum Rent

Years ago, before DCHA began having constant turnover in staff and before its problems were anywhere near what they are today, the agency used its Moving to Work Authority to do something good: remove minimum rent requirements. Minimum rent requirements are what they sound like. Even when a family reports that it has zero income, it is required to pay some amount of rent each month. This leads to an obvious question: where are residents supposed to get this money if they have no income? Now, DCHA is backtracking on its commonsense policy to do away with this paternalistic, offensive requirement. Under its new proposed rules, DCHA will begin charging everyone at least \$50 in rent each month.¹⁷ This policy is steeped in racist and classist stereotypes and presumes that families are either lying about not having income or that they are choosing not to receive income when they otherwise could. DCHA should not rush through regulations that will harm families, when the whole reason they are rushing to do anything is because of the agency's, not residents', failures.

Other Changes

Tenant advocates have not even begun to understand the magnitude of DCHA's proposed changes to its program rules because there is simply too much to review in such a short time. Even though DCHA claims there are only a handful of "substantial changes,"¹⁸ Legal Aid has already identified other (not flagged) harmful proposed changes, including changes to the recertification process. The Council should use all available measures to ensure that DCHA gives stakeholders more time to review and respond to these changes. It is simply too massive an overhaul to expect meaningful and robust feedback in 45 days.

¹⁷ DCHA's Proposed Admissions and Continued Occupancy Policy, *available at* https://www.dchousing.org/wordpress/wp-content/uploads/2023/02/ACOP_2.14.23.pdf, at p. 170.

¹⁸ Summary of Substantial Updates to the Admission and Continued Occupancy Plan, the Administrative Plan and the 2023 Moving To Work Annual Plan, *available at* https://www.dchousing.org/wordpress/wp-content/uploads/2023/02/Updates-to-Admin-ACOP-Plans_FINAL.pdf

Conclusion

The Council must act quickly and aggressively to make sure that DCHA begins to course correct and refocus itself on serving DC's lowest income residents. This means more substantial and regular oversight. It means passing legislation to ensure that DCHA is spending local dollars in a way that preserves public housing and allows residents to live in safe and healthy conditions. DCHA must also allow adequate time for more substantial and meaningful feedback from impacted communities and advocates on proposed program changes instead of rushing to make changes to program rules that hurt, instead of help, the residents that the agency has already been harming for years.