



www.legalaiddc.org
1331 H Street, NW
Suite 350
Washington, DC 20005
(202) 628-1161

**Testimony of Mel Zahnd
Supervising Attorney, Housing Law Unit
Legal Aid DC**

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

**Hearing on B26-0597 – Housing Production Omnibus Amendment Act of 2026
Hearing on B26-0477 – Portable Tenant Screening Report Amendment Act of 2025**

March 30, 2026

Legal Aid DC¹ supports passage of both the Housing Production Omnibus Amendment Act of 2026 (Housing Production Omnibus) and the Portable Tenants Screening Report Amendment Act of 2025 (Portable Report Act). Both these laws can be made even stronger to better protect low-income renters.

Housing Production Omnibus

The Housing Production Trust Fund (HPTF) needs transparency and accountability, and the Housing Production Omnibus will lead to needed reforms. Nonetheless, the bill could be strengthened to more successfully prioritize deeply affordable housing, preserve existing affordable housing, prevent displacement, and create units for larger families.

¹ Legal Aid DC is the oldest and largest general civil legal services program in the District of Columbia. 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 legal system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. For more information, visit www.LegalAidDC.org.

The Need for the Housing Production Omnibus

Government investment is essential for affordable housing to survive in the District.² When a housing developer receives District dollars to construct or preserve affordable housing, there should be clarity on exactly how the developer plans to use those dollars to advance affordable housing. Everyone in the process – the government, developers, and residents – should know the criteria used to judge development projects. The order in which projects are prioritized should be predictable, and those priorities should align with the goal of constructing and preserving affordable housing that prevents displacement.

The HPTF as it currently exists lacks that need transparency and accountability. One of the strengths of the HPTF should be its flexibility.³ Unfortunately, as the DC Auditor has noted, the Department of Housing and Community Development (DHCD), which administers the HPTF, has taken “undue advantage” of this flexibility.⁴ Historically, DHCD has failed to target its requests for proposals (RFPs) to include housing that is affordable for low- and very low-income households.⁵

In a 2019 report, the DC Auditor found that the lack of transparency around selection of HPTF projects led to a loss of affordable units that could have been developed.⁶ According to this report, over the course of the 2017 RFP selection process, projects mysteriously received funding despite the fact that they planned to provide less

² See, e.g., Patrick McAnaney, Greater Greater Washington, “Why Affordable Housing Can’t Pay for Itself,” (Jan. 25, 2024), <https://ggwash.org/view/92306/why-affordable-housing-cant-pay-for-itself>.

³ See Office of the District of Columbia Auditor, “Stronger Management of the Housing Production Trust Fund Could Build More Affordable Housing,” (March 20, 2018), [HPTF.Database.Report.3.20.18.FINAL_-1.pdf](https://dcauditor.org/wp-content/uploads/2023/08/HPTF.Database.Report.3.20.18.FINAL_-1.pdf).

⁴ *Id.*

⁵ Office of the District of Columbia Auditor, “DHCD Should Improve Management of the Housing Production Trust Fund to Better Meet Affordable Housing Goals,” (March 16, 2017), https://dcauditor.org/wp-content/uploads/2023/08/HPTF.Final_Report.3.16.17.FINAL_.pdf.

⁶ See Office of the District of Columbia Auditor, “Low-Ranked Projects Secure Affordable Housing Funds,” (May 30, 2019), 2 <https://dcauditor.org/wp-content/uploads/2023/08/HPTF-Report-Final.pdf>.

affordable housing than their competitors.⁷ Five of the nine projects selected for funding ranked in the bottom half of applications.⁸ Between staff recommendations and ultimate project selection by the Director, 353 affordable units disappeared, including 95 units that would have targeted very low-income households earning up to 30 percent of Area Median Income (AMI).⁹ It is possible that the HPTF in its current form is working well for *some* housing developers who know how to navigate the selection process. However, the HPTF also lacks accountability and transparency to predictably preserve and produce deeply affordable housing.

These failings have a real impact on the District's low-income residents. Every day, Legal Aid attorneys meet with tenants living in atrocious conditions, including sewage floods, rodent infestations, and mold. Many of these tenants tell us they are desperately looking for new homes for themselves and their families. There simply is not enough affordable housing in the District, so these tenants have nowhere to go.

We regularly represent tenant associations through the Tenant Opportunity to Purchase Act (TOPA) process who are looking to improve conditions in their buildings while keeping rents affordable for tenants. While responsible nonprofit developers express interest in working with many of these tenants, often they cannot put together the financing to compete with private developers. These private developers routinely offer quick buyouts, not the repairs and long-term affordability that our clients seek. A predictable funding source that meaningfully preferences deep affordability and preservation of existing housing could be the financing solution that responsible developers need. The proposed Housing Opportunity Fund could provide this accountability and transparency while leaving room for creative new projects.

Proposed Improvements

While the Housing Production Omnibus is an important step towards transparency and accountability, it can be even stronger. Below we describe ways in which revisions could a) better prioritize deeply affordable housing, b) preserve affordable housing and prevent displacement, and c) create affordable units for families. Finally, we ask that the Housing Opportunity Fund Board include more representation of tenant leaders and advocates.

Deeply Affordable Housing

⁷ See *id.*

⁸ *Id.* at 1.

⁹ *Id.* at 2.

The Housing Opportunity Fund could more successfully prioritize deeply affordable housing by dedicating funding for properties that also receive other subsidies, breaking out dedicated funding for the Affordable Housing Subsidy Account, requiring perpetual affordability covenants that survive foreclosure sales, and prioritizing projects for the Housing Production Account that set aside a significant number of units as “Tier 1” housing.

Properties That Receive Other Subsidies

To create deeply affordable housing, the Housing Opportunity Fund will be most effective when paired with other subsidy programs. Deeply affordable units that are accessible to residents at or below 30 percent of AMI need to pair ongoing subsidies – like Project-Based Section 8 or the Local Rent Supplement Program – with “gap financing” to cover the significant costs of construction and preservation.¹⁰ The Housing Opportunity Fund will be most successfully leveraged to produce and preserve deeply affordable housing when it works in conjunction with other subsidy programs. For this reason, we recommend that the Housing Production Omnibus dedicate funding specifically for properties with other subsidies.

Affordable Housing Subsidy Account

The Housing Production Omnibus includes both a Housing Production Account and an Affordable Housing Subsidy Account. The Housing Production Account provides loans and financing for construction of new projects, prioritizing projects that do not require operating subsidies.¹¹ The Affordable Housing Subsidy Account, on the other hand, provides shallow operating subsidies, construction loans, and gap financing for projects that offer affordable housing to tenants at or below 50 percent of AMI.¹²

As currently written, the bill bundles together the Housing Production Account and the Affordable Housing Subsidy Account. Together, at least 60 percent of the total appropriated funds for each fiscal year will need to go to the combined Housing Production Account and Affordable Housing Subsidy Account. We are concerned that, if

¹⁰ See Patrick McAnaney, Greater Greater Washington, “Understanding the District’s Housing Production Trust Fund,” (Feb. 28, 2024), <https://ggwash.org/view/92711/understanding-the-districts-housing-production-trust-fund>.

¹¹ See “Housing Production Omnibus Amend. Act of 2026,” B26-597, Title I(C) § 121.

¹² See *Id.* at Title I(C) § 122.

funding for these two accounts remains bundled together, the Affordable Housing Subsidy Account will not receive sufficient funding.

Historically, the HPTF has consistently failed to award funding to the kinds of meaningfully affordable projects that the Housing Subsidy Account would address. Over the years, time and again, the HPTF has not met the statutory requirement of allocating 50 percent of its funds to serve households at or below 30 percent AMI.¹³ To ensure that projects offering deep affordability receive adequate funding, we recommend separately apportioning a funding requirement for the Housing Subsidy Account – not bundling it in with the Housing Production Account.

Perpetual Affordability Covenants

The bill currently requires properties that receive Housing Opportunity Funds to enter into a 40-year affordability covenant. However, perpetual affordability covenants are possible, as seen in other jurisdictions. For example, in Vermont, developers must commit to perpetual affordability to qualify for competitive Low Income Housing Tax Credits.¹⁴ A similar requirement to receive Housing Opportunity Funds would ensure the maintenance of affordable housing for years to come. The District is currently facing an affordable covenant cliff that could have been addressed with perpetual affordability covenants.

To make these affordability covenants truly perpetual, they should survive foreclosure sales. In 2024, DHCD issued an RFP targeted specifically at stabilization of financially insecure properties.¹⁵ In this RFP, DHCD explicitly claimed that approximately 22,000

¹³ See McAnaney, “Understanding the District’s Housing Production Trust Fund.”

¹⁴ Vermont Hous. Finance Agency, “State of Vermont Qualified Allocation Plan,” 12 (Feb. 6, 2023), https://vhfa.org/sites/default/files/documents/multifamily/Signed_VHFA%202024-25%20Vermont%20Qualified%20Allocation%20Plan_vf.pdf; see also Roshan Abraham, Poverty & Race Research Action Council, “Make Your State’s Housing Affordable Forever with This One Weird Trick,” (Sept. 12, 2024), <https://www.prrac.org/make-your-states-housing-affordable-forever-with-this-one-weird-trick/#:~:text=In%20Vermont%2C%20the%20right%20of,the%20ongoing%20crisis%20of%20expirations.>

¹⁵ Dep’t of Housing and Comm. Devp’t, “2024 Consolidated Request for Proposals for Affordable Hous. Projects,” (Sept. 25, 2024), [https://dhcd.dc.gov/publication/2024-consolidated-request-proposals-affordable-housing-projects.](https://dhcd.dc.gov/publication/2024-consolidated-request-proposals-affordable-housing-projects)

units were at risk of foreclosure.¹⁶ The bogeyman of foreclosure was one of the threats that propelled passage last year's sweeping changes to eviction protections and the Tenant Opportunity to Purchase Act (TOPA).¹⁷

DC can insulate tenants and the affordable housing ecosystem from some of the worst threats of foreclosure by drafting these affordability covenants in a way to ensure they survive foreclosure sales. Financial insolvency is never a desirable outcome for any housing project, but it does not need to be an existential threat to the future of affordable housing for the District.

Housing Production Account

The Housing Production Account should prioritize financing projects that set aside some of their units for Tier 1 housing. The Housing Production Omnibus defines Tier 1 housing as housing that targets affordability for households at or below 30 percent AMI.¹⁸ This population desperately needs affordable housing.

The math of current rent prices does not work for the vast majority of low-income residents. In order for a family at 30 percent of AMI to afford an apartment, the rent needs to be at or below \$1,229.00.¹⁹ However, average rent in DC is nearly double that at \$2,451.00.²⁰ It becomes clear just how bleak the options are for low-income families when we recognize that the average apartment size in DC is a mere 747 square feet,²¹ which is not enough space for most families with children or with more than one generation living together. Affordable rents are out of reach for most low-income residents.

¹⁶ *Id.*

¹⁷ See, e.g., Letter from Muriel Bowser, Mayor of DC, to Phil Mendelson, Chairman of the Council of DC, re. Introduction of the "Rebalancing Expectations for Neighbors, Tenants, and Landlords Amend. Act of 2025," (March 3, 2025), <https://lims.dccouncil.gov/downloads/LIMS/57311/Introduction/B26-0164-Introduction.pdf?Id=207671>.

¹⁸ Title I(A) § 102(6).

¹⁹ Nat'l Low Income Hous. Coalition, District of Columbia, <https://nlihc.org/oor/state/dc>.

²⁰ RentCafe, Washington, DC Rental Market Trends, <https://www.rentcafe.com/average-rent-market-trends/us/dc/washington/>.

²¹ *Id.*

As currently written, the Housing Production Omnibus does not prioritize new construction of the kind of deeply affordable housing that would alleviate the rent burden felt by these low-income residents. Prioritizing financing projects that dedicate some of their units for Tier 1 housing would not by itself fix the problem, but it would begin to create some new deeply affordable housing.

Preservation and Preventing Displacement

We recommend several additions to help the Housing Production Omnibus ensure preservation of currently existing affordable housing while preventing displacement of low-income residents. The law should include a definition of preservation as opposed to stabilization. Currently, the law allows up to 40 percent of the fund's annual budget to go towards stabilization; this is too much money being allocated for stabilization. We recommend including a robust anti-displacement strategy akin to what the law already requires under D.C. Code § 42-3505.01(f). The bill should clarify that the Preservation Account can be used for renovations as well as critical repairs. Finally, properties that receive funding should be subject to an affordability covenant, the terms of which cannot allow higher rent levels than would have otherwise existed.

Definition of Preservation

The Housing Production Omnibus defines “stabilization” but does not define “preservation.” Colloquially, these two terms are used interchangeably, but they are not the same. While the law explains that stabilization can include “risk coverage to lenders” and “bridge funding for properties with a demonstrated unforeseen debt load,” stabilization “does not extend the period of affordability,” nor does it “increase the number of affordable units.”²² This provision makes clear that stabilization is not the same as preservation.²³ Later, the law lays out the anticipated uses of the Preservation Account.²⁴ A clear explanation of both what Council means by “stabilization” and “preservation” in the definitions section will add clarity and prevent later confusion.

Cap on Stabilization

We applaud Council's decision to limit the available funds for stabilization. However, the Housing Production Omnibus currently limits funding for stabilization at 40 percent of the

²² Title I(A) § 102(5).

²³ Title I(A) § 102(5)(C).

²⁴ Title I(C) § 123.

total approved budget for the fund.²⁵ This amount is much too high. While there may be cases where some portion of the fund can appropriately be spent on stabilization, this should not be the goal. The purpose of the fund is to promote construction and preservation of affordable housing.²⁶ Stabilization, by its definition, accomplishes neither of these goals.²⁷ The cap on stabilization funding should be set far below 40 percent of the total approved budget.

Anti-Displacement Strategy

A robust anti-displacement strategy is necessary to ensure that projects designed to preserve affordable housing do not inadvertently push out the low-income residents they should be protecting. Relocations – even temporary relocations for renovations – are expensive and disruptive to current residents. Without a clear and structured plan, it can be hard for residents to return to their homes.

Fortunately, the District already has a strong process for landlords that seek to temporarily relocate tenants so they can make alterations or renovations, D.C. Code § 42-3505.01(f). The Housing Production Omnibus should incorporate the same structure by reference. If a landlord ever seeks to use the fund to complete a project that requires temporary relocation of current tenants, then the landlord should follow the same procedures already laid out in § 42-3505.01(f). A landlord should not receive these funds until they can demonstrate they have complied with this provision of District law.

Preservation Funds for Renovations

The Preservation Account should be available to provide debt or equity to finance renovations. We believe this is already implicit in the Housing Production Omnibus, but we believe Title I(B) § 123(1)(F) will benefit from clarity on this point. It currently states these funds are available for “acquisition bridge loans, predevelopment expenses, environmental remediation, critical repairs, and other activities necessary to preserve the affordability of housing units.” This provision does not explicitly mention renovations. To avoid later confusion, we recommend adding renovations to the enumerated list in § 123(1)(F).

Pre-Existing Rent Limits

²⁵ Title I(A) § 108(a).

²⁶ See Brianne K. Nadeau and Robert C. White, “Statement of Introduction: Housing Production Omnibus Amendment Act of 2026,” (Feb. 17, 2026).

²⁷ Title I(A) § 102(5)(C).

Finally, while affordability covenants are important, they should never be used to circumvent pre-existing limits on rent increases. There are still some rent stabilized properties in the District, particularly in Wards 7 and 8, that have deeply affordable rents without any affordability covenants. Some of these properties may be able to use the fund to effectively preserve or stabilize these properties. In particular, developers who are purchasing these properties through TOPA may be able to use the fund to complete repairs or renovations to keep the buildings safe and comfortable for current residents. The law should make it explicit that rent stabilization and any other affordability covenants or other limits on rent increases continue to apply even after the entry of a new affordability covenant. An additional affordability covenant should never serve as an excuse to raise rents above what would otherwise be legally allowed.

Creating and Preserving Units for Families

We recommend that the Housing Production Omnibus include a requirement that DHCD promulgate regulations providing a preference for properties that create units with a large number of bedrooms. These regulations should also preference properties that have large square footage. In working with our clients, Legal Aid has seen how challenging it is for families with several children or with multiple generations living together to find homes that are big enough for them. Even our clients with vouchers that subsidize the rent have trouble finding homes that are big enough for their families when they need three or more bedrooms.

Just having enough bedrooms by itself does not mean that a home is actually big enough for a large family to share. At several properties, we have recently seen landlords plan to break up small apartments to increase the number of bedrooms without increasing overall space. In one building where we represent a tenant association, the landlord plans to convert all the one-bedroom apartments to two-bedrooms and convert all the two-bedroom apartments to three-bedrooms. However, the overall square footage of each apartment will not change. Tiny bedrooms crammed into small apartments are not livable for large families. This is why DHCD must promulgate regulations giving a preference to units that are large enough for families to live in together.

Housing Opportunity Fund Board

Finally, The Housing Opportunity Fund Board, as it is currently structured in the Housing Production Omnibus, would largely consist of housing developers and industry professionals. We recommend greater parity between housing developers and tenant leaders and advocates on the Board. Ultimately, the perspectives of housing developers

can be helpful, but tenants are the ones whose lives are directly impacted, and they should have a significant say over how the fund is administered.

Portable Report Act

The Portable Report Act could be made stronger with some changes. The most straightforward way to protect tenants from the cost burden of applying for housing would be to prohibit application fees. That said, we would support passage of this law with the following changes: 1) the Portable Report should be good for 6 months, not just 30 days; 2) it should be explicit that Portable Reports cannot include any information already prohibited by DC tenant screening laws; 3) tenants must not be held responsible for errors or discrepancies in reports; and 4) it should be an enumerated form of illegal retaliation for a landlord to take any adverse action against a tenant for using a Portable Report.

Lengthening the Report Expiration Period

Under the current language of the Portable Report Act, these reports will only be good for 30 days. This is not enough time for low-income tenants to find housing. In our eviction defense practice, we often work with tenants who are looking to move out of homes that have become unlivable or unsustainable for them. Many of these tenants were looking for new housing long before an eviction case was ever filed against them. Unfortunately, the search for new housing can be a lengthy process for renters, particularly if they are low-income. As we discussed earlier in our testimony, there just is not enough affordable housing for low-income renters.

It is particularly unfair to expect voucher-recipients to purchase new reports before their housing search period ends. The initial housing search period for a voucher is 6 months. Given this reality, it would be reasonable to allow the Portable Reports to remain valid for 6 months from issuance.

Interaction With Other Tenant Screening Laws

The Portable Report Act should clarify that these reports cannot include any information that is otherwise prohibited by the District's tenant screening laws. The District already has a robust set of tenant screening protections. However, these protections would be eviscerated by reports that include inadmissible information. To ensure the effectiveness of our pre-existing tenant protection laws, the law should clarify that the Portable Reports cannot include prohibited information.

Responsibility for Errors

Tenants must not be held responsible for errors or discrepancies in reports. Unfortunately, in our work with clients, we have seen many tenants receive inaccurate or inconsistent background screening reports. These inaccuracies are not the fault of the tenant. In many cases, the tenants have actively advocated to correct the errors but have been unable to receive redress from the background screening companies. In other cases, tenants may not even be able to detect the errors themselves. Tenants in the middle of a high-pressure housing search cannot be expected to verify or vouch for the accuracy and completeness of a tenant screening or credit report.

Retaliation

Enforcement of the Portable Report Act will be challenging. Many tenants who are desperate to find new housing will not have the time or wherewithal to insist that landlords accept their Portable Report. One small step towards ensuring that the Portable Reporting Act has some teeth would be to add use of a Portable Report as an enumerated protected activity in the anti-retaliation law that protects tenants.²⁸

Conclusion

Legal Aid supports passage of the Housing Production Omnibus and Portable Report Act. Both bills can be improved with some amendments. We are eager to work with Council to continue to revise these bills and will happily provide draft legislative language for our proposals.

²⁸ See D.C. Code § 42-3505.02(b).