

**Testimony of Julie Becker
Legal Aid Society of the District of Columbia**

**Agency Performance Oversight Hearing
for the District Department of the Environment**

**Committee on Transportation and Environment
Council of the District of Columbia
February 18, 2015**

The Legal Aid Society of the District of Columbia¹ submits this testimony regarding the performance of the Department of the Environment (DDOE) in administering the Low-Income Home Energy Assistance Program (LIHEAP). LIHEAP helps thousands of District residents each year with heating and air-conditioning bills, helping to keep families safe and healthy by avoiding utility shutoffs or addressing those shutoffs as quickly as possible.

On the whole, the District's LIHEAP program functions well and provides critical assistance to our client community. But, as we have expressed previously, we are concerned about the program's lack of transparency and accountability on both the individual and policy level. In assisting clients with LIHEAP problems, and in our work as advocates on public benefits issues, we find that the LIHEAP program is something of a black box – it generally helps our clients, but we cannot understand or explain the rules by which it does so. And when something goes wrong, it takes an unreasonable investment of resources to figure out what has happened and how to fix it.

The District, unlike most states, operates its LIHEAP program without any statutory or regulatory framework. DDOE relies on broad federal requirements and a state plan that provides few specifics as to how the program runs. That state plan includes a number of vague and inconsistent rules regarding eligibility, benefit levels, and appeal rights. For example, both the state plan and DDOE's own materials are unclear as to whether, in order to receive "crisis" benefits, a household must actually have had its electricity cut off, or simply be threatened with shutoff.

To address this problem, a bill was introduced last year in the Council that would have established certain basic rules about the application and appeals process, and would have required the Department to create regulations governing the remainder of the program. Passage of the law would have brought the District in line with the large majority of states that have either a detailed statutory framework or a set of regulations governing their LIHEAP programs.

¹ The Legal Aid Society 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." For more than eighty years, tens of thousands of the District's neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the following four priority areas: consumer, family, housing, and public benefits. It also maintains an appellate advocacy project that litigates poverty law matters in the D.C. Court of Appeals. More information about Legal Aid can be found on our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

Following the bill's introduction, and after sustained urging by advocates, the Department last fall finally shared a draft of regulations governing the LIHEAP program. We recognize that getting this draft on paper involved significant time, effort, and thought by the agency's legal and policy staff, and we are pleased to have the process under way.

Nonetheless, as we have communicated to the agency, this first draft of the regulations does not do nearly enough to shed light on the administration of the LIHEAP program. In critical areas, the proposed regulations offer only an administrative framework for operating the program, without any meaningful guidance regarding eligibility standards or policies for determining benefit levels. For example, the draft indicates that each year, the Department will determine eligibility criteria and publish its decision – but in most public benefits programs, that determination is made once, not annually. Once made, it is published in the regulations, subject to change only for important reasons and only subject to notice and comment. There is no reason that LIHEAP should be different.

Because they are so general in nature, the proposed regulations represent a missed opportunity for DDOE to describe clearly the current rules and processes of the LIHEAP program, and to make the policy decisions that would govern the future of the program. These decisions are not easy; they reflect the need to balance competing priorities, such as the desire to serve more residents versus providing a larger and more meaningful benefit to each, or the need to verify information versus the need to respond quickly in crisis situations.

To provide transparency and accountability for LIHEAP, DDOE must make these key policy decisions, negotiate them through the notice-and-comment process, and publish the final result in program regulations. The current draft does not reflect that the agency has undertaken these policy discussions. Nor does the agency appear to be in any hurry to move to the next stage; although we provided informal comments in November, we have yet even to meet with agency staff regarding our comments. In January, the agency responded that it intends to publish redrafted proposed regulations, as well as a list of federal and District laws related to the program. Furthermore, they have invited advocates to meet and discuss these issues as they move forward. However, despite this expressed interest, the process seems to be stalled once again.

We recognize that DDOE has a large portfolio and that, like all city agencies, it operates with limited resources. But we have been working with the Department on these LIHEAP issues for nearly three years. In that time, we have not moved much closer to having a program that is transparent to participants, advocates, or the government employees who administer it. We hope that in the coming year, and with the Council's oversight, the agency will finally complete regulations that give structure and accountability to this critical program.