



**Written Testimony of Beth Mellen Harrison  
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**The Committee on Housing and Neighborhood Revitalization  
Council of the District of Columbia**

**Performance Oversight Hearing on the Department of Housing and Community  
Development and the Rental Housing Commission  
March 3, 2017**

The Legal Aid Society of the District of Columbia<sup>1</sup> welcomes this opportunity to submit written testimony about the impact of the Rental Housing Commission (RHC) and the Rental Accommodations Division (RAD) of the Department of Housing and Community Development on low-income tenants in the District of Columbia and the performance of both agencies.

Legal Aid represents hundreds of low-income tenants in housing cases each year. Many of these cases involve eviction protections and rent control requirements found in regulations promulgated by the RHC. Through these regulations, among other functions, the RHC has a profound impact on the numerous laws that protect tens of thousands of tenants in the District, including low-income tenants served by Legal Aid. Similarly, the RAD – as the clearinghouse for all rent control filings in the District – provides critical information for tenants living in rent control properties, providing them with the tools they need to understand and enforce their rights.

The RHC currently is engaged in a lengthy rulemaking process to revise all rent control and eviction regulations in the District. We applaud the RHC for taking on this task, but we also have concerns. The RHC has offered some opportunities for stakeholder input in the rulemaking process already, but we believe that more can and must be done in the months ahead to provide an effective and balanced rulemaking process.

With respect to the RAD, we are disappointed in the lack of progress to date in implementing the creation of a Rent Control Housing Clearinghouse under the 2015 Budget Support Act. Without this database of rent control filings, too many tenants currently are left in the dark about the rent control status of their units.

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<sup>1</sup> 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 85 years, Legal Aid staff and volunteers have been making justice real for tens of thousands of the District’s neediest residents. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer law.

## **The Rental Housing Commission Should Seek Greater Stakeholder Input in Its Rulemaking Process.**

Legal Aid remains concerned that long-overdue amendments to the RHC's regulations are being formulated with insufficient stakeholder input prior to publication for comment. This is disappointing – and very different from our experience with other agencies.

The RHC last issued comprehensive regulations in 1986, despite numerous changes in the Rental Housing Act itself, decisional case law, and the rental housing market in the District in the intervening years. New laws that significantly changed the District's rent control regime – including the OAH Establishment Act of 2001 and the Rent Control Amendment Act of 2006 – still have not been incorporated into current regulations. Housing providers, tenants, and judges are left to make their best judgments as to how to implement these and other legislative changes.

We applaud the RHC for investing the time and resources to bring amended regulations to fruition. Regulations now have been drafted that will address not only the rent control portions of the regulations, but also those relating to eviction. These regulations are vital to protecting tenants' rights and preserving affordable housing in the District.

Nonetheless, we remain concerned that the RHC has not sought sufficient stakeholder input into the scope of the current draft or the key policy issues to be addressed. To date, the RHC has met only with other government agencies – the Rent Administrator, the Office of Administrative Hearings, the Housing Provider Ombudsman, and the Office of the Tenant Advocate – to review the current draft.

While Legal Aid and other tenant advocates have not been invited to the table, the RHC did share a draft of the regulations with Legal Aid and with the Apartment and Office Building Association (AOBA) last June. Legal Aid welcomed this opportunity to share input with the RHC. Unfortunately, Legal Aid was not permitted to share this draft with any other legal services providers or tenant organizers to seek their input. Based on our substantial experience representing individual tenants and tenant associations, we provided comprehensive written comments on the regulations, numbering 35 pages. The Office of the Tenant Advocate then was tasked with bringing forth the concerns and questions raised by Legal Aid. Legal Aid itself has had only limited contact with the RHC since then; we have not been able to sit down and talk through our comments.

While receiving feedback from the Office of Tenant Advocate and the Housing Provider Ombudsman is an important step, we do not believe it will be sufficient to capture the interests of either tenants or housing providers. Nor do we believe this process the best one to produce our common goal of high-quality, well-drafted, internally-consistent regulations. We also understand that the RHC intends to provide an extended notice and comment period once the regulations are published. While this is commendable, even a 60-day review period is not sufficient for full consideration of 170 pages of proposed regulations that were last updated 30 years ago.

Other agencies that we work with often seek input from Legal Aid and other providers before publishing proposed regulations for notice and comment. This type of informal

stakeholder review serves two key functions. First, it maximizes transparency and ensures input early in the process from the parties who will be most affected. Second, we believe it results in a more efficient and effective rulemaking process, because many points of concern and possible contention can be resolved informally, avoiding a lengthy notice-and-comment process. The public comment stage can be an effective tool for fine-tuning new rules, but the affected community should have an opportunity to provide insight into the scope of the amendments and key policy decisions at the formative stage of drafting the amendments.

It has been our experience in many other rulemaking processes that the best possible feedback and revisions emerge when agencies convene a series of in-person stakeholder meetings, where representatives from all sides – here, government agencies as well as housing provider and tenant interests – can engage in an open, dynamic, and collaborative process. While such a process may appear to be time-consuming, it is a wise investment of resources to ensure high-quality, balanced rulemaking, and it typically avoids a lengthy notice-and-comment process in which multiple rounds of subsequent revisions may be required. Once the inter-agency review of the current draft regulations is complete, we urge the RHC to convene this type of stakeholder working group.

**The Rental Accommodation Division Should Ensure That All Rent Control Filings Are Accessible to the Public.**

RAD oversees the District's rent control regime and is the depository for all rent control filings by housing providers and tenants. This includes rent increase notices, registration forms, and claims of and approval for exemptions. RAD also is the initial filing place for all tenant and housing provider petitions. Many of these petitions are forwarded on to the Office of Administrative Hearings for resolution, but other petitions are resolved by RAD.

For a tenant living in a rent control property – including many of the low-income tenants that Legal Aid serves – access to all of this information is vital in order for the tenant to understand and enforce his or her rights. For an attorney trying to help, investigating a tenant's claims of an illegal rent increase or a wrongful exemption or lack of registration is close to impossible without easy access to these filings. Broad public access to this information supports private enforcement, incentivizes housing providers to comply with the law, and ultimately promotes the preservation of affordable housing.

For a number of years, RAD has maintained public access computer terminals where individuals can conduct searches for scanned filings. The system is not complete – exemption filings and tenant filings have not been included, and petitions of all kinds are kept separately. Moreover, tenants or their representatives have to visit the physical office in person to access the filings. But in the past, the public access computer terminals at least have provided access to rent increase and registration notices.

Unfortunately, Legal Aid has found in the past few years that the public access system no longer functions well, and other means of requesting documents also have significant problems. We have a number of examples from the past two years (and before) of instances in which RAD has been unable to provide important rent control filings to our attorneys or our clients.

The Council already has enacted legislation to address these challenges. The Rent Control Housing Clearinghouse Amendment Act of 2015, enacted as part of the Budget Support Act of 2015, requires RAD to establish an online searchable database of all rent control filings that housing providers submit to RAD. It is our understanding that RAD has begun implementation of this initiative, but to date the public has yet to see any tangible results.

We urge RAD – working with the Office of Tenant Advocate and the Chief Technology Officer, as the legislation requires – to prioritize full implementation of this initiative. While this is an urgent need, RAD nonetheless should consult with stakeholders carefully along the way to ensure that they get this right. The ultimate goal should be ensuring that all members of the public can receive timely access to rent control information about specific units.

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In sum, while we commend the RHC for investing time and resources into a comprehensive overhaul of existing regulations, we nevertheless remain both cautious and concerned. We hope that as the RHC moves forward, it will invite Legal Aid and other stakeholders to the table to ensure meaningful input in this important rulemaking process.

We also urge RAD to take all necessary steps to ensure that all rent control filings are readily-accessible to the public, including prioritizing full implementation of a Rent Control Housing Clearinghouse.

Thank you for this opportunity to submit written testimony.