

**Testimony of Amanda Korber
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**Before the Committee on Housing and Neighborhood Revitalization
Council of the District of Columbia**

Performance Oversight Hearing Regarding the District of Columbia Housing Authority

February 21, 2018

The Legal Aid Society of the District of Columbia¹ submits this testimony to recognize the important strides the DC Housing Authority (DCHA) has made during the past few years in serving our shared client community.² Specifically, DCHA's Housing Choice Voucher Program (HCVP) streamlined its customer service and recertification processes so tenants do not need to spend as much time waiting at the Housing Authority. DCHA also improved its online systems, allowing HCVP participants to easily view their inspection appointments. Legal Aid is also happy to report that after a year-long hiatus, DCHA has begun holding regular meetings with advocates and resumed sharing its proposed regulations, and soliciting advocates' feedback, prior to releasing regulations for notice and comment.

Legal Aid also submits this testimony to recommend four changes the Housing Authority should make to better serve its clients and fulfill its mission to provide affordable housing to those most in need. First, DCHA should continue to oversee and improve its customer service operations to ensure that tenants can easily and quickly meet with their housing specialists. Second, DCHA should amend its regulations for the Rental Assistance Demonstration to ensure that tenants currently living in public housing retain their right to defend themselves in DC Superior Court in the event that DCHA tries to terminate their assistance. Third, DCHA should better track Recommendations for Termination from the HCVP so as to identify trends and consider measures that could be taken to ensure participants' long-term and successful participation in the program. Fourth, DCHA should not increase the income eligibility requirements for its Homeownership Assistance Program.

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 80 years, Legal Aid attorneys and volunteers have served tens of thousands of the District's neediest residents. Legal Aid currently works in the areas of housing, family, public benefits, consumer, and appellate law. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

² While we at Legal Aid do regularly find ourselves on opposite sides of a case against the Housing Authority in court, we also have a long history of collaborating and strategizing with the agency on how to best serve our shared client population.

DCHA SHOULD CONTINUE TO IMPROVE ITS CUSTOMER SERVICE FOR HCVP PARTICIPANTS

DCHA has made important strides in serving its HCVP participants over the last few years. In July 2016, DCHA exercised its Moving to Work authority to amend its regulations so that HCVP participants do not have to report income increases in between biannual recertifications. This important measure reduces the administrative burden on agency employees who no longer have to process regular income changes and has the added benefit of allowing families to save more of their earnings, thus promoting long-term economic stability.

Around the same time that the HCVP changed its income-reporting rules, it also eliminated its weekly walk-in day for tenants. In years past, if tenants wanted to meet with their housing specialists, they had to go to DCHA on Tuesdays and wait in line. Now, tenants can simply call their housing specialists and make appointments. While this is a welcome change, Legal Aid has worked with some tenants who have trouble getting in touch with their housing specialists or scheduling timely appointments. The timing of appointments is particularly important for tenants seeking to report a loss of income. In order for DCHA to decrease a tenant's portion of the rent for the following month, a tenant needs to report her income change before the first of the month. Therefore, if a tenant calls for an appointment to report a loss of income but DCHA does not schedule the appointment until the following month, her rent will not be timely adjusted and she is likely to fall behind.

Legal Aid recommends that DCHA continue to improve its customer service for HCVP participants, and ensure that its participants know how to, and are able to, get in touch with their housing specialists to schedule timely appointments. Specifically, DCHA should schedule appointments for interim recertifications within five (5) business days of a participant's call or before the last day of the current month, whichever is sooner. Alternatively, DCHA could clarify that interim recertifications will be retroactive to the date the participant called to schedule the appointment.

DCHA SHOULD AMEND ITS RENTAL ASSISTANCE DEMONSTRATION REGULATIONS TO ENSURE THAT PUBLIC HOUSING RESIDENTS RETAIN THEIR RIGHT TO JURY TRIALS AFTER RAD CONVERSIONS

The Rental Assistance Demonstration (RAD) is a federal program that allows housing authorities to convert traditional public housing units into project-based Section 8 units. We were happy to hear that, at least for now, DCHA intends to retain ownership over its properties that undergo RAD conversions (this is not the case in many other jurisdictions).³ However, DCHA's

³ The RAD program is intended to help housing authorities rehabilitate aging public housing stock. While Legal Aid recognizes that many of DC's public housing communities need an influx of money to complete necessary repairs given that the Federal Government is not properly funding its programs, we strongly encourage the Council to give local dollars to DCHA to fill in this gap and ensure that traditional public housing – housing that is owned and operated by the government – remains viable in DC. Not only is traditional public housing an important public asset worth preserving, but private companies do not do as good a job as DCHA at managing these properties. Unfortunately, Legal Aid has seen first-hand that when private companies step in to run public housing properties, they regularly violate program rules and sometimes do not even understand that the properties are governed by special federal and local laws.

regulations that govern the RAD program contain some troubling provisions. Most importantly, these regulations allow DCHA to terminate a tenant's housing assistance through an administrative hearing instead of through the court process, which is currently required. This means that tenants could not exercise their right to formal discovery and a jury trial before being evicted from their homes. Instead, they could lose their housing through a quick administrative process, which provides few, if any, of the safeguards offered by DC Superior Court.

Tenants in RAD properties owned by DCHA should have the same rights regarding subsidy termination and eviction as public housing residents. This means that in the event of an alleged program violation, DCHA should have to serve the tenants with a Notice to Correct or Vacate (or a Notice to Vacate if the alleged offense falls under the "one strike" law). Then, if DCHA alleges that the tenant did not cure the violation, DCHA would have to file an eviction case in the Landlord and Tenant Branch of the DC Superior Court. The tenant could then assert his or her right to a trial – jury or bench – and challenge the eviction in court.

Under DCHA's current RAD regulations, DCHA could evict a tenant at a RAD property based on an alleged lease violation without giving the tenant the opportunity to present defenses and have the facts underlying DCHA's allegations determined by a judge or jury in DC Superior Court. If DCHA believes a tenant has or is committing a serious lease violation, it could issue a recommendation for termination against the tenant. Then, the tenant must request an informal hearing to dispute the recommendation for termination. At the informal hearing, a hearing officer would make conclusions of facts and law and either uphold or deny the recommendation for termination. If the hearing officer upholds the termination, DCHA can terminate the tenant's subsidy, leaving the tenant unassisted and responsible for the full rent. DCHA can then sue to evict the tenant, either for failing to pay the full market rent or for the lease violation itself (and argue that the tenant is precluded from relitigating the hearing officer's factual findings).⁴

In either case, this scheme, which allows DCHA to evict its own tenants without affording them the opportunity for a meaningful judicial hearing, raises substantial constitutional questions. Tenants in the District of Columbia have the right to a trial by jury in any eviction case.⁵ This right cannot be waived.⁶ The right to a trial by jury means the right to have a jury resolve factual questions.⁷ Were DCHA to use the afforded voucher termination and informal hearing process against its own tenants, this would be a serious obstruction of the tenants' Seventh Amendment rights. We find this possibility disturbing and recommend that DCHA amend its regulations to clarify that tenants in DCHA-owned RAD properties will only be evicted, and consequently have their subsidies terminated, through judicial actions.

⁴ DCHA says that this is not what it would do. Instead, DCHA has told advocates that while it would go forward with the administrative hearing, it would also use the DC Superior Court process, and "stay" any administrative decision until the Court process is complete. However, DCHA has not explained what it would do in the event that the Court's final judgment differs from the administrative Hearing Officer's decision.

⁵ See U.S. Const. amend. VII; *Pernell v. Southall Realty*, 364 U.S. 363 (1974).

⁶ 14 DCMR § 304.4.

⁷ See, e.g., *Ex parte Peterson*, 253 U.S. 300, 309-310 (1920).

DCHA SHOULD BETTER TRACK ITS RECOMMENDATIONS FOR TERMINATIONS

DCHA issues Recommendations for Termination (RFTs) when it alleges that a family has violated HCVP rules. Our understanding is that while DCHA can report the number of RFTs it issues each year, and how many of those RFTs result in a family's actual termination from the program, DCHA does not track the reasons it issues those RFTs in the first place. It is critically important that DCHA and advocates know the reasons why the agency recommends families for termination, and actually terminates families, from the HCVP. This would allow DCHA and advocates to recognize patterns in the reasons for termination and analyze whether there are any changes DCHA can make to decrease the number of attempted and actual terminations. Advocates would also be able to learn how common problematic types of terminations are.

For example, Legal Aid has seen an increase in a particularly troubling type of termination: DCHA's issuance of RFTs at the request of landlords. Though Legal Aid has raised this concern with DCHA in the context of individual cases within the last year, we were not able to bring this concern directly to the Director of the HCVP until last week. Since then, we have already had a phone call with DCHA about our concern and are hopeful that we will continue to engage in meaningful conversations with DCHA around this issue going forward.

This practice is troubling for two reasons. First, such terminations are often unlawful under DC law, which prohibits landlords from retaliating against tenants for exercising their rights.⁸ If a landlord complains to DCHA about a tenant soon after the tenant exercises their rights, including their right to complain about housing code violations or other violations by the landlord, the landlord's behavior is presumptively retaliatory and unlawful. A landlord should not be able to use DCHA as its agent to accomplish what it cannot do directly under DC law. Otherwise, DC's anti-retaliation law would be rendered meaningless.

Second, even if these RFTs were not unlawful, as a matter of policy DCHA should not assist a landlord in leveraging a tenant's housing assistance to silence complaints or stop tenants from otherwise exercising their rights. Because many HCVP participants would be homeless without their housing vouchers, their landlords are positioned to use DCHA's willingness to issue RFTs to silence tenants living in unlawful and dangerous conditions. Unfortunately, Legal Aid has witnessed this first hand. At a minimum, DCHA should conduct its own investigation if and when a landlord complains and independently verify all allegations and exercise its own discretion as to whether termination may be warranted before issuing an RFT.⁹ Additionally, the Office of General Counsel should review each RFT before it is issued to ensure DCHA's compliance with the law.

⁸ DC Code § 42-3505.02.

⁹ For example, if a landlord's complaint is that a tenant is withholding rent, DCHA should not do any further investigation. It is well established under DC law that tenants are entitled to withhold rent if they are living with housing code violations. *See Javins v. First National Realty Corp.*, 428 F.2d 1071 (DC Cir. 1970). DCHA should only consider termination for nonpayment of rent where a tenant has been evicted for failing to pay rent, and should consider mitigating circumstances in those cases as well.

Legal Aid looks forward to working with DCHA to explore ways that DCHA can track and report the reasons it attempts to and actually does terminate participants so that it can correct practices that result in the problematic types of terminations described above.

DCHA SHOULD NOT INCREASE THE INCOME ELIGIBILITY REQUIREMENTS FOR ITS HOME OWNERSHIP ASSISTANCE PROGRAM

DCHA has provided Legal Aid and other advocates with proposed regulations that would increase the income eligibility requirements for the Home Ownership Assistance Program (HOAP). Our understanding is that DCHA does not plan to make any changes to the income eligibility section prior to publishing the proposed regulations. HOAP participants in the HCVP can use their vouchers to pay a mortgage, instead of rent, if they are able to qualify for a loan and buy a home. This program is critically important, as homeownership is vital for building intergenerational wealth in marginalized and oppressed communities. Therefore, Legal Aid opposes DCHA's proposal to increase HOAP's income eligibility requirements.

Legal Aid understands that DCHA's reason for increasing HOAP's income eligibility requirements is as follows: DCHA does not believe it should be paying a family's entire mortgage because homeowners need to be self-sufficient or on their way to self-sufficiency. This is problematic for two reasons. First, raising income eligibility requirements will erode one of the major benefits of the program: that it corrects a legacy of discrimination that has allowed white families in the District and elsewhere in the United States to transition to home ownership – with significant government help – while locking black residents out of the same opportunities. White Americans have been able to, on average, accumulate vastly more wealth than black Americans not because they are inherently more self-sufficient, but because of discriminatory laws and policies, like redlining and the Serviceman's Readjustment Act of 1944 (the GI Bill), which gave them access to desirable housing markets and beneficial financial tools. Depriving marginalized communities of similar help on the basis of a lack of "self-sufficiency" is not only hypocritical, but slows the remedy of a longstanding deprivation.

Second, it costs DCHA no more money to pay a person's mortgage than a person's rent. This is so because DCHA's payment standards – the maximum amount DCHA will pay for a family's housing each month – apply in both the rental and homeownership programs. The only difference is that in one program, DCHA is enriching a landlord (and, likely, giving a landlord money it will use to pay its own mortgage) instead of its program participant.

Legal Aid understands that as a practical matter, a family that does not have much income will have trouble buying a home regardless of the program's income eligibility requirements. However, all families should have the opportunity to participate in this program if they are able to, and DCHA should not increase the barriers to it.

CONCLUSION

Legal Aid looks forward to working with DCHA and the Council in the coming year to ensure that more of DC's families have access to safe, stable, and affordable housing. While DCHA can implement many of Legal Aid's recommendations without the assistance of the

Council, Legal Aid strongly encourages the Council to provide DCHA with the funding it needs and is not getting from the Federal Government to properly carry out its duties and serve our shared clients.