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**Before the Committee on Housing & Neighborhood Revitalization  
Council of the District of Columbia**

**Public Oversight Hearing Regarding the Rental Housing Commission, the Housing Finance  
Agency, and the Office of the Tenant Advocate**

**February 7, 2019**

The Legal Aid Society of the District of Columbia<sup>1</sup> submits the following testimony on the impact of the Rental Housing Commission (RHC), the Housing Finance Agency (HFA), and the Office of the Tenant Advocate (OTA) on low-income tenants in the District of Columbia and the performance of these agencies. With respect to the RHC and HFA, we urge the Committee to monitor the progress of key rulemakings currently pending before the agencies. These regulatory changes are needed to ensure that tenants receive the full benefits of recent Council legislation. Similarly, this Committee should continue to monitor OTA’s progress on implementation of the Rent Control Housing Clearinghouse and should work with the agency to identify and address any impediments to bringing this database online by the end of this year.

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. Similarly, the HFA has regulatory oversight over rental units in the District that are assisted by that agency and issues regulations to ensure that tenants in these units receive the same protections from eviction and retaliation as all other tenants. Through these regulations, among other functions, the HFA and the RHC have a profound impact on tens of thousands of tenants in the District, including low-income tenants served by Legal Aid. It is vital that both agencies timely issue updated regulations when District law changes, to ensure that new tenant protections are fully implemented.

The Office of the Tenant Advocate interacts with thousands of District tenants every year and plays a key role in ensuring that tenants are educated about their rights and receive timely referrals to attorneys when appropriate. Among other functions, the Council has tasked OTA with developing a comprehensive rent control database, which – when operational – will provide general information about all rental housing units and detailed information about those that fall under rent control. This important project languished for two years with the Department of

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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.” Over the last 87 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 areas of housing, family law, public benefits, and consumer protection.

Housing and Community Development, with little to no progress; it is critical that the project move ahead on time with OTA's support.

On these and other issues, we also recommend that the RHC, HFA, and OTA continue to communicate with and receive input from stakeholders, including Legal Aid.

**The Rental Housing Commission Should Complete Rulemaking to Ensure That Tenants Receive the Full Protections of New Laws, Including the Elderly and Tenants with Disabilities Protection Act**

For several years now, the RHC has been 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, which we also shared with this Committee during oversight hearings for the last three years. 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. We also hope that enactment of the Rental Housing Commission Independence Clarification Amendment Act, B22-0640, will help the RHC to speed up government review of the current draft regulations so that the rulemaking process can move forward.<sup>2</sup>

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. Housing providers, tenants, and judges are left to make their best judgments as to how to implement these and other legislative changes. The RHC now has invested significant time and resources to draft amended regulations. These regulations are vital to protecting tenants' rights and preserving affordable housing in the District.

However, 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. It is our understanding that 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.<sup>3</sup> Now that the inter-agency review is complete or near-

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<sup>2</sup> It is our understanding that release of the drafted regulations has been delayed by internal reviews at the Department of Housing & Community Development and within the Executive Branch. Once the RHC's independence status is clarified, the agency should be able to move forward without this level of review.

<sup>3</sup> The RHC did share a draft of the regulations with Legal Aid and with the Apartment and Office Building Association (AOBA) in June 2016. 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, tenant organizers, or tenant leaders 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

complete, we urge the RHC to convene a stakeholder working group to review and discuss the regulations prior to formal publication for notice and comment.

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. We believe this approach is necessary, particularly given the scope of this rulemaking – approximately 170 pages of draft regulations that were last updated 30 years ago.

In working on updated regulations, we also recommend that the Commission separate out and give priority to new regulations to implement the Elderly and Tenants with Disabilities Protection Act. The Council enacted this law in February 2017 and fully funded it in this year’s budget. While the law currently is in effect, we are concerned that implementation may lag – at least on a practical level – until RHC issues regulations.

Among other protections, the new law ensures that elderly and tenants with disabilities are not required to pay rent increases approved under housing provider petitions. To make up for this potential lost revenue, housing providers will receive a dollar-for-dollar tax credit. This provision is vital to ensure that elderly and tenants with disabilities, who often have limited income and are simply unable to pay large rent increases, will avoid displacement.

Legal Aid currently represents Mr. R and three other tenants in a hardship petition case pending before the Office of Administrative Hearings. Mr. R is elderly and has several disabilities. His only income is Social Security benefits. Mr. R has lived at the property for several decades. His current rent is affordable by District standards and is something he can bear even with his limited income. Fortunately, Mr. R is protected from the 68 percent rent increase sought by his landlord in the pending hardship petition. But we remain concerned that without implementing regulations it may be difficult for Mr. R’s landlord to receive the matching tax credit to which it is entitled. Legal Aid currently is working with two other buildings facing hardship petitions, both of which include elderly and tenants with disabilities.

On this issue, we urge the Committee to monitor the Commission’s efforts to issue, review, and ultimately finalize these regulations. With respect to the larger, comprehensive rulemaking, we hope the Committee will join us in urging the Commission to engage both landlord and tenant stakeholders before moving towards publication. On the specific issue of the Elderly and Tenants with Disabilities Protection Act, Legal Aid and other tenant advocates will be monitoring implementation of the new law and will alert the Committee to any real-world problems that may arise based on the lack of implementing regulations. Should problems arise and the rulemaking process be held up, the Committee should consider conforming amendments

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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.

to the statute itself to ensure that the new protections for elderly and tenants with disabilities can be implemented fully.

**The Housing Finance Agency Should Complete Rulemaking to Ensure That Tenants in HFA-Assisted Projects Receive the Full Protections of the Eviction with Dignity Act**

HFA currently is in the process of amending its regulations to ensure that tenants in HFA-assisted projects will receive the same protections from eviction as all other tenants in the District, an issue that was highlighted with the recent passage of the Eviction with Dignity Act. We applaud HFA for taking swift action on this issue and look forward to providing comments when the new regulations are published for public comment.

By way of background: In December 2018, the Council passed the Eviction with Dignity Act, following the enactment of similar emergency and temporary legislation, to change the procedures for how evictions are carried out in the District. The Eviction with Dignity Act contains important new protections for tenants, requiring landlords to provide at least 21 days' notice of a date certain for an eviction, to store a tenant's belongings in the unit for seven days after an eviction, and to provide access for a tenant to retrieve belongings during this period; ensuring that tenants are not evicted when precipitation is falling; and providing tenants with the right to injunctive relief if a landlord does not follow the law.

Because of a fluke in District law, however, these protections do not apply to tenants in projects assisted by HFA. These projects – including all units under the Low-Income Housing Tax Credit Program, for example – are exempt from the entire Rental Housing Act, title 42, chapter 35:

Housing projects assisted by the Agency or through the auspices of the Agency under the provisions of this chapter shall be exempt from the provisions of Chapter 35 of this title.<sup>4</sup>

The HFA statute does go on to instruct HFA to issue regulations applying eviction protections to these exempt tenants:

The Agency shall establish, by rulemaking, procedures for evictions and protections from retaliatory action for tenants of housing projects exempted from Chapter 35 of this title under subsection (a) of this section. Such procedures and protections shall be in accordance with subchapter V of Chapter 35 of this title.<sup>5</sup>

HFA currently has a regulation that incorporates eviction and retaliation protections. Unfortunately, that regulation incorporates regulations, not the statute itself:

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<sup>4</sup> D.C. Code § 42-2703.08(a).

<sup>5</sup> D.C. Code § 42-2703.08(b)

Tenants of Housing Projects shall be protected from eviction as well as retaliatory action in accordance with 14 DCMR sec. 4300-4399, as amended.<sup>6</sup>

In other words, tenants in HFA projects only receive those eviction protections found in the above sections of 14 DCMR. Those regulations in turn were last amended substantively several decades ago (despite intervening changes in law), an issue noted below in our testimony regarding the Rental Housing Commission. As a result, tenants in HFA-assisted project will not benefit from the new protections in the Eviction with Dignity Act.<sup>7</sup> The scope of this problem is significant. According to HFA's 2017 annual report, their current portfolio includes 152 multi-family properties with 20,653 units. That is about 13% of all renters in the District.

We understand that the Committee raised concerns about this issue with HFA in December 2018, at the time of the final Council vote on the Eviction with Dignity Act. We appreciate the Committee raising this issue. HFA responded promptly by drafting proposed regulations, which were approved by the HFA Board on January 22, 2019. These regulations are now pending review with the Office of the Attorney General and then will be published as emergency and proposed rulemaking. While we have not seen the proposed regulations, we are very encouraged by HFA's swift action on this issue. We look forward to providing any input that we may have on the approach taken by HFA once the regulations are published for public comment.

As with the RHC regulations, we urge the Committee to monitor the agency's efforts to issue, review, and ultimately finalize these pending regulations. Ultimately, they represent a key step to ensuring that tenants are fully covered by the eviction protections that the Council passed. Should this process be held up for any reason, the Committee should consider conforming amendments to the statute itself to close this gap in the law.

### **The Office of Tenant Advocate Should Prioritize Completion of the Rent Control Housing Clearinghouse, Including Seeking Stakeholder Input**

The Office of the Tenant Advocate is tasked with creating the Rent Control Housing Clearinghouse, "a user-friendly, Internet-accessible, and searchable database for the submission, management, and review of all documents and relevant data housing providers are required to submit" to the Rental Accommodations Division related to rent control.<sup>8</sup> The current deadline for this database to be fully operational is December 13, 2019. We look forward to hearing from OTA directly at this oversight hearing, and at the agency's budget hearing in March, about any impediments to meeting the December 2019 deadline and any additional resources or other supports that are needed for OTA to meet this deadline.

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<sup>6</sup> 10-B DCMR § 3510.1.

<sup>7</sup> For the same reason, tenants in HFA-assisted projects technically are not covered by the Protection from Discriminatory Eviction for Victims of Domestic Violence Amendment Act of 2006, which protects survivors of domestic violence from eviction.

<sup>8</sup> D.C. Code § 42-3502.03c(a).

Once completed, the database will provide information on rent control/exempt status, bedroom configuration, and licensing status for all rental units, and – for units subject to rent control – information about rent level, current housing code violations, and current rate of return. Under the Rental Housing Registration Update Amendment Act of 2017 (passed as part of the Budget Support Act of 2018), all housing providers are required to re-register their rental units with this same information. Together these projects will ensure that government agencies, the Council, advocates, and members of the public will have comprehensive and up-to-date information on all rental units in the District.

Unfortunately, the database project already has been subject to several years of delays. The Council first mandated the creation of the database in the Budget Support Act of 2015 and tasked the Rental Accommodations Division with creating it. After two years with little progress to show, the Council transferred responsibility to OTA under the Budget Support Act of 2017. It is our understanding that OTA now has been somewhat stymied in its own progress by delays in the District’s procurement and contracting approval process for releasing a Request for Proposals for a contractor to produce the database.

We also encourage OTA to seek stakeholder input, from both housing providers and tenants and their advocates, as it develops the database. We know this a goal shared by OTA, and we look forward to working with the agency on this important project.

The Committee should continue to monitor OTA’s progress in bringing the database to fruition. To the extent budgetary or other obstacles are identified, we urge the Committee to address these so that this important project finally can be completed.

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Thank you for this opportunity to testify about these agencies’ performance. We look forward to continuing to work with the Committee to monitor the Housing Finance Agency and Rental Housing Commission’s progress on pending rulemakings, and the Office of Tenant Advocate’s progress on the rent control database, and to identify any related budgetary needs or appropriate statutory amendments.