

**Testimony of Beth Mellen Harrison
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**Before the Committee of the Whole
Council of the District of Columbia**

Public Oversight Roundtable Regarding:

**District of Columbia’s Office of Inspector General Report:
“Department of Consumer and Regulatory Affairs: Civil Infractions Program Lacked a
Strong Internal Control Environment”**

June 25, 2019

The Legal Aid Society of the District of Columbia¹ welcomes this opportunity to share our thoughts about the performance of the Department of Consumer & Regulatory Affairs (DCRA) and the issues raised in the recent report issued by the Office of Inspector General (OIG), “Department of Consumer and Regulatory Affairs: Civil Infractions Program Lacked a Strong Internal Control Environment.”²

Over the past two years, Legal Aid has testified at eleven prior Council hearings and roundtables about DCRA’s fundamental failure to enforce the housing code and protect tenants in the District. Enforcement breaks down at every step in the process, including the focus of the OIG report: DCRA’s failure to enforce civil infractions by collecting fines from landlords. Legal Aid remains concerned that as result of this and other systemic failures, far too many tenants in the District are living in substandard conditions that threaten the health and safety of their families.

This Committee should ensure that DCRA implements OIG’s recommendations by adopting written policies for fine collection, ensuring compliance with regulatory requirements, and updating its computer system to track fine collection, among other recommendations.

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.” 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, immigration, and consumer protection. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

² District of Columbia Office of the Inspector General, *Department of Consumer and Regulatory Affairs: Civil Infractions Program Lacked a Strong Internal Control Environment* (May 2019), available at:

<http://app.oig.dc.gov/news/view2.asp?url=release10%2FOIG+Final+Report+No%2E+19-I-02CR+DCRA+Civil+Infractions+Program%2Epdf&mode=release&archived=0&month=00000&agency=0>.

The Office of Inspector General Report Highlights Systemic Problems with DCRA Enforcement

In past testimony, Legal Aid has shared problems that we continue to observe in DCRA's rental housing inspections program. Too often, tenants encounter obstacles and delays in scheduling inspections, a variety of difficulties during the inspection process, and challenges obtaining reports after the inspection process. Even when violations are found, too often DCRA fails to pursue fines and other remedies against landlords who have broken the law and also lacks strategic focus to target problem landlords. The result is under-enforcement of the housing code.

OIG's report highlights one aspect of this process – the collection of fines once DCRA has cited violations and issued civil infractions – and details how enforcement breaks down.³

OIG Concludes That DCRA's Lax Approach to Enforcement Allows Violators to Escape Consequences

The collection of fines is one of the final steps in the enforcement process, after DCRA already has performed an inspection, found one or more violations, issued a notice of infraction(s), and the landlord either has admitted liability or been found liable in an administrative hearing.⁴ DCRA's Office of Civil Infractions (OCI) is responsible for handling all aspects of fine collection. OCI sends out notices of infractions to violators, forwards them to the Office of Administrative Hearings for a final order, tracks case outcomes, collects and tracks payments, and takes further steps when violators do not pay assessed fines. OIG found that OCI lacked internal controls to ensure effective enforcement, with multiple breakdowns in this piece of the enforcement process.

- DCRA Lacks Written Policies and Procedures. OIG found that OCI does not have any written policies or procedures governing its work.⁵ Employees are inconsistent on certain practices, such as how fines actually are paid. In its April 2019 written response to the OIG report, DCRA stated that it recently had adopted standard operating procedures and that a copy was attached to its response. However, OIG reported that no document was attached and that this document was not provided when OIG followed up and requested it. We urge the Committee to inquire as to these standard operating procedures.
- DCRA Does Not Follow Regulatory Requirements. OIG found that OCI does not comply with several regulations related to the collections of fines. Specifically, DCRA does not appear to collect interest on unpaid fines, allow for installment

³ The OIG investigation examined policies and practices that are common to enforcement for all manner of civil infractions issued by DCRA, for everything from housing code to weights and measures violations. Legal Aid will focus our comments on how the general findings by OIG apply to housing code enforcement.

⁴ *Id.* at 1-2.

⁵ *Id.* at 4-5, 6-7.

payments, or suspend licenses or permits when fines are not timely paid, all of which are authorized as part of the regulations governing fine collection.⁶ OIG also found that DCRA management does not track or monitor OCI's activities to assess the Office's performance or its compliance with regulatory requirements.⁷ We urge the Committee to inquire as to whether DCRA's newly-adopted standard operating procedures ensure compliance with these regulations.

- DCRA Cannot Track Enforcement Data. OIG found that DCRA's internal computer system does not contain accurate information on fine collection and does not allow DCRA to track fine payment or pursue violators who do not pay. DCRA management reported, for example, that the agency cannot produce a simple report showing the number and type of cases with outstanding fines due.⁸ DCRA responded to OIG that it is working on updating its systems to ensure accurate tracking of fines by the end of Fiscal Year 2019.⁹ We urge the Committee to inquire as to the status of this project.

Finally, OIG found that DCRA lacks effective policies and procedures to follow up on unpaid fines and ensure debt collection. After 90 days, unpaid fines are transferred to the Office of the Chief Financial Officer's Central Collections Unit for further enforcement steps. Unfortunately, that Unit reports that it takes no steps to collect on DCRA debt. In January 2019, OIG initiated a separate investigation of the Central Collection Units to identify areas for improvement. We look forward to reading that forthcoming report.

In the end, OIG concludes that inconsistencies in DCRA's policies and procedures for collecting fines mean that violators likely can escape any consequences of failure to pay. OIG's report includes nine recommendations for DCRA to improve its fine collection process; DCRA agreed with seven of the nine recommendations. This Committee should continue to monitor steps DCRA is taking to implement *all nine recommendations* from OIG, including ensuring that DCRA does the following:

- Adopt written standard operating procedures for the Office of Civil Infractions, make these documents public, and include policies that ensure compliance with all regulatory requirements;
- Update information systems to allow for real-time tracking and reporting on all outstanding fines; and

⁶ *Id.* at 5-6.

⁷ *Id.* at 7-8.

⁸ *Id.* at 11-13.

⁹ *Id.* at 14.

- Develop written policies and procedures for the transfer of outstanding debt to the Central Collections Unit, and work with that Unit to ensure that old debts are collected.

Problems With Fine Collection Are Longstanding at DCRA

It is worth noting that problems with fine collection are longstanding at DCRA. Over 10 years ago, in 2006, OIG issued a series of three reports detailing internal problems at DCRA. One of OIG's top findings then was that DCRA was owed over \$8.8 million in unpaid fines and penalties, but had no procedures or strategies for collecting them. OIG found at the time "that there is no cohesive, agency-wide process that targets recoupment of outstanding fines and penalties."¹⁰ At the time, OIG recommended that DCRA develop a consistent, standardized process for the collection of fines, including implementation of further enforcement steps for violators who do not pay, among other steps.¹¹

The 2006 OIG report cited a prior 1997 report with similar findings about DCRA's failure to adopt policies and procedures to ensure effective collection of fines.¹² Similarly, an analysis of DCRA fine collection by the Washington Post in 2008 found that for the prior three-year period, landlords had paid less than 20 percent of fines imposed by the agency.¹³ At the time, in response to a series of Post articles detailing enforcement failures, then-Director Linda Argo publicly vowed that DCRA would take steps to address these concerns. Yet twenty years after the 1997 report, and over 10 years after the 2006 report and the 2008 Post investigative series, DCRA has failed to follow through on prior recommendations or to take other steps to ensure strong enforcement, including fine collection.

Fundamental Agency Reform Is Needed

Many of DCRA's systemic failures in the enforcement process are both longstanding and well-known, yet they have gone unaddressed for years. Legal Aid urges this Committee to use this Council period to push forward pending and new legislation to address these failures, as outlined in our testimony to this Committee at DCRA's performance oversight and budget hearings:

- Mandate that DCRA employ a certain number of inspectors for every 10,000 rental housing units;
- Codify and strengthen the proactive inspections program;

¹⁰ Government of the District of Columbia Office of the Inspector General, *Department of Consumer and Regulatory Affairs Part One: Report of Inspection 4* (August 2006).

¹¹ *Id.*

¹² *Id.* at 16.

¹³ Debbie Cenziper and Sarah Cohen, The Washington Post, "A Failure of Enforcement" (March 11, 2008).

- Require DCRA to provide inspectors in the Landlord and Tenant Branch of D.C. Superior Court and codify the current practice of assigning an inspector to the Housing Conditions Calendar of the Court;
- Move forward to enact B23-0132, the Indoor Mold Remediation Enforcement Amendment Act of 2019, and amend the Bill to cover lead; and
- Move forward to enact B23-0091, the Department of Buildings Establishment Act, and strengthen the Bill further to create an independent agency specifically tasked with rental housing inspections and enforcement.

This Committee also should ensure full funding for the Department of Consumer & Regulatory Affairs Omnibus Amendment Act of 2018 (Act 22-0616) in the Fiscal Year 2021 budget.

Legal Aid Has Ongoing Concerns About Other Aspects of DCRA Enforcement

DCRA's failure to deter bad landlord conduct by collecting fines and assessing penalties against violators is one of several systemic failures in the enforcement process. Legal Aid remains concerned that current leadership is not doing enough to right longstanding wrongs in the enforcement process at DCRA. While not the focus of this hearing, Legal Aid is particularly concerned about DCRA's plans to allow private citizens to conduct housing code inspections.

DCRA's Plan For Citizen Inspectors Will Weaken Enforcement

For several months, Director Chrappah has previewed a new plan to train and deploy a team of citizen inspectors to perform housing code inspections on demand. Although Director Chrappah noted at DCRA's oversight hearing in February that successful implementation of such a plan would be challenging and require careful and thoughtful implementation, DCRA appears to be moving full steam ahead toward an imminent launch. Last Tuesday, June 18, 2019, Director Chrappah and Mayor Bowser held a joint press conference to announce plans for a pilot program for on-demand citizen inspections.

As described by Director Chrappah and Mayor Bowser, citizen inspectors will perform classwork and field training and then complete and pass a written exam before being certified to begin inspections. These inspectors will earn \$30 per inspection. While admitting that no other jurisdiction in the United States employs such a program, the Director and Mayor appear committed to implementing this concept very quickly.

This proposal raises a host of questions, among them:

- Will District residents feel comfortable inviting strangers who are not government employees into their homes to inspect?
- What liability will DCRA have for any negligent (or worse) behavior that occurs?
- How will DCRA maintain common standards and practices?

- How will DCRA ensure high-quality inspections, particularly when inspectors are only compensated \$30 per inspection?
- How will DCRA prevent conflicts of interest, for example property managers becoming certified and inspecting their own units?
- What role will DCRA government inspectors play in a new regime?
- Can DCRA ensure that the same citizen inspector returns for follow-up inspections?
- Can DCRA ensure that citizen inspectors will appear at OAH and other court hearings and take other steps needed for enforcement?
- When tenants raise claims against their landlords for housing code violations, will they be able to locate citizen inspectors to subpoena them to appear at hearings or produce documents?
- Can DCRA ensure those inspectors actually will show up for court and provide relevant documents?

Legal Aid fears that any plan for DCRA to rely on citizen inspectors will only weaken an already troubled enforcement environment, by leading to lower-quality inspections, less consistency, and less follow through on enforcement. This Committee should examine DCRA's plans for citizen inspections carefully and should demand real-time public reporting on the results of any such program.

Conclusion

Thank you for this opportunity to testify about our ongoing concerns about DCRA's lapses in enforcement. We look forward to working with members of the Committee, staff, and other advocates to ensure that legislation addressing DCRA's systemic failures can be considered and moved forward this Council period.