Legal Aid Society
OF THE DISTRICT OF COLUMBIA
MAKING JUSTICE REAL

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Before the Committee on Housing and Neighborhood Revitalization
Council of the District of Columbia

Performance Oversight Hearing* Regarding *the Housing Finance Agency

February 10, 2020

The Legal Aid Society of the District of Columbia[1] submits the following testimony regarding the practices and policies of the Housing Finance Agency (HFA), specifically with respect to the agency's implementation, operation, and recent closure of the District's HomeSaver program.

Legal Aid submits this testimony to highlight both the value and impact of the substantial work HFA has done through the HomeSaver program over the past several years to help distressed homeowners avoid foreclosure, and the loss the District has sustained as a result of the agency's recent decision to close HomeSaver when federal funds for the program remain available. This experience underscores the importance of HFA engaging with community stakeholders before making major programmatic changes whenever possible, so that high-impact decisions are fully informed by the realities, concerns, and needs of the communities that HFA's programs are designed to serve.

Background on the HomeSaver Program

HomeSaver is the District's foreclosure prevention program funded through the U.S. Department of the Treasury's Hardest Hit Fund. It was first created in 2010, and before its closure in July 2019, it provided critical home-saving assistance in the form of one-time "catch-up" or reinstatement funds to those suffering a qualifying hardship (such as a job loss) and meeting other eligibility criteria. In some cases, it also provided limited mortgage payment assistance going forward.

[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." Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 88 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

Attorneys in Legal Aid's Consumer Law Unit have substantial experience working with the population of homeowners who need HomeSaver program assistance the most. Our clients are among the most vulnerable homeowners in the District, in the most intensely gentrifying city in the United States.[2] They are low-income individuals and families who have suffered financial and other hardships often through no fault of their own. Many suffered from unemployment following the financial crisis, or underemployment more recently. Some are thankfully now back at work, but being able to afford the regular mortgage payment going forward is of little consequence if there is no way to address the arrears.

<u>HomeSaver is a High-Impact Tool for Preventing Avoidable Foreclosures, Keeping Communities and Families Intact, Preserving Affordable Housing, and Helping to Address Racial and Wealth Inequality in the District</u>

Through our foreclosure-prevention work, Legal Aid attorneys have worked extensively with HFA on HomeSaver-related issues, most frequently involving appeals of agency denials of applications for assistance. Over the past several years working with HFA on these cases, we have seen the level of individualized review and attention that many of our clients' applications and appeals have been given by agency staff when responding to advocacy from our office. When successful, and thanks to the hard work of HFA staff, many our clients—overwhelmingly homeowners of color—have experienced the life-changing positive impact of receiving HomeSaver funds. These funds not only allow our clients to avoid foreclosure but also help to preserve rare, long-term sources of affordable housing, keep families and communities intact, and save generational homes.

HFA's own data supports the value of HomeSaver. In responding to our questions about the program closure, HFA shared that its HomeSaver track record includes a homeowner retention rate of 93.8% after 24 months of mortgage assistance, and an overall retention rate of 88.36% for homeowners who were able to keep their homes after enrolling to receive assistance. HFA's data also shows that HomeSaver effectively assisted hundreds of struggling homeowners citywide—especially in Wards 5, 7, and 8. Through Q3 2019, the cumulative approval rate for D.C. HomeSaver was 71.6%.[3]

To be sure, the HomeSaver program has not been without its challenges. In some instances, our clients have seen HFA's implementation of the program and guidelines pose barriers to approval that place a particular hardship on low-income people, even when they satisfy all core eligibility

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[2] See National Community Reinvestment Coalition, Shifting Neighborhoods; Gentrifications and cultural displacement in American cities (March 19, 2019), available at https://ncrc.org/gentrification/.

[3] *See* https://dchfa.org/wp-content/uploads/2019/12/hfa_dc_q32019.pdf, indicating that 877 homeowners were approved for HomeSaver assistance (including assistance from the Mortgage Payment Assistance Program and Restore) out of 1,314 applications. Excluding the 89 homeowners whose applications were withdrawn or are still being processed, that is a cumulative approval rate of 71.6%.

criteria. Our office has had some success overcoming those barriers through our representation of individual homeowners appealing HomeSaver denials, but other homeowners have been less fortunate and have lost or risk losing their homes through foreclosures that should be avoidable.

HFA's Closure of the HomeSaver Program

Despite all of the above, both the successes and challenges of the HomeSaver program are now a mere part of the program's history. The program came to an abrupt end when, this past summer, HFA suddenly announced that HomeSaver would be closing within weeks.

Though some may have assumed that the reason for the closure was that funding had run out, that is not the case. *Several million dollars in use-or-lose federal funds remained available specifically for use in the District*. According to information provided by HFA about the program closure, over $2.6 million remained available for HomeSaver Restore (the program providing lump sum reinstatement funds), and over $1 million remained available or un-committed for the HomeSaver Mortgage Payment Assistance Program (providing catch-up assistance and payment assistance going forward) around the time of the agency's decision to close all remaining HomeSaver programs. HFA's quarterly reports indicate that the amount of unspent funds, including funds available for administrative costs, is even higher.[4]

While more than half of the 18 states that were awarded federal funding for their Hardest Hit Fund programs in 2016 have since closed their programs,[5] almost all of programs that shuttered did so because they had used 100% of the funds allocated to them by Treasury.[6] *The District is one of the only jurisdictions to close its program completely before using all of its funds.*

HFA Should Engage with Community Stakeholders Before Making Programmatic Changes and Decisions Impacting the Communities that its Programs Serve

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[4] Treasury allocated the District $28,774,267 for its HomeSaver program, including $23,006,159 for direct assistance and $5,768,108 for administrative expenses. See Schedule C of the latest Program Requirements and Administrative Allocations, available at https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/housing/Pages/Program-Documents.aspx. HFA's Q3 2019 report, available at https://www.dchfa.org/homeownership/available-programs/homesaver/, states that the District has spent only $18,406,074 on direct assistance and only $4,834,610 on administrative expenses, *leaving $4,600,085 available for direct assistance to homeowners and $933,498 available for HFA's administrative expenses.*

[5] The Hardest Hit Fund program began in 2010, initially awarding $7.6 billion to 19 states including the District. The program was extended in 2016 with a final round of funding of $2 billion to 18 states including the District. See https://www.treasury.gov/press-center/press-releases/Pages/jl0358.aspx.

[6] See page 5 of Treasury's Q3 2019 Performance Summary, available here: https://www.treasury.gov/initiatives/financial-stability/reports/Pages/HHF.aspx.

Based on our communications with HFA after it announced its decision to close HomeSaver, our understanding is that the decision to wind down all remaining HomeSaver/Hardest Hit Fund programs in the District was based largely on data including but not limited to delinquency, foreclosure, and unemployment rates that agency decision-makers interpreted as indicating that the level of need for the program no longer justified its continued operation. Unfortunately, we did not have any opportunity to be involved in that decision and to inform those conversations with data and information that we have access to as on-the-ground advocates familiar with the many varieties of foreclosures in and out of our local courts.

Had stakeholders like Legal Aid been engaged earlier in the process, we would have provided (and have since provided, in the context of urging HFA to reopen the program) additional, specific local data that HFA did not have the benefit of at the time of the decision to close HomeSaver. The following is a high-level summary of the information and data demonstrating that the need for foreclosure prevention assistance in the District remains high:

- **Timing of Foreclosure Crisis**. The District is unique in terms of the timing of its local foreclosure crisis. In short, our surge of foreclosure cases started much later than the rest of the country. Most other jurisdictions experienced record foreclosure rates around the time of the financial crisis and immediately thereafter, and have since returned to lower levels. But in the District, in response to a major legislative amendment to our residential foreclosure law, mortgage lenders largely elected to suspend residential foreclosures starting in 2010. It was only around the establishment of new judicial foreclosure procedures in D.C. Superior Court in 2014 that foreclosures began to truly take off in the District. Even years later, in 2017, D.C. bucked the national trend of decreasing foreclosures, instead showing a sharp year-over-year increase.[7]

- **Volume of Pending Mortgage Foreclosure Cases**. Because of the nature of D.C. judicial foreclosure cases, which can take months or years to work their way through the court system, the number of mortgage foreclosure cases remaining in the pipeline is large. More meaningful than the number of new foreclosure filings at any given point in time is the number of foreclosure cases that remain pending. These cases represent individuals and families in serious danger of losing their homes. According to data provided by the Strategic Management Division of D.C. Superior Court, the number of mortgage foreclosure cases pending as of August 30, 2019 was 1,488.[8]

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[7] See https://www.attomdata.com/news/foreclosure-trends/2017-year-end-u-s-foreclosure-market-report/ (noting the backlog in foreclosure activity in D.C. led to a surge in foreclosure starts, with a 54% increase of foreclosure starts from 2016 to 2017).

[8] The Court's administrative response to the volume of residential mortgage foreclosure cases in the system also shows the sustained intensity of need. Our foreclosure prevention attorneys are in D.C. Superior Court every week and have been there regularly for the past five years, since the original creation of the judicial foreclosure calendar. When the judicial foreclosure calendar was first implemented in 2014, the Court devoted one courtroom to handle all initial scheduling conferences and status hearings. During the fall of 2015, another courtroom was added to handle

- **Other Types of Foreclosure**. The 1,488 pending mortgage foreclosure cases—while demonstrating a critical local need for home-saving assistance on its own, particularly in a jurisdiction as small as the District of Columbia—does not include cases that were filed prior to 2015 and remain pending. Nor does it include the volume of pending foreclosure matters based on property taxes (which are handled on their own separate calendar within D.C. Superior Court), homeowners' association fees, or condominium fees. And it does not include any of the administrative foreclosures conducted entirely outside of the court process, which remains a legal option in the District of Columbia. Condominium fee foreclosures, largely conducted out of court, are of particular concern because of the current state of D.C. law providing for extinguishment of an unsatisfied mortgage lien when a condominium association forecloses on its "super-priority lien" for unpaid condominium assessments.

- **Unemployment Data**. Although HFA considered a District unemployment rate of 5.6% (apparently from 2018, and described as being the lowest since 1969) in its decision to close HomeSaver, that rate is still higher than the national unemployment rate for the same time period[9] and higher than the unemployment rates in several states with Hardest Hit Fund programs that remain open. And the unemployment rates in Wards 7 and 8 of the District from around the same time period were substantially higher at 10.3% and 12.8%, respectively.[10] The need for HomeSaver program assistance designed for unemployed homeowners remains high.[11]

In explaining the decision to close HomeSaver, HFA has also made note of the approval rates for HomeSaver Restore (the only program remaining after HFA closed the Mortgage Payment

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the high volume of foreclosure cases. In 2016, the court moved to holding foreclosure hearings on two regular days per week to make room for the volume of cases. To address the sustained volume and avoid overcrowding of dockets, the Court expanded its calendaring of judicial foreclosure cases yet again in 2019.

[9] See pp. 4, 12 of Treasury's Q2 2018 Performance Summary, available here: https://www.treasury.gov/initiatives/financial-stability/reports/Pages/HHF.aspx.

[10] See District of Columbia Labor Force, Employment, Unemployment, and Unemployment Rate by Ward (June 2018), https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/DC%20Ward%20Data%20Jun19-May19-Jun18.pdf.

[11] While the need for foreclosure prevention assistance for unemployed or underemployed homeowners remains high, there was also good reason to keep HomeSaver open for those homeowners who have fared better and are back at work. The HomeSaver "Restore" program was designed to provide reinstatement funding to those who had previously experienced an eligible hardship (like a job loss) leading to foreclosure, but are now in a financial position to be able to afford the mortgage—most commonly, due to re-employment.

Assistance Program), which HFA describes as being low, with only approximately 20 percent of applicants being approved. But one in five homeowners or families getting to save their homes and avoid foreclosure is substantial—especially considering the availability of several million dollars in federal funds to continue bringing those life-changing benefits to homeowners in the District. And according to Treasury guidance, states still have until December 31, 2020 to commit funds and until December 31, 2021 to expend all Hardest Hit Fund funding.[12]

The availability of funds—and time—to continue the program should be the deciding factor in whether HomeSaver remains available to distressed homeowners in the District, not high-level market conditions and approval rates. What is more, the agency should address low approval rates by looking at its own role in implementing program requirements and asking how it can increase those approval rates to serve more homeowners in need.

The importance of engaging with community stakeholders to ask questions like this cannot be overstated. As we have already shared with HFA, our experience representing homeowners in HomeSaver appeals has highlighted a number of ways in which HFA's implementation of program guidelines has, from our standpoint, created barriers to approval for low-income people who satisfy all core eligibility criteria. It is also unclear what kind of outreach efforts were made by the agency to ensure that as many potentially eligible candidates were applying for HomeSaver before HFA made its decision to close.

The Committee should use today's oversight hearing to ask HFA the following questions:

1. What steps, if any, did HFA take to seek input from community stakeholders before deciding to close the HomeSaver program?

2. What steps, if any, did HFA take to alert the community (including known stakeholders and the general public) of its decision to close the program?

3. How far in advance did HFA notify community stakeholders and the public about the program closure?

4. HFA has been urged by stakeholders in the legal services community to reopen HomeSaver in light of the continued need and availability of federal funds. Has HFA requested that Treasury allow the District to re-open HomeSaver?

    a. If yes, when was the request made, what supporting information did HFA present to Treasury in making that request, and what was the response? Who was involved in the communications, and were the communications oral or in writing?

    b. If no, why has HFA not made this request?

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[12] See Part 1, p. 3 of Department of the Treasury Agency Financial Report, FY 2019, available at https://www.treasury.gov/initiatives/financial-stability/reports/Documents/FY2019%20OFS%20AFR_11.7.19FINAL.pdf

Conclusion

The Committee should engage with HFA through ongoing discussions and questions to call for complete transparency surrounding HFA's decision to close the HomeSaver program and to ensure that HFA does or has done everything it can with Treasury—and as quickly as possible—to try to prevent District homeowners from continuing to lose out on this federally-funded source of relief. And, because of HFA's important role administering many other homeowner-focused programs in the District, the Committee should continue to engage with HFA to ensure that the agency's practices and policies require that major programmatic decisions be made only after providing a meaningful opportunity for community stakeholder input.