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

**Performance Oversight Hearing Regarding the Housing Production Trust Fund**

**January 28, 2020**

The Legal Aid Society of the District of Columbia<sup>1</sup> submits the following testimony regarding the performance of the Housing Production Trust Fund (HPTF) in producing and preserving deeply-affordable units for the District’s lowest income residents.

Every day, Legal Aid sees the devastating impact of the District’s affordable housing crisis on countless families who are struggling to make ends meet. Far too many of these families are at risk of or are being pushed into homelessness because they cannot secure safe, stable, affordable housing. Many are long-time Washingtonians who face the difficult decision of leaving the District, as housing costs escalate out of reach. The HPTF remains a critical funding source for creating affordable housing opportunities for extremely low-income residents.

We have two broad concerns with the performance of the HPTF. First, the Trust Fund repeatedly has fallen short of its goal to allocate at least 40 percent of its funds to deeply-affordable units — and with the current fiscal year, the goal has increased to a full 50 percent. We urge the Committee to press the Department of Housing & Community Development (DHCD) to present a detailed plan for how the HPTF will meet its new goal and the associated budget requirements. Second, as detailed by the D.C. Auditor in its May 2019 report, the HPTF lacks transparency in its award-making process and the DHCD Director has too much discretion to depart from staff recommendations. We therefore urge the Committee to move forward with Bill 23-123, the Housing Production Trust Fund Transparency Amendment Act of 2019, including by adopting Legal Aid’s recommendations to strengthen the bill.

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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.” 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](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

## **Extremely Low-Income Tenants in the District Face a Severe Shortage of Affordable Housing**

Extremely low-income tenants — those whose incomes fall at or below 30 percent of area median income (AMI) — are being pushed out of the District because of a severe and deepening shortage of affordable housing. The vast majority of Legal Aid’s clients have household incomes at or below this level, which equates to \$32,800 or less for a family of three.<sup>2</sup> These families can afford rent of \$820 per month or less. And many of Legal Aid’s clients fall far below this income threshold. Adults with disabilities awarded minimum benefits through the Social Security Administration, for example, receive only \$783 per month and can afford rent of only \$235 per month.

In a city where the average rent for a one-bedroom apartment now tops \$2,200 per month, these residents are being left behind.<sup>3</sup> Since 2002, the District has lost over half of its low-cost rental units, those renting for \$800 or less.<sup>4</sup> As private market affordable options continue to disappear, subsidized housing remains out of reach for most low-income tenants. The centralized waiting list for subsidized housing maintained by the D.C. Housing Authority (DCHA) has been closed for nearly seven years and still numbers over 40,000 families. At the same time, the pool of available subsidized housing units has been shrinking, as DCHA has pulled public housing units offline and site-based subsidy contracts through the U.S. Department of Housing & Urban Development (HUD) have ended at some properties. DCHA’s proposed transformation plan threatens to take thousands more public housing units offline, at least in the short term.

The result of this deepening affordability crisis is that low-income families are paying far too much of their limited incomes for housing. Nearly two-thirds of extremely low-income households in the District pay half or more of their monthly income towards rent, a threshold that HUD classifies as “severely housing cost burdened.”<sup>5</sup> In fact, nearly half of these families pay 80 percent or more of their monthly income towards rent.<sup>6</sup> And this issue also is one of racial equity; of the approximately 27,000 extremely low-income, severely rent burdened households, 88 percent are headed by a person of color.<sup>7</sup>

The shortage of affordable housing, and accompanying heavy rent burdens are having devastating effects on Washingtonians with low incomes. Thousands of District residents are being displaced from their communities — and the District itself. A recently released study by the National Community Reinvestment Coalition found that about 40 percent of the District’s lower-income neighborhoods experienced gentrification between 2000 and 2013, giving the city

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<sup>2</sup> U.S. Dep’t of Hous. & Urban Dev., *FY 2019 Income Limits Documentation System*, available at <https://www.huduser.gov/portal/datasets/il/il2019/2019summary.odn>.

<sup>3</sup> RENTCafe, *Washington, DC Rental Market Trends*, available at <https://www.rentcafe.com/average-rent-market-trends/us/dc/washington/>.

<sup>4</sup> D.C. Fiscal Policy Institute, *Going, Going, Gone: DC’s Vanishing Affordable Housing* (March 2015).

<sup>5</sup> D.C. Fiscal Policy Institute, *A Broken Foundation: Affordable Housing Crisis Threatens DC’s Lowest Income Residents* 3 (Dec. 8, 2016).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 1.

the greatest “intensity of gentrification” of any city across the country.<sup>8</sup> The District also saw the most African American residents — more than 20,000 — displaced from their neighborhoods mostly by white, affluent, recent transplants.<sup>9</sup>

For those who are still struggling to remain in the District, as housing costs consume a higher and higher portion of a family’s monthly budget, other needs go unmet. Severely rent-burdened households are at higher risk for food insecurity, employment instability, and lack of proper medical care.<sup>10</sup> These families also are far more likely to face eviction and, ultimately, possible homelessness. Eviction not only results in the loss of a family’s home; it can have devastating, long-term negative effects on physical and mental health, employment, and school performance.<sup>11</sup>

Extremely low-income tenants in the District will continue to struggle as housing costs escalate, unless the Council takes action to expand the production and preservation of housing units that are affordable at these income levels. The Housing Production Trust Fund is an important tool to create these deeply affordable housing units.

### **DHCD Should Present a Detailed Plan to Ensure That the Housing Production Trust Fund Meets Its Goals for Producing and Preserving Deeply Affordable Units**

In a March 2018 report, the D.C. Auditor found that only 19 percent of rental units produced or preserved by the Trust Fund between 2001 and 2016 are affordable to families with extremely-low incomes, even though the statute at the time required that a minimum of 40 percent of expenditures be targeted to this group.<sup>12</sup> Indeed, while only 20 percent of HPTF expenditures are supposed to go to units affordable for households at 80 percent of area median income or above, these relatively high-rent units comprise 69 percent of all units funded through 2016.<sup>13</sup> An independent analysis by the D.C. Fiscal Policy Institute similarly found that the Trust Fund met its annual target for deeply-affordable units only once in Fiscal Years 2014 through 2019.<sup>14</sup> DCFPI did note improvements, with DHCD averaging closer to 30 percent of funds dedicated to extremely low-income households but still falling short of the statutory requirement.

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<sup>8</sup> National Community Reinvestment Coalition, *Shifting Neighborhoods: Gentrification and cultural displacement in American cities* (March 19, 2019).

<sup>9</sup> *Id.*

<sup>10</sup> *See id.* at 1-2.

<sup>11</sup> *See, e.g.,* Matthew Desmond, *Evicted: Poverty and Profit in the American City* 296, 298, 299 (2016); Matthew Desmond and Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, 63 Soc. Prob. 46, 59 (2016); Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 Am. J. Soc. 88, 89, 118 (2012).

<sup>12</sup> Office of the District of Columbia Auditor, *Stronger Management of the Housing Production Trust Fund Could Build More Affordable Housing* 9-10 (Mar. 2018), available at <http://dcauditor.org/report/stronger-management-of-the-housing-production-trust-fund-could-build-more-affordable-housing/>.

<sup>13</sup> *Id.*

<sup>14</sup> Claire Zippel, D.C. Fiscal Policy Institute, *Building the Foundation: A Blueprint for Creating Affordable Housing for DC’s Lowest-Income Residents* 5 (April 2018).

Against this backdrop, the Fiscal Year 2020 Budget Support Act included provisions increasing the requirement for the Trust Fund to produce and preserve deeply-affordable units. The statute now requires 50 percent of all HPTF expenditures to fund these units, with at least 50 percent of those funds going to rental units.<sup>15</sup> Given the Trust Fund’s track record, meeting this goal will require significant new investments in the budget and careful strategic thinking by DHCD. As the Mayor and the Council move forward to shape the budget for Fiscal Year 2021, we urge this Committee to ask DHCD to present a detailed plan for how the Trust Fund will meet the new statutory goal, including an analysis of what it will cost to get there.

DCFPI has found that almost all deeply affordable projects within reach of extremely low-income households and funded by the HPTF have included a combination of Trust Fund investments for up-front purchase and capital expenses plus ongoing operating support through the Local Rent Supplement Program (LRSP).<sup>16</sup> Ongoing operating assistance often is necessary for projects with rents that are affordable to extremely low-income households, because the rent levels those households can pay often are below per-unit operating costs.<sup>17</sup> In addition to increasing funding for the HPTF, it is equally important that the Council provide increased funding for operating assistance through LRSP or a similar program. DHCD will continue to face challenges funding projects that are affordable for extremely low-income households unless the budget includes sufficient funding for project-based LRSP or similar operating assistance for new affordable housing projects.

**This Committee Should Improve Oversight of the Housing Production Trust Fund Awards Process By Enacting B23-123, the Housing Production Trust Fund Transparency Amendment Act of 2019**

The HPTF Award-Making Process Lacks Transparency and Allows the DHCD Director Too Much Discretion to Depart From Staff Recommendations

In its May 2019 report, *Low-Ranked Projects Secure Affordable Housing Funds*, the Office of the D.C. Auditor takes a closer look at the June 2018 round of Trust Fund awards by DHCD.<sup>18</sup> Based on confidential information received from an inside source at DHCD – information that is not publicly available and that DHCD itself refused to produce – the Auditor highlights “red flags” in the HPTF award process that undermine the transparency and integrity of the Trust Fund.<sup>19</sup>

Staff in the Department’s Development Finance Division (DFD) had scored submitted proposals and recommended awards for nine projects that would have resulted in the production or

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<sup>15</sup> D.C. Law 23-16. Fiscal Year 2020 Budget Support Act of 2019, codified at D.C. Code § 42-2802(b-1)(2).

<sup>16</sup> *Id.* at 4.

<sup>17</sup> *See id.*

<sup>18</sup> Office of the D.C. Auditor, *Low-Ranked Projects Secure Affordable Housing Funds* (May 30, 2019), available at <http://dcauditor.org/report/low-ranked-projects-secure-affordable-housing-funds-2/>.

<sup>19</sup> *Id.* at 2, 8-10.

preservation of 1,125 total units, including 222 units affordable to tenants with incomes at 30 percent area median income and another 603 units affordable to tenants with incomes at 50 percent AMI.<sup>20</sup> Yet, the Director's ultimate decision bypassed five of these proposals, instead selecting five different projects that staff had scored lower and resulting in only 772 units produced or preserved, with only 127 units affordable at 30% AMI and only 381 units affordable at 50 percent AMI.<sup>21</sup> As the Auditor concludes, "This 2018 decision-making process raises serious concerns about HPTF integrity and transparency."<sup>22</sup>

DHCD follows a fairly transparent and objective process in soliciting and receiving proposals for HPTF funding and scoring those proposals. The Department's Requests for Proposals (RFPs) detail how proposals will be evaluated on a range of selection criteria, including points available for each category.<sup>23</sup> DFD follows a comprehensive, multi-part review process to confirm the eligibility of all submitted proposals and then scores them against the publicly-released criteria.<sup>24</sup> As the Auditor notes, "DFD's scoring phase appeared to be designed to be a competitive method for ensuring only the most qualified developers were selected and the projects delivering the most public benefit (i.e. deeply affordable units) would be selected."<sup>25</sup> DFD follows internal controls in this process to ensure objectivity and consistency. This internal review is followed by an interagency consultative process, ultimately resulting in a set of recommendations to the Director, who maintains ultimate decision-making authority over HPTF awards.

The breakdown in the recent funding round occurred at this stage. The transparent, competitive, and objective process followed by DFD staff was undone by the Director in making her ultimate award decisions. Five of the six proposals that were scored highest by the DFD staff were not selected. Instead, projects scoring 11th, 12th, 15th, 19th, and 20th, out of 20 proposals scored, received awards.

Most troubling is that the Director's decision resulted in a set of awards that run counter to the HPTF's statutory mandate at the time to award 40 percent of funds to projects providing housing to extremely low-income households earning 30 percent AMI or less.<sup>26</sup> As DHCD's RFP itself stated, the greatest gap between the need for and supply of affordable housing is for these households. Yet, the Director's award decision cut the number of deeply-affordable units that will be produced or preserved in half.

While the Director undoubtedly should have some discretion in making ultimate HPTF award decisions, this discretion should be cabined and guided. Employing a transparent, competitive, and objective RFP and scoring process will not achieve better outcomes if the Director is free to disregard this process. This is particularly true if the ultimate decisions remain shrouded in

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<sup>20</sup> *Id.* at 5.

<sup>21</sup> *Id.* at 6.

<sup>22</sup> *Id.* at 9.

<sup>23</sup> *Id.* at 3.

<sup>24</sup> *Id.* at 3-4.

<sup>25</sup> *Id.* at 4.

<sup>26</sup> The recently-enacted Budget Support Act of 2019 will increase this target to 50% of Trust Fund awards.

secrecy. Were it not for a DHCD insider providing confidential information to the Auditor, the degree of discretion that the Director has to disregard the scoring process and her exercise of that discretion might never have come to light.

The Auditor's report raises serious questions about the integrity of the HPTF award process, and this Committee and the full Council can and must respond. The HPTF award process should be as public and transparent as possible, to ensure that this Committee, the Council, stakeholders and advocates can exercise oversight and consider future reforms to the decision-making process, all with an eye toward ensuring that the Trust Fund can achieve its goal of producing and preserving deeply affordable units for the District's lowest-income residents.

Bill 23-123 Will Improve Transparency and Should Be Strengthened, Consistent with Recommendations from the D.C. Auditor

The Housing Production Trust Fund Transparency Amendment Act of 2019 includes some initial steps to improve transparency around the HPTF award process. The bill would require DHCD to release key information about all applications to the Trust Fund, including the location, number of units, and income levels served; the amount of funding awarded; and the scores of each application. Legal Aid recommends strengthening transparency with three additional amendments.

First, the bill should require DHCD to update its public database of HPTF-funded projects to include additional information. Legal Aid supports the recommendations put forth by the Coalition for Non-Profit Housing and Economic Development (CNHED) to include more detailed information about the project's location, owner, number of proposed and produced units, bedroom sizes, and subsidy status, and to require annual updates to the database. The database is a critical tool to monitor the effectiveness of Trust Fund awards in expanding the production and preservation of deeply affordable housing units. We also support CNHED's recommendation that this same information be included in the public announcement of each Trust Fund award.

Second, following the recommendations of the D.C. Auditor, the HPTF statute should be amended to require public release of the Department staff's recommendations to the Director, the final signed Decision Memorandum from the Director, and the Director's written justification for any differences from the Department staff's recommendations.<sup>27</sup> Making this information public would allow monitoring and oversight to bring to light and address the red flags in the award process identified by the Auditor.

Finally, and also in line with the recommendations of the Auditor, the HPTF statute should be amended to include requirements that address when and how the DHCD Director can exercise discretion in the RFP process.<sup>28</sup> Specifically, Legal Aid recommends that the statute both:

- 1) Codify the existing RFP application and review process, and

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<sup>27</sup> *Id.* at 10.

<sup>28</sup> *Id.*

2) Add new requirements that the Director make ultimate award decisions guided by staff recommendations, with limited allowance for discretion and a requirement that any departures be justified.

Together these changes would help to ensure transparency and oversight of HTPF award decisions. With this information in hand, this Committee and the entire Council will be better positioned to consider additional reforms that may be needed to ensure that the Trust Fund achieves its goal of producing and preserving deeply affordable units for the District's lowest-income residents.

### **Conclusion**

Thank you for this opportunity to testify about the performance of the Housing Production Trust Fund. We look forward to continuing to work with the Committee to monitor the HPTF's progress in meeting its statutory requirement to produce and preserve deeply-affordable units. We also urge the Committee to move forward with Bill 23-123, the Housing Production Trust Fund Transparency Act of 2019, and to strengthen the bill consistent with our recommendations.