

**Testimony of Beth Mellen Harrison
Supervising Attorney, Housing Law Unit
Legal Aid Society of the District of Columbia**

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

**Budget Oversight Hearing Regarding
The Housing Production Trust Fund and
The Department of Housing & Community Development**

June 8, 2020

The coronavirus pandemic has drawn public attention to long-standing, systemic inequalities in the District, in particular along lines of race and income. Put simply, people of color, individuals with disabilities, and individuals living in poverty are on the front lines, contracting COVID-19 and dying at disproportionate rates, including because of longstanding gaps in access to quality health care, safe and affordable housing, and other resources.¹ Mayor Muriel Bowser’s administration describes the District’s response to the pandemic as “a once-in-a-generation opportunity to thoughtfully build toward a more equitable, resilient, and vibrant city.”² A critical component to realizing that goal is ensuring that all District residents have access to safe, stable, affordable housing.

The Legal Aid Society of the District of Columbia³ submits the following testimony regarding the Mayor’s proposed budget for the Housing Production Trust Fund (HPTF) and the Department of Housing & Community Development (DHCD). We are concerned that the Mayor’s proposed FY21 budget for both agencies decreases critical funding for the production and preservation of affordable housing, with cuts to both the HPTF and DHCD’s Housing Preservation Fund. In addition, cuts to the Local Rent Supplement Program (LRSP) project and sponsor-based funding (part of the D.C. Housing Authority budget) means HPTF projects may

¹ Executive Office of the Mayor, Coronavirus Data – Total Deaths by Race, available at <https://coronavirus.dc.gov/page/coronavirus-data>.

² Executive Office of the Mayor, *ReOpen DC Overview*, available at <https://coronavirus.dc.gov/reopencdc>.

³ 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. We also 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.

not have long-term operating subsidies available to ensure that at least half of the units preserved or produced are affordable to District residents with the lowest incomes, those most in need.

Legal Aid represents hundreds of low-income tenants in housing cases each year. We work with countless families who are struggling to make ends meet, often because of lack of access to affordable housing. 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 current pandemic is likely to escalate the affordable housing crisis, with tens of thousands of families facing long-term unemployment, increased expenses, and further sharpening of existing economic inequality.

The HPTF remains one of the most important funding sources the District has at its disposal for creating affordable housing opportunities for low-income residents. The Mayor's proposed budget decreases funding for the HPTF for FY20 and FY21 from \$115.68 million to \$100 million, even as housing production and preservation costs continue to rise. Cuts of \$2 million to LRSP project- and sponsored-based funding for FY21 take away critical operating subsidies that are paired with HPTF awards to ensure that projects can provide deeply-affordable units. The Mayor also proposes cutting DHCD's Housing Preservation Fund for FY21 to *less than a tenth* of its FY20 budget, from \$11.8 million to \$1 million. Because the Preservation Fund is leveraged with private financing at a ratio of three to one, in real terms this amounts to a cut from \$47 million to \$4 million in available preservation funding.

The District government can and should find ways to reverse these cuts and ensure adequate funding to address the lack of safe, stable, affordable housing for the District's lowest-income residents.

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 income level, which equates to \$37,800 or less for a family of four.⁴ These families can afford rent of \$945 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 \$2,000 per month, these residents are being left behind.⁵ Since 2002, the District has lost over half of its low-cost rental

⁴ U.S. Department of Housing & Urban Development, *Section 8 Income Limits FY20*, available at <https://www.huduser.gov/portal/datasets/il/il20/Section8-IncomeLimits-FY20.pdf>.

⁵ RentCafe, *Washington, DC Rental Market Trends*, available at <https://www.rentcafe.com/average-rent-market-trends/us/dc/washington/>.

units, those renting for \$800 or less.⁶ 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 seven years and still numbers just under 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, proposed to demolish thousands more, and site-based subsidy contracts through the U.S. Department of Housing & Urban Development (HUD) have ended at some properties.

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”.⁷ In fact, nearly half of these families pay 80 percent or more of their monthly income towards rent.⁸ 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.⁹

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 study released last year 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 the greatest “intensity of gentrification” of any city across the country.¹⁰ The District also saw the most black residents — more than 20,000 — displaced from neighborhoods mostly by white, affluent, recent transplants.¹¹

Against this backdrop, the national economy now is facing what is being described as the worst economic crisis since the Great Depression.¹² Over 40 million Americans have filed for unemployment insurance during the pandemic, and the national unemployment rate currently stands at 13.3 percent for May.¹³ In the District, as of June 4, 2020, nearly 110,000 residents had filed for unemployment.¹⁴

⁶ D.C. Fiscal Policy Institute, *Going, Going, Gone: DC’s Vanishing Affordable Housing* (March 2015).

⁷ D.C. Fiscal Policy Institute, *A Broken Foundation: Affordable Housing Crisis Threatens DC’s Lowest Income Residents 3* (Dec. 8, 2016).

⁸ *Id.*

⁹ *Id.* at 1.

¹⁰ National Community Reinvestment Coalition, *Shifting Neighborhoods; Gentrifications and cultural displacement in American cities* (March 19, 2019).

¹¹ *Id.*

¹² New York Times, “I.M.F. Predicts Worst Downturn Since the Great Depression” (Apr. 14, 2020), available at <https://www.nytimes.com/2020/04/14/us/politics/coronavirus-economy-recession-depression.html>.

¹³ Bureau of Labor Statistics, *The Employment Situation – May 2020*, <https://www.bls.gov/news.release/pdf/empsit.pdf>.

¹⁴ Department of Employment Services, “Unemployment Compensation Claims Data,” available at <https://does.dc.gov/publication/unemployment-compensation-claims-data>.

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.¹⁵ 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.¹⁶

Extremely low-income tenants in the District will continue to struggle as housing costs escalate, unless the Council takes action to maintain and expand the production and preservation of affordable housing units, particularly those units that are deeply-affordable and available to individuals with income levels at or below 30 percent of AMI.

The Committee Should Restore Funding to the Housing Production Trust Fund

The HPTF provides critical support for affordable housing in the District. The HPTF provides loans and grants to developers for the dual purposes of preserving and producing housing units that are affordable to tenants at targeted income levels.¹⁷ This funding comes from a combination of 15 percent of real property transfer tax funds, 15 percent of deed recordation tax funds, and a balance of general revenues.¹⁸ As of last year, fifty percent of HPTF loans and grants are required to be allocated for projects that are affordable to extremely low-income households – an increase from the prior level of forty percent.¹⁹ Rental units produced using HPTF dollars generally must be maintained at affordable rent levels for 40 years, ensuring long-term affordability.²⁰ The D.C. Auditor reports that between 2001 and 2016, the HPTF was used to produce or preserve over 10,000 units of affordable housing.²¹

For three fiscal years, FY17 through FY19, the District allocated \$100 million to the HPTF, making the Trust Fund one of the largest sources of local government funding for affordable housing. For FY20, the Mayor proposed a 30 percent increase in total funds to the HPTF, to \$130 million dollars, and the Council ultimately approved \$115.68 million. The Mayor's supplemental budget now cuts FY20 to \$100 million and includes that same amount for FY21.²²

¹⁵ See *id.* at 1-2. .

¹⁶ 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).

¹⁷ D.C. Code § 42-2802.

¹⁸ *Id.* § 42-2802 (c)(16).

¹⁹ *Id.* § 2802(b-1)(2).

²⁰ *Id.* § 2802.02(a).

²¹ Office of the District of Columbia Auditor, *Stronger Management of the Housing Production Trust Fund Could Build More Affordable Housing* 6-8 (March 2018).

²² FY 2021 Proposed Budget and Financial Plan, Vol. 4 Agency Budget Chapters – Part 3, H-29 - H-33 (May 18, 2020), available at

<https://app.box.com/s/4f3epemwcd2073r910mcchqdkb47gmze>.

The increase in funding originally allocated for FY20 was an important step towards catching the HPTF up to the increase in construction and preservation costs. However, according to a report released by the D.C. Fiscal Policy Institute last year, *to generate the same housing as in 2015, the 2020 HPTF would need \$150 million*. While a \$100 million commitment in 2015 would have yielded approximately 1,140 units, by 2019 that same commitment would only yield approximately 710 units.²³

It is concerning that annual investments are not even keeping pace with rising costs, but there is little doubt that even greater investments are needed if the District truly wants to address the ever-deepening affordable housing crisis, particularly for extremely low-income tenants. The D.C. Fiscal Policy Institute's report, *Building the Foundation: A Blueprint for Creating Affordable Housing for DC's Lowest-Income Residents*, outlines a path to create 30,000 units of deeply affordable housing over a ten-year period. That report finds that achieving this goal would require \$2.6 billion in funding over a decade for construction costs, through the HPTF or a similar funding mechanism, and then \$732 million per year in ongoing operating assistance such as LRSP project- and sponsor-based funding.²⁴

Legal Aid is a member of the Fair Budget Coalition (FBC), which is advocating for \$180 million in the FY21 budget for the HPTF, all specifically targeted to rental units affordable to extremely low-income households, along with additional funding of \$24 million for operating assistance for these units.²⁵ While we recognize funding at that level would represent a substantial increase in a year of budget cuts, we believe that request accurately reflects the current need. As FBC explains, this level of funding is necessary to realize the Mayor's goal to build 12,000 new affordable housing units – and to ensure affordability to extremely low-income households.

Legal Aid is particularly concerned about the Mayor's proposed cuts in the FY20 and FY21 budget for the HPTF because of reports from affordable housing developers that funding from FY20 and even FY21 may only be sufficient to fund projects already awarded funding – even though new awards have not been made for over a year. This includes a number of projects from the March 2019 round of HPTF awards that have not yet closed and thus have not received their funding. DHCD has yet to announce funds awarded as a result of the fall 2019 Consolidated RFP, and many of those projects remain on hold as they await decisions. DHCD has indicated that over 30 projects that applied to the fall 2019 Consolidated RFP passed threshold scoring, indicating eligibility for HPTF investment, amounting to more than \$350 million in requested funding. Without HPTF funding, some or many of these existing projects may not be able to proceed, and new projects will have to wait years for any hope of HPTF funding or will fail.

²³ D.C. Fiscal Policy Institute, *To Ensure all Residents Have a Safe and Affordable Place to Call Home, DC Needs to Double Down on the Housing Production Trust Fund* (March 2019), available at: <https://www.dcfpi.org/all/to-ensure-all-residents-have-a-safe-and-affordable-place-to-call-home-dc-needs-to-double-down-on-the-housing-production-trust-fund/>

²⁴ D.C. Fiscal Policy Institute, *Building the Foundation: A Blueprint for Creating Affordable Housing for DC's Lowest-Income Residents* 7-8 (April 2019), available at <https://www.dcfpi.org/all/building-the-foundation-a-blueprint-for-creating-affordable-housing-for-dcs-lowest-income-residents/>.

²⁵ Fair Budget Coalition, "Housing Security," available at <http://fairbudget.org/fy21.html>.

The Committee should ask DHCD Director Polly Donaldson for an explanation of how much HPTF funding currently remains available; how many projects awarded funding are still awaiting closing and the total required funding for these projects; whether DHCD expects to have adequate HPTF funding to announce fall 2019 Consolidated RFP awards and when; and whether DHCD anticipates being able to issue a new RFP with FY21 funding and when. A thorough accounting is required to understand the current challenges facing the HPTF and the expected repercussions this year and next from the Mayor’s proposed budget cuts.

In the end, we are asking this Committee to restore the funding cuts to HPTF to ensure FY20 and FY21 funding at least at the level of \$115.68 million, and to consider increasing the allocated funding for FY21, to ensure that current affordable housing projects will be funded and new projects will have available financing when needed.

The Committee Should Restore Funding to the Local Rent Supplement Program to Ensure That the HPTF Meets Its Goals for Deeply-Affordable Housing Units

The HPTF long has faced challenges ensuring that sufficient funding goes to those units that are deeply-affordable to families earning 30 percent of AMI or below. The D.C. Auditor’s third and final in a series of reports on the HPTF, issued in March 2019, found that only 19 percent of units funded by the Trust Fund between 2001 and 2016 are affordable to these families, even though the statute long has required that a minimum of 40 percent of expenditures be targeted to this group (and now requires 50 percent).²⁶ DHCD has made improvements in its targeting of HPTF dollars in more recent years — averaging closer to 30 percent of funds dedicated to extremely low-income households — but this still falls short of the statutory requirement.

As Legal Aid has testified in the past, these results are unacceptable.²⁷ The need for affordable housing is most acute for extremely low-income households, and that is where the District must target available resources. Legal Aid supports enactment of Bill 23-0123, the Housing Production Trust Fund Transparency Amendment Act of 2019, with recommended amendments to strengthen the proposal, and we hope the Council will turn back to this bill before the end of this legislative period. Meanwhile, this Committee should ensure that the FY21 budget includes adequate funding to reverse this trend.

The D.C. Fiscal Policy Institute 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 LRSP.²⁸ Ongoing operating assistance often is necessary for projects with rents

²⁶ *Stronger Management of the Housing Production Trust Fund*, *supra*, at 9-10.

²⁷ Written Testimony of Beth Mellen Harrison, Hearing on B23-0123, “Housing Production Trust Fund Transparency Amendment Act of 2019” (June 17, 2019), *available at* <https://www.legalaiddc.org/wp-content/uploads/2019/06/Testimony-on-B23-48-B23-123-FINAL-6.17.19.pdf>. The attached redline of the bill reflects amendments suggested by Legal Aid and the Coalition for Nonprofit Housing and Economic Development, revised to reflect input from DHCD.

²⁸ *Id.* at 4.

that are affordable to extremely low-income households, because the rents levels those households can pay often are below per-unit operating costs.²⁹ In addition to restoring and potentially increasing funding for the HPTF, it is equally important that the Council provide funding for operating assistance through LRSP. Unfortunately, the Mayor's FY21 budget cuts funding for project- and sponsor-based LRSP by \$2 million.³⁰ DHCD will continue to face challenges funding projects that are affordable for extremely low-income households unless the budget includes sufficient LRSP funding for new affordable housing projects.

Director Donaldson has indicated to affordable housing advocates that this year's cut in LRSP funding should not create any problems, because projects approved today do not need these operating subsidies until they come online a few years from now. DHCD has pledged that \$5 million has been added to the LRSP budget in the financial plan for FY22 and FY23 for this purpose.³¹ This represents a marked change from the way funding has been structured in past years and raises a number of questions: Have the Office of the Chief Financial Officer and DCHA agreed that this arrangement is workable? Will DCHA be able to sign long-term commitments to provide operating subsidies when those funds are not yet in their budget? Will private financial actors be comfortable moving forward to close deals under these circumstances? Will affordable housing developers be willing to accept this potential risk when considering potential projects?

As with HPTF funding, the Committee should ask Director Donaldson direct and detailed questions on this topic, including for an explanation of how much LRSP sponsor-based funding, if any, currently remains uncommitted; of the funding that is committed to projects not yet online, when is that funding expected to be needed, including during FY20 and FY21; how much additional funding, if any, is expected to be committed once projects already awarded HPTF funding and depending on LRSP funding close; and overall how will DHCD and DCHA manage the cut in funding to ensure that projects that come online in FY21 will have sufficient operating subsidies? A thorough accounting is required to understand the current challenges facing the HPTF and LRSP and the expected repercussions this year and next from the Mayor's proposed budget cuts.

Unless DHCD is able to provide adequate assurances and details to supports its contention that cuts to LRSP project- and sponsor-based funding will not harm existing and future HPTF projects that preserve and produce deeply-affordable units, this Committee should restore the \$2 million cut and consider whether additional funding is needed to ensure the HPTF meets its statutory mandate for deeply-affordable units.

²⁹ *See id.*

³⁰ FY 2021 Proposed Budget and Financial Plan, Vol. 2 Agency Budget Chapters – Part 1, B-47 – B-51 (May 18, 2020), available at <https://app.box.com/s/d01ut3gjwvcki7ssbct3v67dhppeai4p>.

³¹ Because these financial plan documents are not publicly available, Legal Aid and other affordable housing advocates have not yet been able to confirm this.

The Committee Should Restore Funding to the Housing Preservation Fund to Maximize Private Financing and Ensure Tenants Can Exercise Their Right to Purchase

DHCD created the Housing Preservation Fund, with an initial investment of \$10 million in funding in FY17 and FY18, as a public-private partnership to provide short-term bridge acquisition and pre-development financing to housing preservation projects. The Preservation Fund targets properties with five or more units in which at least 50 percent of the units are currently affordable to households earning 80 percent of area median income or below. Two private financial institutions with long histories of funding affordable housing projects — Capital Impact Partners and LISC-DC — were chosen by DHCD to manage the Preservation Fund and make awards to eligible projects. The Preservation Fund currently is supported by a three-to-one match with private financing, meaning that for every \$1 million invested by the District, private financiers provide an additional \$3 million.

In FY20, the Council allocated \$11.8 million to the Preservation Fund, resulting in \$47.2 million in total funding for the preservation of affordable housing in the District. For FY21, the Mayor proposes decreasing the District's contribution to \$1 million, which will add \$3 million in private financing for \$4 million total, a cut of 85 percent. Legal Aid and other affordable housing advocates are concerned that a cut of this magnitude could have a substantial negative impact on the ability of tenants to exercise their rights under the Tenant Opportunity to Purchase Act (TOPA) to work with affordable housing developers to rehabilitate properties and preserve them as affordable for the long-term.

In recent years, Legal Aid has partnered with community-based organizations and their tenant organizers, including Housing Counseling Services and the Latino Economic Development Center, to provide legal representation to tenants in small buildings exercising their TOPA rights. During the past year we have worked on three such deals, all of which will result in the preservation of affordable units for long-term District residents — protecting tenants who are black or Latinx, many of whom are elderly or have disabilities, all with low incomes — and substantial repairs to properties where housing code violations have festered. The availability of the Preservation Fund, as well as the Housing Production Trust Fund, are part of a robust financing scheme for affordable housing in the District that make these and other deals possible.

1. Preservation of a 4-unit building in Ward 5. Long-term tenants will remain, with rents remaining at \$1200 or below, and the developer agreeing to significant repairs and rehabilitation. The new owner currently is pursuing funding sources through community banks and other financiers. While the property does not qualify for the Preservation Fund because of its small size, other funding sources are being sought and remain more readily-available as a result of the Preservation Fund's strong base of support.
2. Preservation of an 8-unit building in Ward 8. Long-term tenants — one of whom has been at the building for decades — will remain, with rents ranging from \$720 to \$950 and subject only to annual rent control increases, and the developer agreeing to significant repairs. The tenant association received funding from LISC-DC to close. A competing developer planned to seek Preservation Fund dollars, a fact that assisted these tenants in negotiating the best deal possible with their chosen developer.

3. Preservation of a 14-unit building in Ward 7. Long-term tenants, many elderly, will remain, with rents subject only to annual rent control increases for current tenants, LIHTC rents for new tenants, and the developer agreeing to significant repairs and rehabilitation. The developer plans to seek funding from HPTF or other sources at DHCD to finance the repairs and rehabilitation.

Even in an austere budget environment, public financing that is matched three-to-one with private dollars is a wise long-term investment. This Committee should restore funding to the Housing Preservation Fund at least to the level of \$10 million and should consider whether level funding of \$11.8 million for FY21 is feasible.

The Committee Should Amend the FY20 Supplemental Budget Support Act to Provide the Rental Accommodations Division with Funding to Implement the Tenant Payment Plan Provisions in Emergency Legislation

Since the beginning of the pandemic in March, the Council has enacted several emergency bills that contain provisions aimed at ensuring tenants will be able to catch up on their rent and avoid eviction and displacement. Because these provisions have been enacted in emergency and temporary legislation, the Council has been forced to avoid any requirements that would impose a fiscal impact on the District government. Among these new protections is a requirement for landlords to offer tenants payments plans for unpaid rent where the tenant has experienced a financial hardship related directly or indirectly to the pandemic and has fallen behind. The resulting tenant payment plan must have a term of at least one year, provide for equal monthly installments, and not require any lump sum payment.³²

While Legal Aid believes the requirement for tenant payment plans could prove to be a critical tool for ensuring that thousands of District residents avoid eviction and displacement, we are concerned that the devil is in the details. The emergency and temporary legislation creates an overarching set of requirements but leaves many questions unanswered and charges no government agency with implementation, instead leaving these protections up to hundreds of individual District landlords to understand and apply. We have already seen that while some landlords are following the law carefully, others are issuing notices and applications with incorrect information and pressuring tenants to accept certain terms.

The Rent Administrator could play a critical role in ensuring that the tenant payment plan requirement achieves its goals and is implemented consistently and fairly. We understand that no government agency has been charged with responsibility for implementation because of the likelihood this would result in a fiscal impact. This Committee should amend the FY20 Supplemental Budget Support Act to add new requirements and ensure adequate funding. Specifically, the Rent Administrator should be charged with issuing forms that landlords and tenants can rely on, including a form notice from a landlord to a tenant of its payment plan, a form application for tenants seeking relief, and a form agreement that follows the statutory requirements and ensures tenants do not unwittingly waive rights by signing a payment plan.

³² D.C. Code § 42-3281.

Specifically, the Committee should consider adding the following language to D.C. Code § 42-3281, the tenant payment plan provisions, and providing any funding necessary for implementation:

Within 30 days of the effective date of [cross-reference to Act], the Rent Administrator shall publish forms to implement this section, including a housing provider notice to tenants of the rent payment plan program, an application for an eligible tenant to submit to a housing provider, and a rent payment plan agreement for a housing provider and a tenant to enter.

This Committee also should add language to clarify the scope of review when a residential tenant challenges a landlord's decision on a tenant payment plan. The new law currently provides:

A residential tenant whose application for a payment plan is denied may file a written complaint with the Rent Administrator.

Legal Aid recommends clarifying the scope of review with the following language instead:

A residential tenant may file a written complaint with the Rent Administrator if the provider:

- (a) Denies or fails to act upon an application for a payment plan;
- (b) Offers terms that the tenant contends are unreasonable or have been made in bad faith; or
- (c) Violates any provision of this section.

Legal Aid has requested the above already as part of amendments to the emergency legislation, but we understand there are concerns that this potential expansion of review also would impose a fiscal impact. We ask the Committee to include this language and any necessary funding in the FY20 supplemental Budget Support Act as well.³³

Conclusion

Thank you for this opportunity to testify. We hope that the Committee will work between now and the budget mark-ups to restore funding to the HPTF, LRSP project- and sponsor-based funds, and the Preservation Fund as an initial step toward achieving the administration's goal of a more equitable city in which all residents have access to safe, stable, affordable housing.

³³ DHCD also has raised some concerns about the specific language suggested. Legal Aid is happy to work with DHCD to address these concerns and modify the specific language accordingly.

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Councilmember Brianne K. Nadeau

Councilmember Elissa Silverman

Councilmember David Grosso

Councilmember Robert C. White, Jr.

Councilmember Anita Bonds

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Housing Production Trust Fund Act of 1988 to require the Mayor to provide information regarding all applications to the Housing Production Trust Fund including data used to determine funding awards.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Housing Production Trust Fund Transparency Amendment Act of 2019”.

Sec. 2. Section 3~~(d)~~ of the Housing Production Trust Fund Act of 1989, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2802(d)), is amended as follows:

43 (a) Paragraph (d)(2A) is replaced with the following paragraph “Create and maintain
44 a publicly available database of all Fund loans, which shall include the address and ward of each
45 project, loan agreements with the name of the applicant, tax status of the applicant, date of the
46 award, loan status, initial and final amount of loan(s), interest rate of the final amount of loan(s),
47 proposed and produced number of affordable housing units created with the loan(s), rental or
48 homeownership type of each proposed and produced unit, income levels served by each housing
49 unit, initial and final subsidy source for each unit, proposed and produced number of bedrooms
50 for each unit, period of time each unit shall remain affordable, and annually updated status
51 reports of the developer's compliance with the loan agreement(s).

Commented [A1]: Paragraph (d)(2A) currently reads: “Create and maintain a publicly available database of all Fund loans, which shall include loan agreements with the name of the developer, date of the award, loan amount, interest rate, number of affordable housing units created with the loan, income levels served by the housing units, period of time units shall remain affordable, and status of the developer's compliance with the loan agreement.”

52 ~~(a)(b)~~ Paragraph (d)(7) is amended by striking the phrase “; and” and inserting a
53 semicolon in its place.

54 ~~(b)(c)~~ Paragraph (d)(8) is amended by striking the period and inserting the phrase “;
55 and” in its place.

56 ~~(e)(d)~~ A new paragraph (d)(9) is added to read as follows:

57 “(9) Within 5 days after determining the recipient of a ~~competitive~~ grant or loan
58 from the Fund, publicly release:

59 “(A) The identity of each applicant for the grant or loan, including the
60 names and residence and business addresses of each person whose aggregate share of direct or
61 indirect, legal or beneficial ownership of a governance or total distributional interest of the entity
62 exceeds 10 percent or does not exceed 10 percent, but that person controls the financial or
63 operational decisions of the entity or has the ability to direct the day-to-day operations of such the
64 entity;

Commented [A2]: Language is taken from L22-0287: Department of Consumer and Regulatory Affairs Omnibus Amendment Act of 2018, as amended. All corporate entities will have to submit this information when registering or reregistering with DCRA, when the law goes into effect.

65 “(B) The address and ward location of the proposed affordable housing
66 development, the number of housing units and the number of bedrooms in each unit in each
67 proposed development and income levels served by each unit;

68 “(C) The amount of funding awarded by each funding source and
69 program;

70 “(D) Any set-aside assigned to the recipient of a grant or loan recipient;
71 and

72 “(E) The underwriting and prioritization scores of each applicant.”.

73 (e) A new paragraph (g) is added to read as follows:

74 “(g) For each request for proposals issued for the purpose of awarding Fund loans,
75 the Department shall:

76 “(1) Include in each request for proposals a detailed description of how
77 proposals will be evaluated, including a list and explanation of all eligibility and selection
78 criteria and points available for each selection criterion;

79 “(2) Conduct an initial review of all proposals to ensure compliance with
80 all published eligibility criteria and reject any proposals that do not comply with one or more
81 eligibility criteria;

82 “(3) Conduct a secondary review of all proposals against the published
83 selection criteria and create a score for each proposal based on those criteria; and

84 “(4) Based on this review, issue a set of recommendations to the Director
85 as to which proposals should receive Fund loans.”.

86 (f) A new paragraph (h) is added to read as follows:

87 “(h) In response to each request for proposals, the Director shall issue a final
88 written decision of Fund loans to be awarded. The Director’s decision shall be based on the
89 Department’s review of selection criteria and scoring of each proposal and any additional criteria
90 that the Director determines to be relevant. If the Director awards a Fund loan to any proposal
91 that was not recommended by the Department or rejects a Fund loan for any proposal that was
92 recommended by the Department, the Director shall issue a detailed written justification
93 explaining that decision, including an explanation of any additional criteria that were considered
94 and why they were considered. Following each Fund loan award decision, the Department shall
95 release publicly the Department’s -recommendations to the Director, the final signed Decision
96 Memorandum from the Director, and the Director’s written justification for any differences from
97 the Department’s recommendations. The Department’s scoring sheets and the final score
98 awarded to each proposal shall not be released publicly.”.

99 Sec. 3. Fiscal impact statement.

100 The Council adopts the fiscal impact statement in the committee report as the fiscal
101 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
102 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

103 Sec. 4. Effective date.

104 This act shall take effect following approval by the Mayor (or in the event of veto by the
105 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
106 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
107 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)) and publication in the District of
108 Columbia Register.