

**Testimony of Beth Mellen & Amanda Korber
Supervising Attorneys, Housing Law Unit
Legal Aid Society of the District of Columbia**

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

Public Hearing Regarding:

Bill 23-0873

“Rent Stabilization Program Reform and Expansion Amendment Act of 2020”

and

Bill 23-0972

“Hardship Petition Reform Amendment Act of 2020”

November 9, 2020

Faced with the District’s rapid gentrification and worsening affordable housing crisis, the Legal Aid Society of the District of Columbia¹ supports policies that preserve and produce affordable housing. The Rent Stabilization Program is a critical piece of this framework. Legal Aid is a member of the Reclaim Rent Control Coalition, and we fully support the Rent Stabilization Program Reform and Expansion Amendment Act of 2020 (Bill 23-0873), which tracks with the Coalition’s platform. This omnibus package of legislation would expand the Rent Stabilization Program to cover more units and would fix many of the loopholes in the current system that have resulted in the loss of thousands of affordable, rent-controlled units.

While we are generally supportive of the ideas embodied in the Hardship Petition Reform Amendment Act (Bill 23-0972), the more comprehensive approach to reform embodied in the omnibus bill is needed. We recommend that this Committee work to combine the more positive aspects of this bill, which are discussed below, into the omnibus legislation, and then move forward with approving this vitally important and comprehensive bill.

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. 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.

The Council Must Act Boldly to Address the District’s Affordable Housing Crisis

In a city where the average rent for a one-bedroom apartment now tops \$2,000 per month, households with low and moderate incomes — many headed by people of color — are being left behind.² Since 2002, the District has lost over half of its low-cost rental units, those renting for \$800 or less.³ As a result, 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”.⁴ 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.⁵

The shortage of affordable housing, and accompanying heavy rent burdens are having devastating effects on Washingtonians with low incomes, particularly black households. A 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 the greatest “intensity of gentrification” of any city across the country for that period.⁶ The District also saw the most black residents — more than 20,000 — displaced from neighborhoods, mostly by white, affluent, recent transplants.⁷ An updated study covering 2013 to 2017 found that the District “still has a high intensity of gentrification,” with displacement continuing.⁸

Against this backdrop, the national economy now is facing what is being described as the worst economic crisis since the Great Depression.⁹ In the District, nearly 155,000 residents have filed for unemployment, and nearly 225,000 residents have lost income.¹⁰ This loss of income is

² RentCafe, *Washington, DC Rental Market Trends*, available at <https://www.rentcafe.com/average-rent-market-trends/us/dc/washington/>.

³ Wes Rivers, D.C. Fiscal Policy Institute, *Going, Going, Gone: DC’s Vanishing Affordable Housing* (March 2015), available at <https://www.dcfpi.org/wp-content/uploads/2015/03/Going-Going-Gone-Rent-Burden-Final-3-6-15format-v2-3-10-15.pdf>.

⁴ Claire Zippel, D.C. Fiscal Policy Institute, *A Broken Foundation: Affordable Housing Crisis Threatens DC’s Lowest Income Residents* 3 (Dec. 8, 2016), available at <https://www.dcfpi.org/all/a-broken-foundation-affordable-housing-crisis-threatens-dcs-lowest-income-residents/>.

⁵ *Id.* at 1.

⁶ National Community Reinvestment Coalition, *Shifting Neighborhoods* (March 2019), available at <https://ncrc.org/gentrification/>.

⁷ *Id.*

⁸ National Community Reinvestment Coalition, *Gentrification and Disinvestment 2020* (June 2020), available at <https://ncrc.org/gentrification20/>.

⁹ 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>.

¹⁰ Department of Employment Services, “Unemployment Compensation Claims Data,” available at <https://does.dc.gov/publication/unemployment-compensation-claims-data>; U.S. Census

putting tens of thousands of District residents at risk of eviction. Updated Census survey data indicate that over 20,000 households in the District are not current in their rent payments, and over 50,000 households had little or no confidence in their ability to pay November rent.¹¹

The burden of this economic and housing crisis is falling disproportionately on low-income black and Latinx families. Nearly 90 percent of the families reporting that they are not current in their rent and those families with little or no confidence in their ability to pay November rent are black or Latinx.¹² Many of those affected are families with children with reported 2019 annual income of \$25,000 or less, who report loss of employment income since mid-March 2020 and still are not employed.¹³

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.”¹⁴ Any long-term strategy to preserve the District’s dwindling supply of affordable housing must include comprehensive reform to strengthen and expand the Rent Stabilization Program.

Studies Show That Rent Control Preserves Affordable Units, Stabilizes Rents, Prevents Displacement, and Promotes Stable, Diverse Neighborhoods

Rent control was implemented in the District to address the severe shortage of affordable housing available, particularly for low- and moderate-income renters. The purposes of the rent control law include “protect[ing] low- and moderate-income tenants from the erosion of their income from increased housing costs,” “protect[ing] the existing supply of rental housing from conversion to other uses,” and “prevent[ing] the erosion of moderately priced rental housing while providing housing providers and developers with a reasonable rate of return on their investments.”¹⁵

Studies from across the country show that when rent control works, it helps to preserve existing affordable units, stabilize rents, prevent displacement, and promote stable, diverse neighborhoods. Tenants in rent control units stay in their homes longer and are less likely to be

Bureau, Week 17 Household Pulse Survey: Oct. 14 – Oct. 26 – Detailed Tables, *available at* <https://www.census.gov/data/tables/2020/demo/hhp/hhp17.html>. The Census Household Pulse Survey has collected survey data from jurisdictions across the United States, including the District, since the week of April 23, 2020.

¹¹ U.S. Census Bureau, Week 17 Household Pulse Survey, *supra*.

¹² *Id.*

¹³ *Id.*

¹⁴ Executive Office of the Mayor, *ReOpen DC Overview*, *available at* <https://coronavirus.dc.gov/reopencd>.

¹⁵ D.C. Code § 42-3501.02.

forced to move.¹⁶ In fact, one of the most-cited, recent studies criticizing rent control found that San Francisco tenants in rent control units were 20 percent more like to remain in their homes than other tenants.¹⁷ Because it stabilizes rents, rent control also helps to preserve existing affordable units, provide predictability, and slow gentrification and displacement.¹⁸ While rent control protects tenants at various income and rent levels, it disproportionately benefits low-income households headed by older residents, women, and people of color.¹⁹ By keeping more money in the pockets of low-income residents in particular, rent control also helps put money back into the local economy and local businesses and contributes to better employment, health, and educational outcomes for these families.²⁰

Rent Control Should Be Expanded to Cover Newer Units and Smaller Buildings

When the Rental Accommodations Act was enacted in 1975, rent control covered approximately 188,000 units across the District.²¹ Ten years later, when the current Rental Housing Act of 1985 went into effect, the number had shrunk to 120,000 because of new exemptions.²² Today only 90,000 units still remain, and this number will continue to shrink as more units fall under existing exemptions or are demolished, discontinued from housing use, or converted to condominiums or cooperatives.²³ Unless rent control is expanded, the program will continue to

¹⁶ Ameer Chew & Sarah Treuhaft, PolicyLink, the Center for Popular Democracy, and the Right To The City Alliance, *Our Homes, Our Future, How Rent Control Can Build Stable, Healthy Communities* 24-26 (Feb. 2019), available at https://www.policylink.org/sites/default/files/OurHomesOurFuture_Web_08-02-19.pdf; Manuel Pastor, Vanessa Carter, & Maya Abood, USC Dornsife Program for Environmental & Regional Equity, *Rent Matters: What are the Impacts of Rent Stabilization Measures?* 16-17 (Oct. 2018), available at https://dornsife.usc.edu/assets/sites/242/docs/Rent_Matters_PERE_Report_Final_02.pdf; Nicole Montojo, Stephen Barton, & Eli Moore, Haas Institute, *Opening the Door for Rent Control* 26 (2018), available at https://belonging.berkeley.edu/sites/default/files/haasinstitute_rentcontrol.pdf.

¹⁷ Rebecca Diamond, Tim McQuade, & Franklin Qian, “The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco” (Mar. 4, 2019), available at <https://web.stanford.edu/~diamondr/DMQ.pdf>.

¹⁸ Chew & Treuhaft, 27-28; Pastor, Carter, & Abood, 10-12; Montojo, Barton, & Moore, 27.

¹⁹ Chew & Treuhaft, 21-22; Pastor, Carter, & Abood, 19-21.

²⁰ Chew & Treuhaft, 29-33; Pastor, Carter, & Abood, 17-19.

²¹ LaBarbara Bowman, “D.C. Leaders Agree on Rent Control Bill,” *The Washington Post* A1 (July 8, 1975).

²² Kenneth Bredemeier, “Lines Drawn in D.C. Rent Control Battle,” *The Washington Post* A1 (Mar. 17, 1985). Between 1975 and 1985, the exemption for subsidized units was expanded and the small landlord exemption was added.

²³ Peter Tatian, et al., Urban Institute, *Affordable Housing Needs Assessment for the District of Columbia: Phase II* 24 (May 2015), available at <https://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000214-Affordable-Housing-Needs-Assessment-for-the-District-of-Columbia.pdf>.

decline in its reach and effectiveness. Legal Aid supports two provisions in the omnibus bill to expand the protections of rent control to more District residents.

First, the Rental Housing Act should be amended to move the new construction exemption year. Under current law, all buildings built after 1975 are exempt from rent control. This date should be moved to 2005. In addition, the year should be dynamic, so that only buildings less than 15 years old are exempt, with more units coming under rent control each year.²⁴ Exempting units built within the last 15 years will allow owners and investors adequate time to maintain market rental income streams and recoup their initial investments. A 15-year old building falling under rent control for the first time would start at market rates, with rental income only gradually becoming more limited over time. California and Oregon recently enacted statewide rent control laws with 15-year exemption periods, recognizing this time period as a reasonable benchmark.²⁵ Changing the new construction exemption to add properties built after 1975 could add anywhere from 10,000 to 20,000 new units, depending on the scope of the extension.²⁶

Second, the small landlord exemption should be narrowed. Under current law, if a natural person owns four or fewer rental units, then those units are exempt from rent control. Instead, the small landlord exemption should only apply to natural persons who own three or fewer units.²⁷ Four-unit buildings in the District are an important source of naturally-affordable rental housing, and it is precisely these buildings that may be most at risk of becoming unaffordable as gentrification spreads. For tenants living in these buildings, their ability to remain in their homes and maintain affordable rents often depends entirely on who happens to own the building — or who will purchase it next. Limiting the small landlord exemption would ensure that all four-unit buildings fall under rent control, while still protecting smaller landlords, including those who may rent out one or two accessory dwelling units in their own homes. Changing the small landlord exemption to add properties with four units that currently are exempt could add approximately 8,000 new units to the Rent Stabilization Program.²⁸

²⁴ See Bill 23-873, § 2(c), lines 94-103.

²⁵ Lauren Dake, “Rent Control Is Now the Law in Oregon,” *Oregon Public Radio* (Feb. 28, 2019), available at <https://www.opb.org/news/article/oregon-rent-control-law-signed/>; Jenna Chandler, “Here’s how California’s rent control law will work,” *Curbed Los Angeles* (Oct. 9, 2019), available at <https://la.curbed.com/2019/9/24/20868937/california-rent-control-law-bill-governor>.

²⁶ Peter A. Tatian & Ashley Williams, Urban Institute, *A Rent Control Report for the District of Columbia* 6 (June 2011), available at https://www.urban.org/research/publication/rent-control-report-district-columbia/view/full_report. The Urban Institute estimates that the District has 11,003 rental units in multifamily properties built in 1976 and 1977, some of which already may fall under rent control because of when the building permit was issued, and 10,131 rental units in multifamily properties built after 1978. This does not include additional single-family units that might be covered, but also includes units that might fall under other rent control exemptions. *Id.* at 9-10.

²⁷ See Bill 23-873, § 2(d), lines 104-127.

²⁸ Tatian & Williams, *supra*, at 6, 10-11. The Urban Institute estimates that the District has 11,903 rental units in multifamily properties with fewer than 5 units where property records

Legal Aid currently is working with tenants in a four-unit building in Ward 5 that was at risk of losing its affordable status because of the small landlord exemption. The long-time owner of the building had owned multiple properties and fell under rent control. When she passed away, the building was contracted for sale to a new owner who did not own any other rental units in the District and would have been exempt. The four tenants, whose rents all fell under \$1,000 a month, were at risk of large rent increases and displacement in a neighborhood that is rapidly gentrifying. Legal Aid worked with the tenants to exercise their TOPA rights and find a developer to keep the building under rent control, rehabilitate it, and maintain affordability with only modest rent increases. By expanding rent control to all four-unit buildings, the Committee can ensure affordable units like these are preserved, regardless of who owns them.

Petition Rent Increases Should Be Time-Limited and Only Available to Landlords That Maintain Capital Reserves and Comply With the Housing Code

Petitions allow landlords to request and get approval to take extraordinary rent increases often ranging as high as 50 to 100 percent or more. Because rent increases at this level often may take affordable units out of reach for low-income tenants and are very likely to lead to displacement, petitions should be limited to landlords who follow the law and demonstrate a true need for the requested rent increase. These rent increases also should be time-limited to meet the needs presented by the landlord but no more. Legal Aid supports provisions in the omnibus bill to: 1) ensure that petition rent increases expire once the needs set forth in the petition are met, and 2) make clear that landlords will only be approved for petition rent increases if they maintain capital reserves and keep their properties in compliance with the housing code.

First, because petition rent increases are extraordinary, they should be limited in time to meet the needs claimed by the landlord. Capital improvement petitions²⁹ already impose time-limited rent surcharges, which are calculated based on the total cost of the project and expire and are removed once the project is paid for in full. Substantial rehabilitation petition³⁰ rent increases already are calculated based on the total cost of the project, but — unlike capital improvement petition increases — they never expire. There is no logic behind this different treatment. While

indicate the owner is a natural person and the unit otherwise falls under rent control, i.e. units that currently qualify for the small owner exemption. Based on other data about the distribution of units, it is estimated that up to 8,000 of these units might fall under control by changing the small landlord threshold from 4 to 3 units.

²⁹ A capital improvement petition allows a landlord to seek a rent increase to fund capital investments, such as a new roof or new windows. The resulting rent increase is time-limited to either 64 months (for limited projects) or 96 months (for building-wide projects, and the rent increase is calculated to pay off the total project cost over this period with a maximum cap of 15 or 20 percent respectively. *See* 14 D.C.M.R. §§ 4210.1-.55.

³⁰ A substantial rehabilitation petition allows a landlord to seek a rent increase to fund a broader rehabilitation or renovation of a building. These projects may involve replacing multiple systems, upgrading bathrooms and kitchen, and so on. The resulting rent increase is calculated to pay off the total project cost, with a maximum cap of 125 percent and no expiration date. *See id.* §§ 4212.1-.12.

substantial rehabilitation surcharges necessarily would remain in place longer, given the scope of the projects, there is no reason these rent increases should remain in place once the project costs have been paid. Similarly, hardship petition³¹ rent increases should only remain in place for three years, followed by a reevaluation of the landlord's finances to determine if the need for the rent increase remains, and should be phased in gradually in increments of 5 percent per year.³²

Second, petition rent increases should be limited to financially-responsible landlords that have established reserve accounts to cover capital expenditures. When available, these funds could help to cover all or part of the costs of repairs and rehabilitation that otherwise might form the basis for a capital improvement, substantial rehabilitation, or hardship petition. There are some models available for establishing the parameters for this type of requirement — HUD requires a reserve for replacements account in properties that the agency insures or subsidizes,³³ the Department of Housing & Community Development similarly assesses reserve requirements on Low-Income Housing Tax Credit properties,³⁴ and New York requires the establishment of such an account when a building is converted from rental to condominium.³⁵ We support provisions in the omnibus bill to require landlords to show they have established a replacement reserve account in line with HUD's model in order to file a petition.³⁶ For those petitions where capital expenditures are relevant, the landlord also should have to show that capital reserves already have been or will be accessed before relying on rent increases for funding.

Finally, landlords should not be able to seek petition rent increases unless their properties currently are in compliance with the housing code. The Rental Housing Act already is clear that a landlord may not increase a tenant's rent if the tenant's unit or the common areas of the

³¹ Described in further detail below, a hardship petition allows a landlord to seek a rent increase if current profits on the building's operations do not provide a 12 percent annual return on the landlord's equity in the building. The resulting rent increase can be any amount and never expires, regardless of how the landlord's finances may change in future years. *See id.* §§ 4201.1-.20.

³² *See* Bill 23-873, §§ 2(i), 2(j), 2(m), lines 225-252, 347-352, 398-404, 424-451, 497-530. The Elderly Tenant and Tenant With a Disability Protection Amendment Act of 2016, L21-0239, clarified that substantial rehabilitation and hardship petition rent increases should be treated as surcharges but did not specify how or when those rent surcharges would expire. *See* D.C. Code §§ 42-3501.03(29C), -3502.24(i)(2).

³³ *See, e.g.*, HUD Reserve for Replacement Guidelines, Region VIII – Denver (Sept. 2014), available at <https://www.hud.gov/states/shared/working/r8/mf/reserveguidelines/14>.

³⁴ *See* Department of Housing & Community Development, *Low-Income Housing Tax Credit Qualified Allocation Plan 24*, 34 (June 2019), available at <https://dhcd.dc.gov/page/2019-dhcd-low-income-housing-tax-credit-qualified-allocation-plan-draft>.

³⁵ N.Y.C. Admin. Code §§ 26-703 to 26-704. Project sponsors must provide a fund equal to at least three percent of the overall offering prices for all units combined, either within 30 days or over a five-year period with a minimum initial contribution.

³⁶ *See* Bill 23-873, § 2(p), lines 605-654.

building are not in compliance with the housing code.³⁷ The regulations implementing the law state that petitions should be treated as rent increases in this regard,³⁸ but Legal Aid and other attorneys representing tenants have found that landlords and even judges sometimes ignore this rule. A landlord should not be able to seek approval via a petition for a rent increase that cannot currently be implemented, and such a landlord should not be rewarded for its failure to follow District law. Legal Aid supports provisions in the omnibus bill to amend the Rental Housing Act to clarify that a landlord cannot file a petition seeking an extraordinary rent increase unless the property complies with the housing code.³⁹

Legal Aid currently is representing tenants facing a hardship petition increase despite substantial housing code violations in their building. The tenants currently benefit from affordable rents in a gentrifying neighborhood but have had to endure poor conditions for a number of years. Inspections conducted by the Department of Consumer & Regulatory Affairs before and after the petition was filed found multiple, substantial housing code violations, with violations cited in every unit in the building. Despite this fact, the landlord still filed and pursued the petition, seeking a rent increase of over 60 percent.

Hardship Rent Increases Should Be Limited to Landlords That Are Not Making Enough Money to Cover Their Expenses

Under current law, a landlord that is not receiving a 12 percent return on its equity in a rent control property is entitled to raise rents to whatever level is necessary to reach this guaranteed return on investment.⁴⁰ The resulting hardship petitions often seek large rent increases, ranging from 50 to 100 percent or more. Once approved, many hardship rent increases push affordable units out of reach of low-income tenants and result in displacement of current residents. Moreover, because the hardship formula focuses on return on equity rather than operating gains and losses, it often rewards landlords with comparatively little financial need. A large landlord that can afford to invest more equity in a building will be entitled to large rent increases, even if

³⁷ D.C. Code § 42-3502.08(a)(1)(A).

³⁸ 14 D.C.M.R. § 4216.1

³⁹ *See* Bill 23-873, § 2(o), lines 560-574. Legal Aid also supports provisions in the omnibus bill to 1) allow the Rent Administrator or a judge at the Office of Administrator Hearings to require a landlord to provide an independent audit and/or other documentation to substantiate any claims made in petitions seeking extraordinary rent increases, 2) to require all such petitions to be served on the Office of Tenant Advocate and non-profit organizations that provide technical assistance and legal services to tenants, such as Legal Aid, and 3) to allow the Office of the Attorney General to intervene in any rent control proceeding. *See id.*, § 2(o), lines 580-590, 602-604. These provisions should help to ensure that extraordinary rent increases are thoroughly vetted before they are imposed on tenants.

⁴⁰ This rate of return – which is incredibly high compared to modern market conditions – was established in 1985 at a time of high interest rates and inflation, when the yield on a 10-year Treasury Bill was nearly 12 percent. *See* Macrotrends, 10 Year Treasury Rate - 54 Year Historical Chart, available at <https://www.macrotrends.net/2016/10-year-treasury-bond-rate-yield-chart>.

it is operating with a comfortable profit margin, while a small landlord that may be losing money and have little cash invested will not qualify.

An analysis by Legal Aid of hardship petitions filed since 2006 has found that many landlords that benefit from hardship rent increases may not need them. Over half of hardship petitions submitted (52%) came from properties with positive net income. Over a third of the landlords — 35% of submitted petitions — reported profit margins of 15 percent or more. This same analysis found that hardship petitions have contributed to the loss of hundreds of affordable rent control units during the past 10-plus years. For the 65 petitions that were approved, covering 1,001 units, the average rent increase was \$642 per month, or 76 percent.

The hardship petition formula should be changed to put a brake on large increases and focus on operating gains and losses, rather than return on investment. We support provisions in the omnibus bill to limit hardship increases to the amount necessary to bring a property into the black and at a profit rate equal to the 10-year Treasury Bill rate.⁴¹ This will ensure that landlords do not operate properties at a loss, including after accounting for repairs and all other necessary expenses, but also will ensure that tenants do not have to shoulder high rent increases in order to provide landlords with an exorbitant guaranteed rate of return.

Legal Aid also supports provisions in the omnibus bill to strengthen requirements for the audit process for hardship petitions. Once a hardship petition is filed, the Rent Administrator is charged with obtaining an audit report of the petition.⁴² The Rent Administrator uses outside auditors to perform this function. The audit process is critical for catching errors in the landlord's calculations and fixing these problems, so that tenants' rights will be protected without the need for protracted litigation. Unfortunately, based on Legal Aid's experience representing tenants in a number of hardship petition cases over the past 15 years, and evaluating other cases for possible representation, these audits often do not catch critical problems. We have seen audits that did not fix problems with the landlord's calculation of its current rental income, remove reported expenses outside the 12-month period, and or depreciate or remove capital and extraordinary expenses.

Provisions in the omnibus bill address these issues in two ways. First, the bill requires audit reports to contain specific findings of fact and conclusions of law on all of the above issues.⁴³ Second, the bill requires any auditor employed by the Rent Administrator to be a certified public accountant with experience in rental housing and the skills need to evaluate and apply these auditing standards.⁴⁴ Setting high standards for the auditor and including more specific requirements for the audit report itself should help to ensure that the auditor takes the time to examine hardship petitions carefully and catch common errors, protecting tenants from rent increases that are not justified.

⁴¹ See Bill 23-873, § 2(j), lines 297-352.

⁴² See 14 D.C.M.R. § 4209(d),(e).

⁴³ See Bill 23-873, § 2(j), lines 353-378.

⁴⁴ See *id.*, lines 405-410.

Legal Aid also recommends that the Committee add a provision from the Hardship Petition Reform Act (Bill 23-972) into the omnibus bill, requiring the Rent Administrator to dismiss hardship petitions if they are not fully and properly documented when submitted.⁴⁵ In order for the auditor to analyze a hardship petition properly, it is critical that the landlord submit complete and detailed documentation of all claimed income and expenses. Legal Aid has seen hardship petitions that do not meet this standard nonetheless approved by the auditor and the Rent Administrator. Language in Bill 23-972 makes clear that such petitions must be dismissed and can only be refiled when the landlord submits complete documentation.

Voluntary Agreements Should Be Eliminated

The Rental Housing Act includes a provision for voluntary agreements between landlords and tenants to raise rents on the theory that landlords and tenants can come together and bargain to provide benefits to both sides. Tenants would agree to pay higher rents within a range they can afford, and in exchange landlords would agree to make improvements to their building. The process was designed to ensure a fair compromise by requiring approval of a super-majority (70 percent) of tenants.

Unfortunately, since the 2006 reforms to the District's rent control law, landlords increasingly have used voluntary agreements to win approval for rent increases of hundreds or even thousands of dollars per month, well above market rates. They have achieved these dramatic rent increases by offering current tenants a deal they cannot refuse: agree to the rent increases, but only future tenants will have to pay them. And landlords who do not use this technique use similar ones, for example providing current tenants with large move-out payments if they approve rent increases and then vacate. What this practice does is externalize the costs of rent increases by shifting them to future and other tenants who are not party to the agreement, giving current tenants little to no incentive to challenge such increases. As a result, entire buildings of affordable units become unaffordable. Rent control still theoretically applies, but the law's restrictions are meaningless once substantial rent increases are locked in through voluntary agreements.

This practice is not just theoretical, it is well-documented. An analysis by Legal Aid and the Coalition for Nonprofit Housing & Economic Development of voluntary agreements filed since 2006 has found that the 206 approved voluntary agreements resulted in monthly rent increases totaling \$4,949,501 across 5,135 units — an average increase of over \$964 per unit per month. Voluntary agreements that shifted costs to future tenants had average increases of \$1,182 per month, compared to \$869 for agreements that did not. Some of these agreements approve rent increases as high as \$3,000 per month per unit.

Last Council period, Chairwoman Anita Bonds and other members of the Committee introduced a bill to end this practice, B22-0100, the Preservation of Affordable Rent Control Housing Amendment Act of 2017. Legal Aid, other tenant advocates, and tenants spent the last three years negotiating in good faith with landlords and their representatives to try to move this bill forward, to no avail. While these negotiations have continued during the past year, the group has

⁴⁵ *See id.*, lines 232-265.

been unable to make any further progress. And this latest bill is one of five other pieces of legislation introduced since 2006 to reform the voluntary agreement process, all of which have failed to win passage.

Recognizing this impasse, the incredible damage done by voluntary agreements in the past 10-plus years, and the inherent unequal bargaining power between landlords and tenants that may inevitably result in these types of outcomes, Legal Aid has come to the conclusion that voluntary agreements should be eliminated entirely. We support the provision in the omnibus bill to do so.⁴⁶

Regular Rent Increases Should Be Limited to Stabilize Housing Costs

Legal Aid also supports provisions in the omnibus bill to ensure that regular rent increases — the annual inflation-based rent increase and the vacancy increase when a unit turns over — are more limited.

First, Legal Aid supports provisions in the omnibus bill to clarify that rent increases not taken by a landlord within 30 days expire and cannot be saved for future implementation.⁴⁷ As we outlined in our testimony before this Committee on September 24, 2020,⁴⁸ in the past decade-plus, landlords have been using various tactics to return to a two-track rent control system. These landlord practices result in de facto rent ceilings, in which what a tenant actually pays for rent and what the landlord claims could be charged are two different numbers, often hundreds or even thousands of dollars apart. This two-track rent system is confusing for tenants and also allows landlords to keep rents at market rents, implementing large increases over time to follow the market. The clarifications contained in the omnibus bill will help eliminate de facto rent ceilings, increase transparency, protect tenants from large rent increases, and ensure that rent ceilings finally are abolished.

Second, Legal Aid supports provisions in the omnibus bill to eliminate the extra plus 2 percent that is added on to the annual allowable rent increase and to eliminate vacancy increases altogether.⁴⁹ Rent stabilization is only successful if it helps to mitigate market effects, keeping rent increases affordable and stable at times when market increases are inflationary. In the District, average market rents increased by 55 percent between 2010 and 2019, while the annual

⁴⁶ See *id.*, § 2(n), line 573.

⁴⁷ See *id.*, § 2(f),(g), lines 137-153.

⁴⁸ Testimony of Beth Mellen Harrison and Amanda Korber Before the Committee on Housing and Neighborhood Revitalization, “Public Hearing Regarding: Bill 23-0237, “Rent Concession Amendment Act of 2019”, Bill 23-0530, “Rent Stabilization Affordability Qualification Amendment Act of 2020”, Bill 23-0877, “Substantial Rehabilitation Petition Reform Amendment Act of 2020”, Bill 23-0879, “Capital Improvement Petition Reform Amendment Act of 2020”, Bill 23-0878, “Voluntary Agreement Moratorium Amendment Act of 2020” (Sept. 24, 2020), available at https://www.legalaiddc.org/wp-content/uploads/2020/09/Legal-Aid-Testimony-on-Rent-Control-Bills-9.24.20-Hrg_FINAL.pdf.

⁴⁹ See Bill-23-873, § 2(h),(l), lines 154-163, 413.

rent control increases during this same period totaled 40 percent.⁵⁰ This figure does not account for vacancy increases on units, which ranged from 10 to 30 percent per vacancy during this period. During roughly the same period, from 2008 to 2018, average household incomes in the District rose by only 26 percent, and Black families saw their incomes remain stagnant with zero growth.⁵¹ Even with the current rent stabilization rules for regular increases in place, low- and moderate-income households in the District cannot keep pace. More change is needed to stabilize rents and protect long-term affordability.

All Tenants in the District Should Be Limited to One Rent Increase Per Year, Following Notice to the Tenant

Finally, Legal Aid supports provisions in the omnibus bill to add a new protection to limit rent increases for all tenants.⁵² Landlords may only increase the rent once a year, following a minimum of 30 days' notice, for tenants living in rent-controlled units.⁵³ Tenants in non-rent controlled units should receive these same protections. While some landlords treat the rent control limits as applicable to all units, and only increase rents once annually following notice, Legal Aid has seen exceptions. Without these protections, tenants are left vulnerable and landlords have an easy tool for harassment and retaliation. The Committee should amend the Rental Housing Act to limit all landlords to one rent increase per year following notice to the tenant.

Conclusion

Legal Aid joins the call of the Reclaim Rent Control Coalition — the status quo has failed tenants in the District for far too long, and comprehensive reform is needed to ensure that the Rent Stabilization Program achieves its purpose of protecting low- and moderate-income tenants from displacement, by stabilizing their rents. We look forward to working with the Committee and the full Council on this vital work.

⁵⁰ “D.C. area's rent increases among the highest in past decade,” *Washington Business Journal* (Dec. 18, 2019), available online at <https://www.bizjournals.com/washington/news/2019/12/18/d-c-areas-rent-increases-among-the-highest-in-past.html>; D.C. Office of the Tenant Advocate, *Historical Comparison of the “Rent Control CPI” and the Social Security Cost of Living Adjustment Through 2019*, available at https://ota.dc.gov/sites/default/files/dc/sites/ota/publication/attachments/2019%20OTA%20History%20of%20SS%20COLA%20%26%20RC%20CPI-W.FINAL_.pdf. The 40 percent increase is based on the Consumer Price Index (CPI) plus 2 percent; for tenants who are elderly or have disabilities, the increase during this same period would have been only 14 percent. *Id.*; see also D.C. Code §§ 42-3502.08(h), 42-3502.24(a).

⁵¹ Tazra Mitchell, D.C. Fiscal Policy Institute, *The District’s Rising Economic Tide Isn’t Lifting Black Boats* (Oct. 24, 2019), available at <https://www.dcfpi.org/all/the-districts-rising-economic-tide-isnt-lifting-black-boats/>. The report finds that Black households saw average income change from \$45,700 in 2008 to \$45,200 in 2018. For all households overall, average income grew from \$67,600 to \$85,200. *See id.*

⁵² See Bill 23-873, § 2(q), lines 655-673.

⁵³ D.C. Code §§ 42-3502.08(g), 42-3509.04(b).