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**Before the Special Committee on COVID-19 Pandemic Recovery
Council of the District of Columbia**

**Public Oversight Hearing Regarding an Equitable End to Safety Net Protections Put in
Place During the COVID-19 Pandemic**

May 21, 2021

The Legal Aid Society of the District of Columbia¹ submits the following testimony regarding “An Equitable End to Safety Net Protections Put in Place During the COVID-19 Pandemic.” Specifically, this testimony focuses on the impact that the end of foreclosure and debt collection moratoria will have on low-income homeowners and consumers in the District.

There are critical timing considerations and policy priorities that the District must focus on in working toward an equitable end to the emergency protections. Without careful planning, the District is at risk of intensifying the displacement of Black and Brown residents and widening the already stark racial wealth gap in the District. The District’s pandemic recovery plan must include a commitment to equitable policymaking that will help District residents achieve housing and economic stability.

As an initial matter, the District must ensure that federal Homeowner Assistance Fund programs are open and working effectively for homeowners *before* lifting restrictions on foreclosures and utility disconnections. In addition, before lifting the foreclosure and debt collection moratoria, the District should implement key consumer protections including: (1) enhancing procedural protections for condominium owners; (2) clarifying basic requirements for post-foreclosure evictions; and (3) modernizing the District’s debt collection law, including protecting a baseline amount of funds in a consumer’s bank account from garnishment by debt collectors.

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 89 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

The End of the Foreclosure and Debt Collection Moratoria Will Immensely Impact District Residents, Especially Black and Brown Residents

By enacting the foreclosure moratoria prohibiting mortgage and condo foreclosures of owner-occupied homes during the District’s public health emergency and for sixty days after, the D.C. Council has kept thousands of individuals and families housed during the ongoing pandemic. Pre-pandemic, at the beginning of 2020, there were already 1,389 mortgage foreclosure cases pending in D.C. Superior Court – not including any homeowners who were at risk of foreclosure for other reasons, such as inability to pay their condominium dues or property taxes. After the pandemic hit, the number of households struggling to make their mortgage payments skyrocketed. The Census Bureau’s Housing Pulse Survey released in April 2021 indicates that more than 20,000 households in the District reported being behind on their mortgage payments.²

Against a backdrop of systemic racism in lending, reverse redlining, and already racially disparate rates of homeownership, homeowners of color face a grossly disproportionate risk of losing their homes when pandemic protections are lifted. Of all District households reporting being behind on their payments, 90% identify as Black or Hispanic.³ Black and Brown homeowners nationally are also less likely to have accessed mortgage relief through forbearance programs.⁴

The debt collection moratorium has similarly staved off the spiraling impacts of debt collection for thousands of consumers during the pandemic. These same consumers will unfortunately be swept up in a flood of debt collection lawsuits, attempts to garnish wages and bank account funds, and other forms of debt collection when the moratorium ends. Even before the emergency, as a recent *Washington City Paper* headline aptly put it, “More and More D.C. Residents Are Being Sued Over Debt.”⁵ The number of consumer debt collection cases filed in the D.C. Superior Court has increased substantially in recent years. In 2017, there were 4,558 such cases, most of them filed in the Small Claims Branch of the court. By 2019, there were over 7,202 new debt collection case filings, an increase of 58% in just three years.

² U.S. Census Bureau, Week 27 Household Pulse Survey, Housing Tables, Table 1a. “Last Month’s Payment Status of Owner Occupied Housing Units” (Excel spreadsheet), available at <https://www.census.gov/data/tables/2021/demo/hhp/hhp27.html>.)

³ *Id.*

⁴ Sharon Cornelissen and Alexander Hermann, Joint Center for Housing Studies of Harvard University, “A Triple Pandemic? The Economic Impacts of COVID-19 Disproportionately Affect Black and Hispanic Households,” July 7, 2020, available at: <https://www.jchs.harvard.edu/blog/a-triple-pandemic-the-economic-impacts-of-covid-19-disproportionately-affect-black-and-hispanic-households>.

⁵ Gomez, Amanda Michelle, “More and More D.C. Residents Are Being Sued Over Debt,” *Washington City Paper* (Feb. 6, 2020), available at <https://washingtoncitypaper.com/article/176580/increasing-number-of-dc-residents-are-being-sued-over-debt/>.

The District should anticipate an even sharper rise in new debt collection activity as a direct result of the pandemic once moratorium protections end. In the last major recession in 2009, the credit card delinquency rate spiked by 84 percent.⁶ With over 159,000 new unemployment claims filed in DC in FY2020⁷ (more than four times the number for FY2019),⁸ and with bills and unpaid debts stacking up, we should expect a deluge of past due accounts and debt collection against DC residents. And racial disparities in the debt collection context are also pronounced: 36% of people in communities of color have debt in collections, more than five times the rate in white communities.⁹

Despite the staggering data on the impact of the pandemic and the number of people who stand to lose their limited income, assets, or housing when pandemic protections end, there is a way forward that can mitigate these impacts and work to support a more equitable transition from pandemic protection to recovery.

The District Must Ensure That Homeowner Assistance Fund Programs are Open and Working Effectively for Eligible Homeowners *Before* Lifting Restrictions on Home Foreclosures and Utility Disconnections

Timing will play a critical role in whether the District’s pandemic protections work as intended to not only stave off immediate harms, but also to give the District’s most vulnerable residents a real chance at recovery, including achieving housing and economic stability. The purpose of the moratoria was never to simply delay the devastation of the pandemic until after the public health emergency, and the District should not accept that result now.

The Homeowner Assistance Fund (“HAF”) created by the American Rescue Plan Act of 2021 includes \$50 million for the District – with funds available to provide direct assistance to help

⁶ See Board of Governors of the Federal Reserve System, Charge-Off and Delinquency Rates on Loans and Leases at Commercial Banks, <https://www.federalreserve.gov/releases/chargeoff/delallsa.htm> (last updated Feb. 18, 2020).

⁷ See D.C. Department of Employment Services Responses to FY 2020 Public Oversight Questions, p. 32, <https://dccouncil.us/wp-content/uploads/2021/02/DOES-POH-2021-PreHearing-Question-Narrative-Responses-FINAL.pdf>

⁸ See D.C. Department of Employment Services Responses to FY 2019-2020 Public Oversight Questions, p. 69, https://dccouncil.us/wp-content/uploads/2020/02/DOES-PO-Questions-2020_Final-Response.pdf

⁹ See Urban Institute, Debt in America: An Interactive Map, Debt Delinquency (as of Mar. 21, 2021), https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections&state=11

struggling homeowners with their mortgage and other housing-related payments. If HAF programs are designed and rolled out effectively, this new source of federal funding has the potential to prevent thousands of foreclosures, to preserve Black and Brown homeownership in the District, and to prevent rare sources of affordable housing from disappearing into the hands of developers and investors. To have this kind of an impact, it will be critical for the District to design its HAF programs in a way that is low-barrier, with a streamlined and accessible application process. HAF funds should also be carefully targeted to make sure they reach the most vulnerable homeowners. And the District should ensure that it implements HAF programs in close consultation with community stakeholders who have on-the-ground experience with foreclosure issues, including lessons learned from the successes and challenges of locally-run programs like D.C.'s HomeSaver Program. The District's goal should be for local HAF programming to make foreclosure cases moot for as many District homeowners as possible, and for all of the District's most vulnerable homeowners.

But as of the date of this hearing, the District has not yet even submitted its *proposals* for the design of its HAF programs because it and other agencies across the nation continue to wait for further guidance from the U.S. Department of Treasury regarding program implementation. Jurisdictions are required to submit their proposed HAF plans to Treasury by June 30, 2021.

It is essential that foreclosure moratorium protections remain in place – even if that means that extending the foreclosure moratorium for longer than 60 days beyond the public health emergency – until the District has rolled out its HAF programs, conducted outreach to target communities, and collected data to indicate that the programs are working effectively. The widespread problems experienced by renters trying to apply for assistance from STAY DC should serve as a clear example of how the mere existence of relief funds or availability of programs does not translate into actual relief for those eligible to receive assistance.¹⁰ The District must ensure that HAF programs are free of substantial bottlenecks in the application process and that qualifying applications are being processed to approval before lifting protections. An equitable end to pandemic protections requires carefully-designed “off-ramps”¹¹ – not a cliff. By keeping the existing foreclosure moratorium protections in place until HAF programs are open and operating effectively, the District can leverage these substantial federal funds to dramatically increase housing and economic stability for residents hardest hit by the pandemic, rather than driving large-scale foreclosure and displacement.

¹⁰ See Emily Near, “STAY DC Program Needs an Overhaul to Live Up to Its Promise to Prevent an Eviction Crisis,” (blog), May 17, 2021, <https://www.makingjusticereal.org/stay-dc-program-needs-an-overhaul-to-live-up-to-its-promise-to-prevent-an- eviction-crisis>

¹¹ In addition to HAF programs that will likely provide mortgage reinstatement and other foreclosure prevention assistance to homeowners, another “off ramp” for distressed homeowners is the permanent, post-forbearance mortgage relief available to homeowners with federally-backed loans. However, Legal Aid's on-the-ground experience assisting homeowners trying to get such relief indicates serious systemic issues with whether mortgage companies are properly reviewing loans for relief in accordance with federal guidelines. Until those programs are working effectively, emergency protections must remain in place to prevent a wave of avoidable foreclosures.

Finally, timing also matters with respect to the District's utility disconnection moratoria. The federal legislation creating the Homeowner Assistance Fund specifically allows states to create programs for the payment of utilities for struggling homeowners. But homeowners cannot apply for a program that does not yet exist in the District, and homeowners are categorically ineligible for utility assistance from STAY DC (even though that program also is not working effectively for renters who qualify). Until such programs are opened and working effectively, the existing automatic protections against utility shutoffs should remain in place.

Several Key Consumer Protections Should be Put in Place Before Foreclosures and Debt Collection Are Allowed to Resume

While they play a critical role, direct financial assistance programs cannot be the only way that the District addresses the needs of residents coming out of the pandemic. Such programs must be paired with longer-term policy changes that increase fairness and improve housing and economic security for District homeowners and consumers. The District should prioritize implementing several key consumer protections before foreclosures and debt collection are allowed to resume, including:

1. *Increasing protections for condominium owners at risk of foreclosure.* Condominium foreclosures in the District happen outside of the court system and with minimal procedural safeguards. Under current law, an auction can happen just 31 days after a notice of foreclosure is issued to a homeowner. This timeframe should be increased to at least 60 or 90 days. While such a reform is long overdue, it is particularly critical now that substantial federal relief funds for homeowners are on the way. Low-income condominium owners eligible for homeowner assistance funds should be able to apply for and access relief without the danger of a foreclosure auction happening in the meantime. Supporting low-income condominium owners in accessing financial assistance also makes sense because such funds will not only preserve affordable housing for individual owners, but also improve the financial health of the whole building.

The Council should also update DC's Condominium Act to require associations to offer unit owners the opportunity to participate in mediation before either issuing a non-judicial notice of foreclosure or filing a collection/foreclosure lawsuit. Mediation would enable homeowners and associations to resolve delinquencies through repayment plans and receipt of homeowner assistance funds, while also avoiding the substantial costs associated with collections cases and foreclosure auctions.

2. *Ensuring that only legal owners of a property have the right to evict occupants.* Even with various foreclosure prevention and direct financial assistance programs, some homeowners will still lose their homes to foreclosure and face eviction when the emergency pandemic protections end. Currently, some real estate investors and developers that are the highest bidders at a foreclosure auction pursue eviction of the foreclosed homeowner and/or charge rent and fees before they have even gone to closing to complete the sale. This means they are pursuing eviction when they have not yet paid the purchase price or gotten the deed. This is unfair and should be clearly prohibited. The District should enact clarifying legislation requiring highest bidders from foreclosure auctions to have the deed before evicting occupants or charging rent or fees.

3. *Modernizing the District's permanent debt collection law to broaden its scope, require adequate proof from collectors, and automatically protect a baseline amount of funds in a consumer's bank account.* The District's debt collection statute is obsolete, enacted almost 50 years ago when the consumer credit market looked nothing like it does today. As a result, the scope of the existing law is woefully inadequate to protect District consumers, failing to cover even credit card or medical debt. The Council already addressed this scope problem for purposes of making the emergency debt collection legislation broadly applicable to all forms of consumer debt, and now it should do the same for the permanent law.

The District's debt collection statute must also be modernized in substance, requiring debt collectors to have adequate information and documentation before they can sue or get a judgment. Doing so before moratorium protections are lifted would mitigate the intensity and harm of the flood of anticipated debt collection lawsuits, judgments, and garnishments to follow. And in this time of widespread economic hardship, the Council should go further by amending District law to automatically protect a baseline amount of funds in a consumer's bank account – so that even with a judgment, a regular creditor or debt collector cannot take someone's last dollar, triggering a domino effect of adverse outcomes (like missing the rent and not being able to afford food) and spiraling poverty.

Conclusion

We thank the Committee for the opportunity to submit this testimony, and we look forward to working with members of the Committee and the Council on continuing efforts to plan for a just and equitable pandemic recovery.