

Joint Comments of Legal Counsel for the Elderly and the Legal Aid Society of the District of Columbia on the D.C. Department of Housing and Community Development’s Homeowner Assistance Fund Draft Plan

September 24, 2021

Legal Counsel for the Elderly¹ (LCE) and the Legal Aid Society of the District of Columbia² (Legal Aid) are the leading non-profit organizations that provide free legal representation to low-income homeowners in the District facing foreclosure.

LCE and Legal Aid maintain a regular presence at the D.C. Superior Court’s foreclosure docket proceedings to represent and conduct outreach to low-income homeowners. Even during the pandemic, and when foreclosures have been stayed as a result of the current foreclosure moratorium that is in place until November 5, 2021, we continue to work with our clients on preserving their homes, and we continue to appear in court virtually when hearings are underway.

The Department of Housing and Community Development (DHCD)’s draft Homeowner Assistance Fund (HAF) plan has enormous potential to prevent the disparities laid bare in the COVID-19 pandemic from leaving a second scar in the form of foreclosures and displacement. The plan is strong, and its implementation is urgent. The District currently has a moratorium on all foreclosures where the home is owner- or heir-occupied until November 5, 2021. Time is running out to implement the HAF program so that much needed funds can be allocated to preserve affordable housing in the District and address systemic racism in the District’s housing

¹ For more than 45 years, Legal Counsel for the Elderly has championed the dignity and rights of Washington, D.C. elders by providing free legal and social work services to those in need. Our work addresses the most important aspects of an older adult’s life, including housing, economic security, self-determination, and health & safety.

On average 15% of LCE’s cases are housing advocacy: preserving affordable housing for low-income seniors and preventing tax and mortgage foreclosures and evictions. For over four decades, LCE has assisted District residents in foreclosure matters, securing more favorable outcomes than would otherwise be possible for homeowners without legal counsel.

² 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.

market. It is essential that the District keep its foreclosure moratorium for owner-occupied homes in place until HAF is open and fully operational.

As noted in the plan, DHCD held listening sessions with legal services and housing counseling agencies during the plan's development. We appreciate DHCD's collaborative approach and the work that has gone into this plan proposal. The proposed plan is on the right course in many key respects. The strengths of DHCD's plan include the following:

- The program plan recognizes the history of racial discrimination and segregation in the District's housing market, the profound impacts that carry into the present day, and the disparate impact of the COVID-19 public health and economic crises. The proposed plan is tailored to address the continuing inequities in the District's housing market. The plan also states an intent to continually monitor data relating to the program and, if necessary, revise the plan to ensure that it is reaching the homeowners with greatest need.
- The program plan deliberately reduces paperwork burdens to the extent possible while remaining within Treasury guidance. In our experience, onerous application requirements are a true barrier to assistance and inevitably have the greatest impact on those most in need of assistance. The proposed plan indicates that DHCD is serious about reducing the unnecessary requirements that have impeded the success of some prior assistance programs.³ We hope the Department maintains this commitment as the program is implemented.
- The program plan further commits to equity by building in language access from the start, including by providing application and other program materials in English and Spanish and committing to targeted outreach to communities with limited English proficiency. DHCD has already met with our organizations about this issue, and we look forward to continuing to work together to ensure that all District residents can access this vital assistance.
- The program plan provides broad relief for the myriad issues that homeowners may face. Assistance will be available to single-family homeowners as well as condominium owners throughout the District, and homeowners can receive assistance with mortgage payments (including payments to cure a reverse mortgage default), condominium and homeowner association fees, property taxes, utilities, and necessary legal fees relating to reinstatement.
- The program plan acknowledges the high cost of housing in the District and commits to deliver significant lifetime assistance of up to \$120,000 per household to stabilize households and help them avoid involuntary displacement.
- The program allows heirs to access program assistance to remain in their family home and longtime community. Opening the program to heirs will also help to support the intergenerational transfer of wealth and augment the District's work to reduce the racial wealth gap.

³ In particular, the plan allows self-attestation of hardship and takes advantage of the option to use a fact-based proxy to determine income in certain circumstances.

Although the plan has many strengths, there are a few areas where we encourage DHCD to make changes to its draft plan or to be prepared to change course in order to meet the needs of District homeowners.

Specifically, we believe that DHCD should do the following:

- Prepare to expand its pilot program quickly.
- Ensure that the plan includes protections to ensure effective implementation.
- Make several technical changes to the term sheets.
- Engage in ongoing evaluation of the demographics of HAF fund recipients to ensure that the program is adequately targeted to meet the needs of the District's most vulnerable homeowners.

1. DHCD needs to be prepared to expand the pilot quickly.

We applaud DHCD's initiative in establishing a pilot program that is targeted to condominium owners located in Wards 7 and 8 given that those homeowners will be at high risk of foreclosure once the District's foreclosure moratorium lifts. However, the pilot program is extremely narrow in scope – not only is it limited to condominium owners in certain geographic areas, it is further limited to homeowners with DHCD loans. Based on Department records, this constitutes a pool of roughly 700 homeowners out of the approximately 166,000 owner-occupied households in the District that have mortgages. (See Table 1).

It will be critical for DHCD to quickly expand the scope of its pilot or open the full program so that program funds may be used to prevent avoidable foreclosures. Unless the District's moratorium is extended, there will be homeowners in danger of foreclosure after November 5, 2021, that will be categorically excluded from the pilot program. Homeowners that are facing a foreclosure by their condominium association or who had a pending mortgage foreclosure case prior to the enactment of the moratorium will be at imminent risk of foreclosure once the moratorium lifts. DHCD must expand its pilot program to allow homeowners at imminent risk of foreclosure to apply for funds.

2. The plan should include measures to ensure effective execution of the program.

We know from our experience assisting homeowners with previous home preservation programs that effective execution of the program is critical to the program's overall success. The HAF plan does not address details describing the administration and execution of the program. While these matters may not need to be written into the plan itself, we believe that DHCD must prioritize planning for certain matters regarding administration and execution and should continue to share its intentions for public input.

Application and payment processing

The HAF plan does not address timelines for processing applications or disbursing payments. A strong administrative apparatus that includes sufficient funds for staffing will be essential to

ensure that applications are evaluated and processed in a timely fashion. Under-staffing in other home preservation programs has resulted in lengthy application review times and multi-month delays in payment disbursement for approved applications. DHCD should take steps to ensure that those problems do not plague the HAF program.

Recognition of technology limitations

DHCD must ensure that homeowners without technology access (and/or who are not technologically proficient) have equal access to the program. DHCD currently has a phone number in place for applicants applying for the pilot program. We recommend that DHCD establish a hotline for the HAF program where individuals who do not have access to technology or do not feel comfortable completing online forms can call to request a paper application.

A hotline will also be necessary to assist those without adequate technology access in connecting with housing counselors and legal services for assistance.

In addition, in-person assistance should be available when the need is established, and home visits should be offered to avoid displacement of the District's homebound residents who would unlikely be able to recover from foreclosure.

Meeting the needs of limited English proficient homeowners

We applaud DHCD's efforts to address barriers for those with limited English proficiency, including by providing application and other program materials in English and Spanish and committing to targeted outreach to communities with limited English proficiency.

To continue this work, we recommend that DHCD inquire of every potential applicant their preferred language and method of communication so that language access data can be collected from the outset and the program can be adjusted to meet the needs of the District's diverse community.

We also urge DHCD to ensure that the community-based organizations that will be assisting homeowners with applications have the training and resources to provide assistance in Spanish and other languages.

Mechanism for escalating applications

DHCD should create an escalation department for emergency situations. Those already delinquent on property charges and/or their mortgages prior to the COVID-19 pandemic will be at greatest risk when the foreclosure moratorium lifts, in addition to those facing condominium foreclosures, and the program should be able to escalate emergency situations when foreclosure is imminent.

The plan should also include an appeal process when an application is denied and a process to revive previously incomplete applications.

Funding for housing counseling agencies and legal services organizations

The plan commits to facilitating applicants' access to legal services and housing counseling. Even with a relatively streamlined application, many homeowners will need this support to complete their applications, as well as advice and/or representation on related housing, budgetary and legal needs. We encourage DHCD to tap a portion of the funds to boost the legal services and housing counseling support services network, to ensure the program's ability to reach and serve the most vulnerable homeowners.

3. DCHD should make several technical changes to its term sheets.

Heirs

As currently drafted, the plan allows eligibility for heirs who have made payments to the mortgage company within the last two years. This requirement will likely exclude many heirs whom the District would want to help to allow for the transfer of intergenerational wealth particularly in Black and Brown communities. For example, heirs who were contributing to the overall household even if they were not technically the one mailing a check to the mortgage company, or those who may not have been *able* to make payments over much of the last two years either because of the ongoing pandemic or because mortgage companies do not always take payment once a loan is in default. We suggest eliminating the requirement that heirs have made payments in the last two years. Instead, the program should make clear (at the application stage and in the term sheets) that heirs are eligible to apply provided that all other criteria are satisfied (for example the heir must occupy the property).

DHCD should not prioritize paying down payment government loans with HAF funds

Prioritizing payment of government loans for down payment assistance is not a good use of the limited program funds as typically those loans may have other options for home retention. DHCD should limit use of program funds to reinstatement for those loans that are behind on monthly payments due. In order to preserve funds most needed to avoid foreclosure, we recommend that loans that are already deferred or can be deferred should not be eligible for HAF.

Attestation language for Mortgage Reinstatement Program Element

The first bullet point in the homeowner eligibility row of the "Mortgage Reinstatement Program" term sheet appears to have inadvertently omitted key language from the Treasury sample term sheet making clear that homeowners can combine reinstatement assistance with ongoing assistance, in which case they do not have to attest to being able to make future payments on their own.

As a result, we believe the written attestation requirement should be amended to state, "Statement of current ability to resume any required regular payments after account is reinstated (OR) Ability to resume any required regular payments with assistance from the District of Columbia Mortgage Payment Assistance Program."

Inclusion of legal fees in the Property Charge Default Resolution Program Element

DHCD should make clear that legal fees and collection costs are allowable expenses for the Property Charge Default Resolution Program.

Homeowners who are behind on condominium or homeowners' association fees generally have been assessed legal fees and collection costs, and payment of those fees is necessary to resolve their delinquencies. Although legal fees are included as an allowable expense in the Mortgage Reinstatement Program when advanced by the mortgage servicer, they are not currently included in the Property Charge Default Resolution Program.

The term sheet should be updated to include legal fees and collection costs as allowable expenses for this program element in order for the program to maximally benefit homeowners and completely resolve delinquencies

Mortgage Default Property Resolution Program Element

We appreciate DHCD's willingness to conduct an ongoing assessment of the needs of eligible homeowners and to implement the Mortgage Default Property Resolution program element if adequate funds remain and the need is evident.

We recommend that DHCD modify its term sheet for this element to remove the requirements that the homeowner have previously qualified for the Mortgage Reinstatement Program and be at least one month delinquent and currently unable to resume mortgage payments. We believe that there may be a pool of homeowners that suffered a COVID hardship but entered into a loss mitigation option with their mortgage servicer rather than receive HAF funds. Those homeowners could still benefit from HAF assistance in the form of funds that enable principal reductions and/or recasting of payment terms. For example, HAF funds could be used to pay off a payment deferral that a homeowner received following a period of forbearance, or to sufficiently lower the principal balance of a mortgage to enable a homeowner to qualify to remove PMI (primary mortgage insurance), which is typically required for borrowers who were unable to make a 20% down payment.

These measures would help homeowners increase their equity and preserve wealth for their families.

4. DHCD should engage in an ongoing assessment of the demographics of HAF fund recipients to ensure that the program is adequately targeted to meet the needs of the District's most vulnerable homeowners.

It is crucial that DHCD target those most in need throughout the duration of the program and ensure that funds are not depleted prematurely before the most vulnerable are able to access the program. DHCD has committed to prioritizing 60% of funding to homeowners at or below 100% AMI, and to conduct targeted outreach to the communities with the highest default rates. This is a good start to preserving funds for socially and financially disadvantaged communities, but the program will likely need to be more targeted as the data reveal what communities are accessing program funds.

We suggest that after the full HAF program has been open for six months (or after the first \$5 million in funds from the full HAF program has been committed), and every three months thereafter, DHCD review and publish data showing where funds have been distributed with a break down by zip code and race.

It will be important to see whether program funds are flowing to homeowners in a way that tracks the data on defaults, socially disadvantaged homeowners, and where the need is concentrated. For example, DHCD should pay close attention to zip codes, and whether program funds are largely flowing to the zip codes with the highest default rates and rates of non-white homeownership. If the data do not track anticipated need, it will be important for DHCD to take more aggressive action to target funds – beyond targeted outreach – such as implementing measures to preserve an appropriate percentage of funds for homeowners with substantially lower AMI and in high default zip codes.

We thank DHCD for the opportunity to submit this testimony, and we look forward to working with the Department in its continuing efforts on HAF planning and execution.