

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

**Before the Committee on Housing & Executive Administration  
Council of the District of Columbia**

**Performance Oversight Hearing Regarding  
the Department of Housing & Community Development**

**January 19, 2022**

The Legal Aid Society of the District of Columbia<sup>1</sup> submits the following testimony regarding the performance of the Department of Housing & Community Development (DHCD).

The COVID-19 global health pandemic has worsened existing economic inequalities in the District, imposing disproportionate burdens on Black and Latinx residents and deepening the District’s longstanding affordable housing crisis. DHCD will continue to play a critical role in preventing tenant displacement as the District emerges from this crisis. This Committee can support that work by passing permanent legislation to protect tenants’ rights.

Legal Aid recommends the following as two top priorities:

1. DHCD should improve its current process for sharing information about new TOPA filings with technical assistance and legal services providers, and this Committee should strengthen and then reintroduce and approve the TOPA Reporting Amendment Act of 2020 (Bill 23-694), with a cooling-off period before tenants can give up their rights; and
2. DHCD should strengthen its audit process for hardship petitions to ensure that tenants do not face inflated, extraordinary rent increases, and this Committee should reintroduce and

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<sup>1</sup> The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 90 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, [www.LegalAidDC.org](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

approve the Hardship Reform Amendment Act of 2020 (Bill 23-972) to limit these increases and also ensure only landlords with true hardship qualify to take them.

### **The District’s Affordable Housing Crisis Continues to Put Thousands of Tenants at Risk of Displacement**

In a city where the average rent for a one-bedroom apartment now tops \$2,000 per month, households with low incomes — many headed by people of color — are being left behind.<sup>2</sup> Analysis of Census data shows that for extremely low incomes earning 30 percent of area median income or less, the District meets only half of the need for rental units affordable at this income level.<sup>3</sup> For low-income families who earn 50 percent of the area median income, only 72 affordable units exist for every 100 families who need one.<sup>4</sup> The result of this affordability crisis is that low-income families are paying far too much of their limited incomes for housing. Nearly two-thirds of extremely low-income households in the District pay half or more of their monthly income towards rent, a threshold that HUD classifies as “severely housing cost burdened”.<sup>5</sup> And this issue also is one of racial equity; of the approximately 27,000 extremely low-income, severely rent-burdened households, 88 percent are headed by a person of color.<sup>6</sup>

The shortage of affordable housing, and accompanying heavy rent burdens, have had devastating effects on Washingtonians with low incomes, particularly Black households, pushing many out of the District entirely. 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.<sup>7</sup> The District also saw the highest number of Black households displaced — more than 20,000 —largely replaced by white, affluent, recent transplants.<sup>8</sup> An updated study covering 2013 to 2017 found that the District “still has a high intensity of gentrification” with displacement continuing.<sup>9</sup> This ongoing displacement is caused

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<sup>2</sup> See Justin Chaplin & Rob Warnock, “Average Rent in Washington DC & Rent Price Trends,” Apartment List (Oct. 8, 2021), available at <https://www.apartmentlist.com/renter-life/average-rent-in-washington-dc>; RentCafe, *Washington, DC Rental Market Trends*, available at <https://www.rentcafe.com/average-rent-market-trends/us/dc/washington/>.

<sup>3</sup> Nat’l Low Income Hous. Coal., *Housing Needs By State: District of Columbia*, available at <https://nlihc.org/housing-needs-by-state/district-columbia>.

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

<sup>5</sup> D.C. Fiscal Policy Inst., *A Broken Foundation: Affordable Housing Crisis Threatens DC’s Lowest Income Residents* (Dec. 8, 2016), p. 3, available at <https://www.dcfpi.org/all/a-broken-foundation-affordable-housing-crisis-threatens-dcs-lowest-income-residents/>.

<sup>6</sup> *Id.* at 1.

<sup>7</sup> National Cmty. Reinvestment Coal., *Shifting Neighborhoods* (March 2019), available at <https://ncrc.org/gentrification/>.

<sup>8</sup> *Id.*

<sup>9</sup> National Cmty. Reinvestment Coal., *Gentrification and Disinvestment 2020* (June 2020), available at <https://ncrc.org/gentrification20/>.

in part by eviction, which disproportionately impacts majority-Black areas of the District with high concentrations of poverty.<sup>10</sup>

Against this backdrop, over 40 percent of District residents lost employment income between mid-March 2020 and February 2021.<sup>11</sup> While family income decreased for many, rents did not. A recent report found that as of September 2021, overall rents in the District were at 96 percent of their pre-pandemic levels.<sup>12</sup> More recent market data indicate that rents already have climbed above pre-pandemic levels, after falling during the beginning of the pandemic.<sup>13</sup>

DHCD has responsibility over critical affordable housing programs that can help to reverse these long-term trends, as well as ensure stability and prevent displacement in the short-term as the District emerges from the current economic crisis. Chief among these responsibilities are oversight over the Tenant Opportunity to Purchase Act and the rent stabilization program.

### **DHCD and This Committee Should Take Steps to Prevent Abuses Under TOPA, to Ensure Tenants Can Prevent Displacement and Preserve Affordable Units**

Under emergency legislation enacted by the Council, all deadlines for tenants to exercise their rights under TOPA were tolled during the public health emergency and for 30 days after, ending in late August 2021.<sup>14</sup> TOPA requires tenants to form tenant associations and act collectively to exercise their rights, steps that have been difficult to accomplish during the pandemic. With the end of tolling last August, we saw a wave of TOPA activity from pent-up demand, and we

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<sup>10</sup> See Brian J. McCabe & Eva Rosen, Georgetown Univ., *Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability* (Fall 2020), pgs. 18-21, available at <https://georgetown.app.box.com/s/df0d4mruf59wcvqm6cqo9a8pyu8ukeuk>. McCabe and Rosen found that nearly sixty percent of all eviction cases in the District are filed against tenants living in Wards 7 (22.6 percent) and 8 (34 percent), both of which have populations that are over 90 percent Black, even though those two Wards account for only 25.7 percent of all renter households.

<sup>11</sup> U.S. Census Bureau, *Week 24 Household Pulse Survey: Feb. 3-15 – Detailed Tables, Employment Table 1*, available at <https://www.census.gov/data/tables/2021/demo/hhp/hhp24.html#tables>. The Census Household Pulse Survey collected survey data from jurisdictions across the United States, including the District, starting the week of April 23, 2020.

<sup>12</sup> Kyle Swenson, “Rents in D.C. increased despite rent freeze, report says,” *The Washington Post* (Nov. 2, 2021), available at <https://www.washingtonpost.com/dc-md-va/2021/11/02/dc-rent-increase/>.

<sup>13</sup> See Chaplin & Warnock, *supra*.

<sup>14</sup> D.C. Code § 42-3405.10b. Yesterday, the Council approved emergency legislation to reinstate tolling of TOPA deadlines from January 5 through February 15, 2022, based on the current rise in COVID infection and hospitalization rates in the District. *Foreclosure Moratorium Extension Emergency Amendment Act of 2022*, Bill 24-612, Amendment #1 (Jan. 18, 2022), available at [https://lims.dccouncil.us/downloads/LIMS/48595/Bill\\_Amendment/B24-0612-Bill\\_Amendment.pdf](https://lims.dccouncil.us/downloads/LIMS/48595/Bill_Amendment/B24-0612-Bill_Amendment.pdf). Legal Aid supported this reinstatement of tolling to respond to the current public health situation. We expect TOPA activity to continue in earnest once the tolling period ends next month.

expect building sales to remain strong for months to come. This market turnover continues to present an important opportunity for tenants and the District to exercise rights under TOPA and (where necessary) DOPA to preserve affordable rental housing and avoid tenant displacement.

Unfortunately, tenant organizers and legal services providers (including Legal Aid) continue to see abuses in the TOPA process, with bad actors swooping in as soon as buildings go up for sale and convincing tenants to sign away their rights for very little compensation, often tied to a promise to move out, removing any possibility for those tenants to partner with an affordable housing developer to preserve affordable units at the building and avoid displacement. Often these bad actors race to the properties and win over the tenants before tenant organizers at community-based organizations funded by DHCD have a chance to speak with tenants and inform them of their rights under TOPA or refer them to legal services providers.

Tenant organizers at community-based organizations play a critical role in assisting tenants with navigating the TOPA process, providing technical assistance and connecting tenants with attorneys. Examining District properties that received TOPA notices between 2015-2019, 65 percent of those where tenants received technical assistance successfully registered for their TOPA rights, compared to only 21 percent of properties where tenants did not receive this support.<sup>15</sup> In recent years, Legal Aid has partnered with these organizations to provide legal services to tenants in navigating the TOPA process. Legal Aid has found this to be a lengthy, challenging, though ultimately highly-rewarding process for the tenants in these buildings. Each property is unique, yet in every project Legal Aid has worked on, tenants were able to secure the long-term affordability of their units along with needed repairs and upgrades through the TOPA negotiation process.

Unfortunately, as DHCD has previously acknowledged to this Committee, “The general public, tenants and housing providers do not have significant awareness of their rights or obligations under [TOPA] and [this] can present challenges and prevent tenants from exercising these rights. ... Often despite their best efforts our [community-based organization] partners are unable to reach tenants before they make decisions regarding their rights such as assigning their right to purchase for consideration other than a guarantee of affordable housing.”<sup>16</sup> Under the status quo, tenants are signing away rights with little to no understanding of the universe of other options they are forgoing.

There are several steps DHCD can take to improve the TOPA process and support tenants’ ability to make informed choices about the future of their buildings, including by getting access to free technical assistance and legal services:

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<sup>15</sup> See Scott Bruton & Gretchen Nicholls, Coal. For Nonprofit Hous. & Econ. Dev. and Twin Cities LISC, Opportunity to Purchase Policy Options for the City of Minneapolis (Jan. 2021), p. 27, available at <https://cnhed.org/wp-content/uploads/2021/01/Opportunity-to-Purchase-Policy-Options-for-the-City-of-Minneapolis.pdf>.

<sup>16</sup> Department of Housing and Community Development FY18-FY19 YTD Performance Oversight Pre-Hearing Responses, Response to Question 13 (Feb. 2019), available at <https://dccouncil.us/wp-content/uploads/2019/02/dhcd19.pdf>.

1. DHCD should ensure it updates its online reports of new TOPA filings in a timely manner. Organizers funded by DHCD to provide technical assistance to tenants and tenant associations rely on these online reports to provide outreach and help connect tenants to affordable housing developers and financiers, as well as attorneys who can help them navigate the TOPA process. At times during the past few years (including in recent months), we have seen delays in how promptly the online reports are updated, exacerbating the existing race to the properties and putting tenants at risk of waiving their TOPA rights with little consideration in return. DHCD should update the online reports weekly, with each update covering all filings received in the prior week.
2. DHCD should review and update all of its TOPA notices and forms to ensure they are accessible and informative. The first notice that tenants receive of a pending sale of their building typically is a DHCD-approved form that contains critical information about the pending sale, tenants' rights, and free resources available for technical and legal assistance. DHCD should review all of these forms and notices to ensure they are easy-to-read and convey all needed information.

This Committee also can help curb abuses by supporting permanent legislation to require certain fixes. The TOPA Reporting Amendment Act of 2020, Bill 23-0694, sought to address the current problems by requiring DHCD to update its online reports on a weekly basis with all recent filings. While ensuring weekly updates is helpful, this step alone will not be enough. We urge the Committee to strengthen this prior bill and then reintroduce and approve it, including by adding provisions to 1) require DHCD to provide advance notice about new TOPA filings to community-based organizations funded by DHCD to assist tenants with the TOPA process, before this information is released to the general public and becomes available to private realtors and attorneys who may use this information to exploit tenants, and 2) mandate a "cooling off" period during which third parties may not approach tenants with offers to waive or assign their rights, again with the goal of ensuring tenants have time to seek technical and legal assistance, speak with affordable housing developers, and otherwise explore their rights and options before making any final decision to assign their TOPA rights.

### **DHCD and This Committee Should Take Steps to Protect Tenants from Extraordinary Rent Increases Under Hardship Petitions**

Legal Aid fears that the end of the pandemic may bring an increase in landlord petitions seeking extraordinary rent increases, and in particular we expect more landlords may claim hardship under the District's generous 12-percent guaranteed rate of return provision. Under governing regulations, the Rent Administrator is required to submit all hardship petitions to a certified public accountant for an audit before issuing an initial decision approving a rent increase.<sup>17</sup> If the tenants disagree with the results of the audit, they can file objections and exceptions and request a hearing. In those instances, the case is forwarded to the Office of Administrative Hearings for a hearing and final decision.

The purpose of the audit requirement is to catch errors on the front end and ensure that the Rent Administrator's initial approval of a rent increase is as accurate as possible and consistent with

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<sup>17</sup> 14 D.C.M.R. § 4209.30.

the law. Legal Aid previously has testified about some of the weaknesses we have seen in DHCD oversight over landlord petitions, and in particular, serious flaws with the hardship petition audit process.<sup>18</sup> Our experience in the past year representing tenants in three pending hardship petitions confirms that the required audits continue to fail to identify glaring landlord errors, resulting in the approval of inflated increases.

1. 1544 Marion Street, NW. The auditor made at least two errors that resulted in a significantly higher approved increase. First, the auditor stated it would subtract out the landlord's claimed management fee based on lack of documentation, but instead that charge remained in the calculation. Second, the auditor included the entire cost of a roof replacement, rather than depreciating the roof over its useful life as a capital expense, as required by governing regulations and case law. The auditor ultimately approved a 41.56 percent rent increase. If these two errors had been corrected, the resulting rent increase would be only 12.71 percent, significantly lower.
2. 1445 Park Road, NW. The auditor also failed to depreciate multiple expenses that the landlord in this hardship petition expressly labeled as "capital expenditures." Depreciating these amounts would have reduced the requested rent increase from 33.8 percent to 26.6 percent, a helpful correction for tenants even if no other mistakes were found.
3. 3513 13<sup>th</sup> Street, NW. In this hardship petition, the auditor once again failed to depreciate multiple expenses that the landlord had expressly labeled as "capital expenditures." Depreciating these amounts would have reduced the requested rent increase from 64 percent to 51 percent, a significant change even before accounting for other issues.

When hardship petition audits fail to catch these types of errors, tenants are harmed. The Rent Administrator's order approving an inflated rent increase often will intimidate tenants, who may give up and move out without consulting with an attorney or understanding their rights. Tenants who speak a primary language other than English or who otherwise have trouble understanding the notice sent by the Rent Administrator may not even understand that they have the right to object and may leave under the assumption that the increase will take effect immediately. At 1445 Park Road, NW and 3513 13<sup>th</sup> Street, NW, many of the tenants are native Spanish speakers who found the approval notices from the Rent Administrator to be confusing and scary. The Rent Administrator's order approving a rent increase carries great weight in the eyes of tenants — as it should — and Legal Aid has spoken to many tenants over the years who have considered vacating after receiving an order approving a significant rent increase.

When the audit process fails, it also is more likely that a proposed hardship petition will only be resolved through lengthy litigation, requiring both tenants and the landlord to invest in a time-consuming and costly process that creates uncertainty for months or even years while the parties

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<sup>18</sup> Written Testimony of Beth Mellen Harrison, Committee on Housing & Neighborhood Revitalization, "Performance Oversight Hearing on the Department of Housing & Community Development" (Feb. 26, 2019), pp. 4-5, available at <https://www.legalaiddc.org/wp-content/uploads/2019/02/Legal-Aid-FY18-19-DHCD-Oversight-Testimony-FINAL.pdf>.

await a final resolution in court. Landlords previously have complained to this Committee that hardship petitions are not a feasible alternative because they always trigger litigation. Some of this litigation might be avoided if the audit process caught landlord errors and adequately protected tenants' rights. When the audits sign off on inflated increases that do not meet the basic requirements of the law, tenants have no choice but to file objections and exceptions and request a hearing in order to protect their rights.

There are two important steps DHCD can take to ensure that hardship petitions are properly vetted before any rent increase is approved and that tenants are able to understand their rights and get access to free technical assistance and legal services:

1. DHCD should review and update all of its landlord petition notices and forms to ensure they are accessible and informative. The first notice that tenants receive of a pending landlord petition is a DHCD-approved form. We believe the forms and notices provided in rent stabilization petition cases would benefit from a comprehensive review to ensure they are easy-to-read and convey all needed information about tenants' rights and free resources available for technical and legal assistance. These notices and forms also should be treated as vital documents under the D.C. Language Access Act and provided in all languages required under that Act, including Spanish and Amharic.
2. DHCD should implement changes to ensure a comprehensive audit process for hardship petitions that catches landlord errors and ensures fair outcomes. Legal Aid has testified before about steps DHCD can take on its own, without any new legislation, to strengthen the hardship petition audit process. These steps include hiring auditors who are certified public accountants and have experience in rental housing, and then requiring the auditors to make detailed findings about common landlord errors, including failing to depreciate capital expenses and exclude extraordinary expenses.

Legal Aid and other legal services providers and community-based organizations with tenant organizers would be happy to work with DHCD on both of these projects.

These issues also highlight the ongoing need for comprehensive reform to expand and strengthen the existing rent stabilization program, including various measures aimed at curbing landlord abuses and protecting tenants in the hardship petition process. As a member of the Reclaim Rent Control Coalition, Legal Aid supports reintroduction of Bill 23-0873, the Rent Stabilization Program Reform and Expansion Amendment Act of 2020, which would expand the scope of the rent stabilization program, provide greater affordability for tenants living in rent-stabilized units, and close loopholes that too often allow landlords to impose extraordinary rent increases that price out existing tenants.

Many of these same reforms also were contained in separate bills introduced by Chairwoman Anita Bonds last session, including Bill 23-0972, the Hardship Petition Reform Amendment Act of 2020. Importantly, this bill would have changed the formula for hardship petitions to ensure that landlords with true need — those who are not making any profit on their buildings and simply cannot pay their bills — are able to receive rent increases, while profitable landlords without any true hardship are not. The current formula is based on equity, which means landlords with the most cash and credit on hand tend to be rewarded, while small landlords

struggling to pay their bills are not. In each of the three cases listed above, the landlords were making good profits at the time they filed their hardship petitions, ranging from 9 to 41 percent, and the current formula nonetheless entitled them — at least according to the landlord’s calculations — to large rent increases.

As this Committee considers these and other long-term solutions, it is critical that the debate not be unduly influenced by current landlord claims of financial distress and hardship. The ongoing economic crisis undoubtedly has caused hardship for some landlords, but we remain confident that the ongoing distribution of hundreds of millions of dollars in federal and local rental assistance will go a long way to address these concerns. Meanwhile, thousands of District tenants will face months and years of unemployment and unstable employment, lower income, and higher costs, all against the backdrop of the District’s existing affordable housing crisis. A global health pandemic that has disproportionately impacted Black and Latinx tenants already struggling with low wages and high rents must not become an excuse to stop long-term, needed reforms — or indeed, as many landlords already are calling for — to dismantle existing tenant protections, including rent stabilization and the Tenant Opportunity to Purchase Act.

### **Conclusion**

Thank you for this opportunity to testify about how DHCD and this Committee can protect tenants’ rights and preserve affordable housing as the District emerges from the COVID-19 crisis. We look forward to working with DHCD and this Committee on the path forward.