

**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**

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

**March 30, 2022**

The COVID-19 pandemic has worsened existing economic inequalities in the District, imposing disproportionate burdens on Black and Latinx residents, and deepening a longstanding affordable housing crisis. Tens of thousands of families are continuing to struggle to make ends meet, facing eviction and displacement because they cannot afford ever-increasing rent burdens.

With this background, the Legal Aid Society of the District of Columbia<sup>1</sup> submits the following testimony regarding the Housing Production Trust Fund (HPTF) and Department of Housing & Community Development (DHCD) budgets. We appreciate the Mayor’s proposals to make historic and desperately-needed long-term investments in affordable housing. We also are concerned that the much-needed funding for affordable housing production and preservation in the FY22 budget will not be maximized without additional investments:

1. To ensure at least half of HPTF funding supports deeply-affordable units, the Committee should consider recommending language for the Budget Support Act to break the HPTF into separate accounts for different levels of affordability.
2. To strengthen oversight over the HPTF, the Committee should move forward immediately with enacting Bill 24-0459, the Housing Production Trust Fund Transparency Amendment Act of 2021, and Bill 24-0458, the Housing Production Trust Fund Income Targeting Accountability Amendment Act of 2021, 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).

including any fiscal impact from these bills in the FY23 Budget so that they can be implemented.

3. To ensure that tenants will be able to exercise their right to purchase under the Tenant Opportunity to Purchase Act (TOPA) with the ongoing wave of rental housing sales, the Committee should increase funding for the Housing Preservation Fund to last year's level of \$19 million and consider any necessary changes to make the fund more flexible.
4. In the same vein, the Committee also should explore with DHCD whether to reactivate the First Right to Purchase Program, including recommendations that this funding be focused on smaller properties (5-49 units).

We urge the Committee to identify funding for each of these priorities.

### **The COVID-19 Pandemic Is Exacerbating the District's Existing Affordable Housing Crisis, Putting Black and Latinx 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 and moderate incomes — the vast majority headed by people of color — are being left behind.<sup>2</sup> The result of the District's ongoing affordability crisis is that low-income families are paying far too much of their limited incomes for housing. Sixty-two percent of extremely low-income households in the District pay half or more of their income towards rent, a threshold that HUD classifies as "severely housing cost burdened".<sup>3</sup> Put another way, for every 100 extremely low-income households in the District, there are only 50 housing units that are affordable for those families.<sup>4</sup> This issue is one of racial equity; Wards 7 and 8, with the highest concentration of Black families, also have the highest percentage of rent-burdened households.<sup>5</sup>

The shortage of affordable housing and accompanying heavy rent burdens are having devastating effects on Washingtonians with low incomes, particularly Black households. A national study found that the District had the greatest "intensity of gentrification" of any city across the country

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<sup>2</sup> 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 – State Data Overview, *available at* <https://nlihc.org/housing-needs-by-state/district-columbia>. Extremely-low income families are those with incomes at or below 30 percent of area median income.

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

<sup>5</sup> D.C. Econ. Strategy, Rent Burden by Ward, *available at* <https://dceconomicstrategy.com/rent-burden-ward/>

for the period of 2000 to 2013, with more than 20,000 Black residents displaced.<sup>6</sup> An updated study covering 2013 to 2017 found that the District “still has a high intensity of gentrification” with displacement continuing.<sup>7</sup> This ongoing displacement is caused in part by eviction, which disproportionately impacts majority-Black areas of the District with high concentrations of poverty.<sup>8</sup>

Against this backdrop, nearly 40 percent of District residents have lost employment income since mid-March 2020.<sup>9</sup> Over 12 percent of households report that they are still finding it “very difficult” to pay their regular bills.<sup>10</sup> This includes 17 percent of tenants in the District reporting they were not current in their rent payments as of mid-March 2022, amounting to approximately 28,000 households.<sup>11</sup> The burden of this economic and housing crisis is falling disproportionately on low-income Black and Latinx families. Over ninety percent of the families reporting that they are not current in their rent are headed by a Black or Latinx tenant.<sup>12</sup>

**This Committee Must Ensure That At Least Half of Housing Production Trust Fund Dollars Will Be Used to Support Deeply-Affordable Units**

The HPTF provides critical support for affordable housing in the District, with loans and grants to developers for the dual purposes of preserving and producing rental units that are affordable to

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<sup>6</sup> Nat’l Cmty. Reinvestment Coal., *Shifting Neighborhoods* (March 2019), *available at* <https://ncrc.org/gentrification/>

<sup>7</sup> Nat’l Cmty. Reinvestment Coal., *Gentrification and Disinvestment 2020* (June 2020), *available at* <https://ncrc.org/gentrification20/>

<sup>8</sup> See Brian J. McCabe & Eva Rosen, Georgetown Univ., *Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability* (Fall 2020), pp. 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>9</sup> U.S. Census Bureau, *Week 27 Household Pulse Survey: Mar. 17-29 – Detailed Tables*, Employment Table 1, *available at* <https://www.census.gov/data/tables/2021/demo/hhp/hhp27.html>.

<sup>10</sup> U.S. Census Bureau, *Week 43 Household Pulse Survey: Mar. 2-14 – Detailed Tables*, Spending Table 1, *available at* <https://www.census.gov/data/tables/2022/demo/hhp/hhp43.html>.

<sup>11</sup> *Id.*, Housing Table 1b.

<sup>12</sup> *Id.*

tenants at targeted income levels.<sup>13</sup> Fifty percent of HPTF loans and grants are required to be allocated for projects that are affordable to extremely low-income households, families with incomes at or below 30 percent of area median income.<sup>14</sup> Rental units produced using HPTF dollars generally must be maintained at affordable rent levels for 40 years, ensuring long-term affordability.<sup>15</sup> Since Fiscal Year 2017, the District has allocated at least \$100 million annually to the HPTF, making the Trust Fund one of the largest sources of local government funding for affordable housing. The Mayor now proposes allocating \$498 million in the FY23 budget for the Trust Fund.<sup>16</sup>

This proposed investment is historic and desperately needed, but it should be considered with a few cautionary notes. First, DHCD must continue to do better to achieve the statutory requirement that half of these funds go to deeply-affordable units for extremely-low-income families. The D.C. Auditor has found that only 19 percent of rental units produced or preserved by the Trust Fund between 2001 and 2016 are affordable to families at this income level.<sup>17</sup> In recent years, the numbers have been the same or even lower. DHCD reports that only 12 percent of FY19 funds, 19 percent of FY20 funds, and 16 percent of FY21 funds went to deeply-affordable units — despite the statutory requirement.<sup>18</sup>

To achieve the goal of investing at least half of HPTF funds in deeply-affordable units, historic investments also will continue to be needed in ongoing operating subsidies. An analysis by the D.C. Fiscal Policy Institute estimates that creating 30,000 deeply-affordable housing units would require \$2.6 billion in HPTF funding, coupled with \$732 million per year in ongoing operating

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<sup>13</sup> D.C. Code § 42-2802.

<sup>14</sup> *Id.* § 2802(b-1)(2).

<sup>15</sup> *Id.* § 2802.02(a).

<sup>16</sup> FY 2023 Proposed Budget and Financial Plan, Vol. 4 Agency Budget Chapters – Part 3 (Mar. 16, 2022), pp. H-35 to H-40, *available at* <https://app.box.com/s/3rlimccdb0e93ipigk216d423olsilg>.

<sup>17</sup> Office of the District of Columbia Auditor, *Stronger Management of the Housing Production Trust Fund Could Build More Affordable Housing* (Mar. 2018), pp. 9-10, *available at* <http://dcauditor.org/report/stronger-management-of-the-housing-production-trust-fund-could-build-more-affordable-housing/>

<sup>18</sup> See Dep’t of Hous. and Cmty. Dev., *DHCD Responses to Questions for the Performance Oversight Public Hearings on Fiscal Years 2021/2022 - Attachments*, “Key Performance Indicators” (Feb. 11, 2022), p. 107, *available at* <https://dccouncil.us/wp-content/uploads/2022/02/dhcdatt.pdf>.

assistance through Local Rent Supplement Program (LRSP) project-based funding.<sup>19</sup> If the budget does not get this mix right every year, the predictable result is that the preservation and production of deeply-affordable units fall short. We are encouraged to see that that Mayor has committed incremental new funding totaling \$14.5 million for FY23 to local project-based and sponsor-based subsidies potentially available to pair with HPTF funding.<sup>20</sup> We understand the financial plan contains an additional \$23.7 million projected for FY24 and FY25, for a total of \$38.2 million.

While these figures represent a significant investment in project- and sponsored-based subsidies, they still may not be enough, given the proposed nearly \$500 million investment in HPTF, which will require that approximately \$250 million be used to fund deeply-affordable units. This investment comes one year after an investment of \$250 million in the FY22 budget for HPTF. The Council should continue to monitor awards over time to ensure no further investments for LRSP project-based subsidies are needed. We will be watching RFP awards during FY22 closely to see if the FY22 budget's increases in both HPTF and LRSP project-based funding appear to have been properly aligned.

Given the historic challenges in meeting the statutory goal for deeply-affordable units, Legal Aid also believes the Committee should strongly consider the idea of breaking the HPTF into separate accounts corresponding to differing affordability levels. This would ensure that money the Council has set aside for deeply-affordable units is not instead spent on units affordable to households at higher income levels. This redirection of public funds has occurred year after year, with no long-term commitment to righting this wrong. Separate accounts would ensure funds are spent as intended. The process for receiving proposals and awarding funds still could be consolidated, ensuring that projects seeking funding for different affordability levels could submit proposals requesting different types of funding. The Committee should consider making this change in the FY23 Budget Support Act.

Along with these budget investments, Legal Aid supports two pending bills that would bring greater transparency and accountability to HPTF funding. Bill 24-0458, the Housing Production Trust Fund Income Targeting Accountability Amendment Act of 2021, would clarify current requirements for reporting from DHCD to the Council by focusing on new projects approved for funding and clarifying that any request for a waiver of the statutory goal for deeply-affordable units requires DHCD to report not only about any lack of proposals but also about any concerns related to the viability of proposals submitted. This is important because DHCD has cited the latter reason as an additional challenge to meeting the statutory goal for deeply-affordable units.

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<sup>19</sup> D.C. Fiscal Policy Institute, *Building the Foundation: A Blueprint for Creating Affordable Housing for DC's Lowest-Income Residents* (April 2019), pp. 7-8, available at <https://www.dcfpi.org/all/building-the-foundation-a-blueprint-for-creating-affordable-housing-for-dcs-lowest-income-residents/>.

<sup>20</sup> FY 2023 Proposed Budget and Financial Plan, Vol. 2 Agency Budget Chapters – Part 1 (Mar. 16, 2022), pp. B-16 (Account 2045), B-34 (Account 7010), available at <https://app.box.com/s/bzjtghnj6tsfqxvllleob88r41k7lildf>.

Bill 24-0459, the Housing Production Trust Fund Transparency Amendment Act of 2021, contains a variety of changes to bring greater transparency to DHCD’s process for selecting proposals. The bill would require disclosure of additional information in DHCD’s existing database of funded affordable housing projects, as well as new disclosures related to all proposals submitted, whether they are chosen or not. The bill also would clarify that DHCD’s selection process should be based on published selection and prioritization criteria and objective scoring of proposals against those criteria, and that any departure from that objective scoring — e.g., when a lower-scoring proposal is accepted and a higher-scoring proposal is rejected — must be explained by DHCD. This will help both the Council and the public evaluate DHCD’s stated reasons for not meeting the statutory goal for deeply-affordable units.

### **This Committee Should Increase Acquisition Funding to Ensure Tenants Can Continue to Exercise Their TOPA Rights to Preserve Affordable Housing**

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. Subsequent legislation briefly reinstated tolling from January 5 through February 15, 2022 for some properties. With the end of tolling last August, we saw a wave of TOPA activity from pent-up demand, and we expect building sales to remain strong for months to come. Legal Aid attorneys currently are working with tenants at five different properties at various stages in the TOPA process. 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.

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.<sup>21</sup> Legal Aid frequently partners with these organizations to provide legal services to tenants navigating the TOPA process. We have found TOPA negotiations 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 TOPA. Community-based organizations like Housing Counseling Services and the Latino Economic Development Center depend on grants from DHCD’s Neighborhood Based Activities fund (account 3010) to do this tenant organizing and counseling work. We appreciate the Mayor’s commitment in the budget to increase funding for this critical work from \$7.845 for FY22 to \$13.287 million.<sup>22</sup>

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<sup>21</sup> Examining District properties that received TOPA notices between 2015 and 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. 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>22</sup> FY 2023 Proposed Budget and Financial Plan, Vol. 2, *supra*, p. B-16 (Account 3010).

Once tenants organize, they seek to partner with affordable housing developers or to form their own limited-equity cooperatives to preserve affordable housing. Flexible acquisition funding and money for critical repairs is necessary to bring these projects to fruition. The FY22 budget allocated \$19.302 million to preservation financing through the Housing Preservation Fund. This year, the Mayor's budget reduces this account to only \$2.059 million.<sup>23</sup> We understand this change was made in part on the expectation that repayments on prior loans soon will make the fund self-sufficient, such that ongoing investments can be reduced. The Committee should scrutinize this approach. We are concerned that such a drastic reduction may leave the Housing Preservation Fund short at some point in FY23 into FY24. These dollars are matched 3:1 with private market investment, making the Housing Preservation Fund a critical resource for TOPA transactions and similar projects.

Even if the Housing Preservation Fund is self-sufficient, Legal Aid continues to see situations in which tenants are not able to exercise their TOPA rights because of a lack of interest from affordable housing developers or a rapid timeframe that moves too quickly to put current financing tools in place. For this reason, we support increased flexibility for the Housing Preservation Fund and/or renewed funding for the First Right to Purchase Program (FRPP) (which currently is not funded). In the past, the FRPP helped tenants preserve hundreds of rental units as affordable housing. DHCD's current focus is to use the Housing Preservation Fund and other resources to accomplish this same goal. We believe increasing or restoring funding in one or both of these programs, and then increasing flexibility and potentially shifting their focus, could help to address two key areas in which rapid, flexible financing can mean the difference between whether or not tenants are able to exercise their TOPA rights.

The first is when landlords sell their properties through the bankruptcy or foreclosure process. While TOPA currently does not apply to these sales, affordable housing developers still have a limited opportunity to purchase these buildings, often working in cooperation with the current tenants. The main limitation on their ability to do so is the lack of available funding that can be deployed quickly to complete a purchase on a fast track. HPTF funds cannot be secured quickly enough and competition for Housing Preservation Fund dollars can be a limiting factor. Similarly, Legal Aid has found that smaller buildings of 5 to 49 units often are not attractive to affordable housing developers because they are not as competitive for HPTF or Housing Preservation Fund dollars.

Finally, the Committee should consider other statutory changes that also could help facilitate the preservation of affordable housing when rental properties are put up for sale. For example, the Committee should consider whether to amend TOPA and DOPA to allow a right to purchase in the context of bankruptcy and foreclosure sales, a recommendation in last year's report from the

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<sup>23</sup> *Id.* at B-16 (Account 2025).

Mayor's Saving the District's Rental Housing Strike Force.<sup>24</sup> Legal Aid already has consulted bankruptcy experts on this possibility and would welcome the opportunity to work with the Committee to craft legislation, consistent with federal law, to close the current bankruptcy and foreclosure loophole.

### **Conclusion**

Thank you for this opportunity to testify. We hope that the Committee will work between now and the budget mark-ups to increase funding in the areas identified above as an initial step toward achieving the goal of safe, stable, and affordable housing for all residents, particularly extremely low-income families with the highest need.

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<sup>24</sup> District of Columbia Government, *Saving DC's Rental Housing Market: A report of recommendations from Mayor Bowser's Strike Force to Save DC's Rental Housing Market* (May 21, 2021), p. 16, available at [https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/SRH Strike Force Report 5-21-2021 Final\\_0.pdf](https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/SRH%20Strike%20Force%20Report%205-21-2021%20Final_0.pdf).