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**Before the Committee on Housing
Council of the District of Columbia**

**Public Oversight Roundtable on the
District of Columbia Housing Authority**

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Legal Aid of the District of Columbia¹ appreciates this opportunity to share its comments and concerns about the District of Columbia's Housing Authority's (DCHA's) current inability to meet its most basic obligations to tenants in its housing programs, as well as DCHA's inability and unwillingness to revise its proposed regulations so that they do not run afoul of existing law.

¹ Legal Aid 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 91 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.

DCHA's Rushed Emergency Regulations Make Obtaining and Keeping Housing Harder for DC Residents

DCHA's emergency regulations,² in general, impose stricter timelines on applicants and participants to respond to DCHA and skew towards mandatory consideration of disqualifying factors wherever HUD allows DCHA to exercise its discretion. These rushed changes to DCHA's regulations are not laying the foundation for a successful, functioning agency but are sowing confusion, chaos, and harm in the short term, and inviting costly and extended litigation in the medium-to-long term.

Rather than remain accessible and maintain open communication with advocates during this time, DCHA seems to be in siege mode, walling itself off from perceived outsiders. We also fear that DCHA is poised for yet another disruptive wave of turnover in its leadership, potentially setting back the agency's basic day-to-day operations even further.

These regulations, if permanently implemented, would make it harder for the people DCHA is meant to serve – its public housing residents, voucher participants, and families coming off waiting lists – to access and maintain affordable housing. The group of people affected is predominantly working-class Black women living in Wards 7 and 8.³ While we understand that DCHA has been under pressure to demonstrate to the United States Department of Housing and Urban Development (HUD) that it is making rapid progress in responding to last year's HUD Assessment,⁴ DCHA's rushed promulgation of "emergency" regulations is happening without meaningful oversight. Advocates have

² See Notice of Emergency and Proposed Rulemaking, 70 D.C. Reg. 007115 (May 19, 2023); Second Notice of Emergency and Proposed Rulemaking, 70 D.C. Reg. 012004 (Sept. 8, 2023); Notice of Emergency and Proposed Rulemaking, 70 D.C. Reg. 006436 (May 5, 2023); Second Notice of Emergency and Proposed Rulemaking, 70 D.C. Reg. 011658 (Sept. 1, 2023).

³ See DCHA Fiscal Year 2022-2023 Performance Oversight Pre-Hearing Questions (Feb. 24, 2023), available at <https://dccouncil.gov/wp-content/uploads/2023/03/Pre-Hearing-Responses-DCHA-2.27.2023.pdf>, at pp. 21-22, 31, 39-40.

⁴ See District of Columbia Housing Authority (DC001) Assessment, U.S. Department of Housing and Urban Development (Oct. 2022), available at https://oag.dc.gov/sites/default/files/2022-10/DCReview_Final%209302022%20%281%29.pdf.

tried to raise the alarm⁵ about how inadequate and problematic the emergency regulations are, but it feels as if our concerns are falling on unlistening ears.

DCHA's Failures Should and Can be Addressed by this Committee

There is a perception among advocates that DCHA is more disorganized and inaccessible than before and is failing to fulfill basic business functions essential to ensuring that residents and voucher-holders are safely and securely housed. These failures include reliably processing recertifications,⁶ conducting timely voucher briefings, and processing emergency transfers for survivors of domestic violence. While Legal Aid hopes that DCHA's incoming executive director will put in the time and effort to rebuild a constructive and open working relationship with advocates and community members, this Committee cannot pull back on its oversight obligations now. Indeed, the only thing that will ensure continuity and accountability during this time of seismic change at DCHA is consistent, focused oversight by this Committee.

A good starting point for the Committee would be to push DCHA to produce a full legal analysis of how its proposed regulations conflict with local law, or else require DCHA to meet regularly with advocates to substantially revise its proposed regulations prior to publishing a permanent version of these regulations. Additionally, to meet the immediate needs of tenants, the Committee must force DCHA to make its rent reasonableness determination process more transparent (through legislation if necessary), to allow tenants to know, *before* they put down an application fee, whether a unit is or is not likely to be rent-reasonable, and to ensure oversight over DCHA's rent reasonableness determinations. Below are the issues the Committee should consider as it addresses DCHA's failures.

⁵ See Joint Letters of Bread for the City, Children's Law Center, Disability Rights DC at University Legal Services, Empower DC, Equal Rights Center, Legal Aid of the District of Columbia, Legal Counsel for the Elderly, Washington Lawyers' Committee for Civil Rights and Urban Affairs, and Washington Legal Clinic for the Homeless, to Brenda Donald, Executive Director of DCHA, dated June 2, 2023, and June 16, 2023.

⁶ See DCHA Fiscal Year 2022-2023 Performance Oversight Pre-Hearing Questions (Feb. 24, 2023), available at <https://dccouncil.gov/wp-content/uploads/2023/03/Pre-Hearing-Responses-DCHA-2.27.2023.pdf>, at pp. 41, 43 (showing that 85% of Recommendations for Termination from the voucher program were based on "Failure to Recertify," and that DCHA does not track how long it takes on average to process recertification materials).

DCHA Has Not Committed to Substantially Revising its Emergency Regulations, Which Conflict with Local Law, Before Making Them Permanent

In May, DCHA published over 200 pages of emergency regulations governing public housing (the Admissions and Continued Occupancy Plan, or “ACOP”) and over 450 pages of emergency regulations governing its Housing Choice Voucher Program (the Administrative Plan, or “Admin Plan”). Advocacy groups, including Legal Aid, pored over the changes and produced comprehensive, written comments highlighting the many ways the emergency regulations conflicted with the U.S. Constitution, federal statutes and regulations, HUD guidance, and local law. Our written comments suggested specific ways that the regulations could be improved to avoid these conflicts and better serve residents. Copies of both sets of advocates’ comments (to the ACOP and Admin Plan) were provided to the Council in May and June this year.

DCHA hosted meetings in August and September for advocates to discuss their comments to the ACOP and Admin Plan with DCHA leadership. Time constraints forced advocates to quickly touch upon only their most important concerns. Other than committing to make changes to be consistent with the D.C. Language Access Act, DCHA made no concrete commitment to correct other conflicts with existing law that advocates flagged. These include conflicts with the Fairness in Renting Amendment Act of 2022, the Fair Criminal Record Screening for Housing Act, the Rental Housing Act, and the D.C. Human Rights Act.

Nor did DCHA commit to an iterative process to continue to engage with advocates on specific issues of concern before a final, permanent rulemaking would be published. DCHA leadership stated that a final set of regulations would be published in October, subject to a thirty-day comment period – a signal that it intended to make virtually no changes to the emergency regulations before making them final. While DCHA has since delayed its timeline for publishing a permanent version of the ACOP and Admin Plan, the expressed reasons for doing so are unrelated to advocates’ concerns. And, in the meantime, DCHA has not engaged advocates in further discussions of specific revisions or specific conflicts with local law, nor has it indicated any intention that it plans to do so.

DCHA’s promulgation of emergency rules, on this scale, is unprecedented and alarming in its haste and disregard for the ramifications that getting things wrong will have. Historically, DCHA consulted with advocates prior to publishing an important rule change, relying on advocates to suggest redlines and edits to help ensure that any proposed regulation conformed with existing law, was internally consistent, and made grammatical sense. As advocates’ letters explained, both sets of emergency regulations, but particularly the extensive Admin Plan (governing the voucher program), seemed hastily and sloppily put together, filled with typos or references to non-existent or incorrect chapters of Title 14 of the D.C. Municipal Regulations. There are also places where

policies seem to contradict one another on their face, such as the regulations governing when voucher participants must report changes in their household income. These problems cannot be understated or minimized as mere “drafting errors” or the cost of moving quickly in response to the HUD Assessment. The interpretation and application of these regulations will have real-world consequences for people in DCHA’s housing programs and people seeking admission to them. And, again, DCHA has not publicly committed itself to addressing these errors prior to publishing permanent versions of these regulations.

Moreover, the Council should not gloss over or casually condone DCHA’s choice to overhaul its regulatory scheme via emergency rulemaking. The D.C. Administrative Procedures Act allows for emergency rulemaking only where a rule is “necessary for the immediate preservation of the public peace, health, safety, welfare, or morals” – a high standard not met here.⁷ DCHA first published these rules in May and then re-issued them in virtually identical form as a second emergency rulemaking in September. While it remains unclear to what extent DCHA is actually applying these new rules to deny assistance, deny administrative appeals or other requests for relief, or terminate participants (a separate problem in and of itself), it is simply a matter of time before both the problematic substance and process by which these rules were enacted becomes the subject of litigation.

We hope the Committee will impress upon DCHA leadership the importance of getting these important sets of regulations right, and require DCHA’s General Counsel to submit a memo to the Committee addressing, point by point, how DCHA intends to resolve all potential conflicts between the emergency regulations and local law, or else require DCHA to commit to regular meetings with advocates to exchange redlines and edits to correct the serious flaws in these documents before moving forward with permanent versions.

Breakdowns in DCHA’s Processing of Recertifications Place Tenants at Risk of Eviction Proceedings

A higher number of the voucher and public housing tenants Legal Aid works with are reporting significant problems around DCHA mishandling their recertification paperwork. This can include significant delays between a tenant’s submission and DCHA’s processing of a recertification; DCHA erroneously claiming no recertification was ever completed; or a tenant not knowing who to contact at DCHA, or being unable to reach anyone at DCHA, to resolve a question regarding a recertification issue.

⁷ See D.C. Code 2-505(c).

These delays and communication breakdowns can escalate into eviction filings over unpaid rent, as the longer it takes DCHA to adjust a tenant's rent to reflect their household income and composition, the more likely it is that the tenant will accrue a balance of unpaid rent. Sometimes, a tenant must be sued for nonpayment of rent (and get help from a lawyer) to successfully resolve an underlying DCHA recertification issue. If a tenant with a recertification issue who is in court is not able to get the help they need in time, they may end up with a judgment against them, placing them at risk of eviction over an amount that they should have never been held legally responsible for paying. **This is the human toll exacted by DCHA's inaccessibility and disorganization – the very real risk that people could be evicted over a routine administrative issue.**

Legal Aid asks that the Committee pay particular attention to DCHA's performance in this most basic of its functions, by asking DCHA to map out its internal recertification business process and track how long it takes to internally process a recertification and issue a new rent determination notice.

DCHA Must Make its Rent Reasonableness Determination Process Less Time-Consuming and Expensive for Voucher Tenants, and More Transparent

While Legal Aid supported DCHA's adoption of a rent reasonableness standard for voucher subsidy payments, **DCHA's current implementation of this standard is placing an added financial and time burden on voucher holders, who have little way of knowing ahead of time whether a proposed rental unit will or won't be deemed "rent reasonable" by DCHA.**

DCHA explained to advocates that DCHA only makes a rent reasonableness determination after a landlord has submitted a Request for Tenancy Approval (RFTA) packet to DCHA. This means that a voucher-holder will pay an application fee (typically a fee per adult household member) and only later find out whether a unit is "rent-reasonable" or not. While DCHA says it tries to "negotiate" with landlords, and requests that landlords submit comparable units ("comps") to justify the proposed rent level, this process only happens after RFTA submission and has no guarantee of resulting in a successful lease-up.

Advocates and members of the Stabilization and Reform Board have repeatedly raised this concern about the time and money costs to voucher-holders with DCHA, but DCHA has yet to give a satisfactory response. DCHA has not designed a reliable way to help voucher-holders determine ahead of time – before they incur application fees – whether a potential unit is "rent reasonable." Rather than commit to improving its own processes, DCHA concedes that voucher-holders will bear the cost of multiple application fees and the additional time spent applying to unit after unit.

Additionally, the emergency regulations in the Admin Plan regarding rent reasonableness are so generic and open-ended (because they are not, in fact, regulations but copy-pasted guidelines) as to offer little way for landlords, tenants, advocates, or Council to know how DCHA is actually conducting its rent reasonableness determination or provide meaningful oversight. For example, the regulations do not spell out all the factors that DCHA may consider in making a rent reasonableness determination, do not require DCHA to consider a minimum number of comparable units, and do not define the relevant “market area” for purposes of comparison. This gives DCHA a tremendous amount of power and discretion, without any meaningful oversight.

Conclusion

Now is not the time for this Committee to wait and see how DCHA does or does not succeed in addressing its deficient performance. While we are hopeful that DCHA’s new executive director will rebuild a constructive working relationship with advocates to identify and solve problems of greatest concern for residents, no one can count on good faith alone. This Committee has an obligation to ensure that DCHA’s governing regulations and its most essential functions are sound, lawful, transparent, and ultimately good policy for meeting DCHA’s mission and the needs of our community. We look forward to continuing to work constructively with DCHA, this Committee, and the entire Council on these and other aspects of DCHA’s operation and performance.