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**Testimony before the Committee on Economic Development
Rent Control Hardship Limitation Amendment Act of 2013**

April 11, 2014

By Will Merrifield

**Staff Attorney, Affordable Housing Initiative
Washington Legal Clinic for the Homeless**

Good morning and thank you for this opportunity to testify. My name is Will Merrifield and I am a Staff Attorney with the Affordable Housing Initiative at the Washington Legal Clinic for the Homeless. The Legal Clinic envisions – and since 1987 has worked towards – a just and inclusive community for all residents of the District of Columbia, where housing is a human right and where every individual and family has equal access to the resources they need to thrive.

First, I fully support the provisions in this bill to limit the conditional rent increase to a maximum of 5% and require prompt repayment of overpaid rents if the petition is ultimately denied. I also fully support the provision to allow the Rent Administrator to assess treble damages if the petition is found to have been filed in bad faith.

To understand why the above protections are important, it is crucial to understand how hardship petitions are handled on a day to day basis by the rent administrator. I have never seen or heard of a petition being processed within 90 days of its initial filing. This means the housing provider inevitably has the option to take the conditional rent increase. Furthermore, many of these conditional increases are over 50% of the tenant's current rent. Thus, tenants are being assessed huge rent increases without the opportunity to challenge the petition.

Now, if a tenant has an attorney, they sometimes maneuver around the conditional rent increase. However, if the tenants have not been able to retain counsel, this increase could lead to their moving out or being evicted from the property for non-payment of rent.

Furthermore, even if the conditional rent increase does not result in move outs or evictions, it gives the housing provider a huge advantage in negotiating settlements when their petitions are challenged. These settlements are often in the form of voluntary agreements. These agreements guarantee current tenants the

right to stay in the building at rents they can afford in exchange for their granting the housing provider the increase they originally requested in the hardship petition to be applied to future tenants. Thus, the hardship process is creating a cycle whereby current tenants are signing away their buildings current affordability for future tenants. This is resulting in the loss of an untold amount of affordable units each year.

My takeaway from participating in these cases is that the system could be easily abused by a housing provider claiming a hardship, providing enough documents to make the petition look somewhat legitimate, and then using the threat of a conditional rent increase to force the tenants into a settlement largely on the housing provider's terms. The scenario I just described makes the treble damages clause a vital aspect to this bill. There needs to be a real consequence for housing providers trying to abuse the system in this way.

Next, I would like to touch on something the bill does not deal with which is a housing provider's guarantee to a 12% rate of return. I have never seen a rationale to justify this number which leads me believe it's fairly arbitrary. Furthermore, the 12% guaranteed rate of return incentivizes housing providers to overpay for buildings. It does this because the housing provider can ultimately pass on these overpayments to the tenants in the form of higher rents through a hardship petition. Not only does this have the effect of potentially displacing current tenants in favor of new higher paying tenants, it also makes it very difficult for tenants to be able to purchase properties through the TOPA process. This is because the potential housing provider is valuing the property at future inflated rents while the tenants are valuing the property at current or slightly increased rents. This is an especially serious threat in highly gentrifying neighborhoods.

In closing, I support the provisions of this bill and hope it is the beginning of a larger discussion around not only hardship petitions but also voluntary agreements. Thank you and I would be happy to answer any questions.