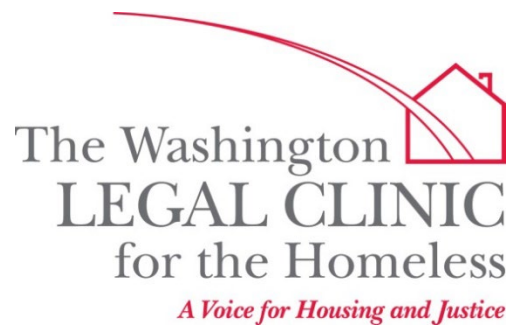


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Testimony before the DC Council Committee of the Whole

B24-714, Fiscal Year 2023 Budget Support Act of 2022

B24-715, Fiscal Year 2023 Federal Portion Budget Request Act of 2022

B24-716, Fiscal Year 2023 Local Budget Act of 2022

B24-717, Fiscal Year 2022 Revised Local Budget Emergency Adjustment Act of 2022

B24-719, Fiscal Year 2022 Second Revised Local Budget Emergency Act of 2022

Amber W. Harding and Brittany K. Ruffin

April 8, 2022

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. We are members of the Fair Budget Coalition and the Way Home campaign and we strongly support the FY22 and FY23 budget and policy recommendations of both coalitions.

Echoing the FY23 Fair Budget Coalition platform call for DC officials to view this year's budget process as an 'Act of Justice,' the Legal Clinic calls for a focus on housing justice this budget cycle. Despite living in a well-resourced District of Columbia, DC residents are facing homelessness, housing instability, and crisis-level lack of affordable housing every day, so there is much work to be done to address these issues in DC in order to further housing justice. The budget process is an opportunity to do just that.

COVID-19 Protections

Many people experiencing homelessness have been medically determined to be at high risk of dying of COVID-19 and need a safe placement in a hotel – in DC this program is called the Pandemic Emergency Program for Medically Vulnerable Individuals (PEP-V). (They are at greater risk of contracting and dying of COVID-19 because they live on the street or in a congregate shelter and are older or have serious medical conditions.) The federal government is paying 100% of costs for PEP-V through April. Right now, there are hundreds of vacancies in PEP-V, while hundreds of eligible people wait to be placed. In January, we sent a letter on behalf of over 35 organizations, asking the Bowser Administration to lower barriers to PEP-V, including removing the requirement that residents be matched to permanent housing, and maintain COVID-19 mitigation measures consistently to be prepared for a new variant. We also asked the Mayor to stop clearing encampments in accordance with CDC guidelines. Finally, it is concerning that DC has decided to no longer report COVID-19 cases publicly for subpopulations, including people experiencing homelessness.

We ask the Council to encourage the Mayor to maintain mitigation measures and public reporting of cases, lower barriers to PEP-V, and require PEP-V programs to comply with the Homeless Services Reform Act, including critical due process protections. For the budget, we want DC to be prepared to use local dollars to sustain PEP-V if the federal money lapses.

Ending Homelessness

We are thrilled to see our full asks for Permanent Supportive Housing funded by Mayor Bowser. The rest of our asks to end family and returning citizen homelessness were not funded at all by the Mayor.

We ask the Council to fund the following programs to end homelessness:

- **\$27.72 million for Targeted Affordable Housing for 1040 families,**
- **\$17.33 million for 800 Local Rent Supplement Program (LRSP) Tenant Vouchers,**
- **\$1.3 million for 60 LRSP Tenant Vouchers for returning citizens,**
- **\$1.8 million for the third and final year of the Reentry Housing Pilot, providing housing and services for 50 returning citizens, and**
- **\$300,000 for Project Reconnect (\$400,000 was funded by the Mayor).**

During the last budget season, the Council crafted BSA language that required DCHA to specifically update its LRSP eligibility regulations allow self-certification and remove eligibility barriers based on criminal legal interaction and immigration status. While DCHA missed the original November 1st deadline and initially failed to issue emergency regulations as directed by this Council, we were pleased to see that the agency recently issued emergency regulations. The regulations capture some portion of the BSA instructions; however, the agency has, thus far, failed in the translation and implementation of the BSA language, causing concern for service providers, applicants, and attorneys.

The agency has added exceptions and exclusionary language that have no statutory or regulatory basis, including: not allowing self-certification for identification documents, continuing to exclude some applicants with criminal records, and failing to remove all requirements that would screen out applicants based on immigration status. The agency is also telling applicants that the BSA only applies to initial eligibility, meaning that the agency can revert to a more restrictive standard at recertification. That is an absurd reading of the BSA provision and would result in housing loss in two years for applicants who took advantage of required policy shift. That cannot possibly be what the Council intended.

The LRSP local voucher program is not beholden to federal exclusions---which is *why* the BSA set forth language for DCHA to remove eligibility barriers that would screen out applicants based on criminal legal interactions and immigration status. Legislative requirements are pointless if they are not enforced and correctly implemented. DCHA must quickly update their regulation guidance and issue permanent regulations that comply with the Council's intent and BSA language. **Council must also accurately amend the Local Rent Supplement Program statute to remove these barriers as intended so that providers and applicants do not have to rely on DCHA's (mis)interpretation of the law.**

Rapid Re-housing Reform

913 families are [slated for termination](#) this year from rapid re-housing for reaching a time limit, even though the Mayor admits that 90% of the families will not be able to afford rent on their own without further assistance. (The program for single adults faces similar challenges but is much smaller in scope.) It is past time to reform rapid re-housing. We, along with [38 other organizations](#), asked the Mayor to use extra money to extend families until everyone who needs permanent affordable housing gets it, rather than prematurely terminating them from assistance. The Mayor has added an extra \$45.6M to the program this year, as well as an extra \$44.4M for next year, but has made no promises to sustain any of the families in the program. With very few permanent housing subsidies in next year's budget so far, more families will be thrown off the subsidy cliff next year.

While very few families have appealed their terminations, most likely because they have received multiple confusing notices from DHS, we are working with over a dozen families who are facing termination. Despite DHS claiming to have assessed each family for additional housing support and promising that no family would receive an exit notice if they were eligible for another support, every single family we have spoken to is eligible for TAH, PSH, and/or DC Flex.

Many of the parents have disabilities, as do many of the children in the families. Several have experienced domestic violence—one client was assaulted just days before receiving her exit notice. Some have language and immigration barriers to housing. Some are working, but all are unemployed or underemployed. Several have infants and irregular childcare. Several report having no personal safety net-- no friends or family to support them if they become homeless again.

What they all have in common, though, is that they cannot pay the rent without additional help. They all have said they will become homeless if they are exited from the program without any more help. And when we say they cannot pay the rent, I do not mean they will be rent burdened. Only one of our clients is in that situation—she would pay 73% of her income for rent without a subsidy, severely rent burdened by any standard. Every other client has a total monthly income that is *far below* the rent—making it mathematically impossible to stay housed even if they devote every single dollar to rent.

Rapid re-housing is so broken that even funding historic levels of permanent housing did not stop DHS from terminating nearly one third of the families, sending nearly 1000 families reeling into crisis. It is so broken that DC spends \$863 per month per family on case management that only helps a quarter of families increase their incomes at all, and then only an average \$39 per month. (Let's envision a world where instead we just gave families that money, thereby dramatically improving performance outcomes!) It is *so* broken yet, despite such obvious failures *of the program*, only families bear the burden of such failures, never providers and never the government that designed the program in willful blindness to the huge gap between income and market rent in DC.

We, along with 55 others signed onto the attached letter, are asking the DC Council to:

- 1) Demand that the Mayor immediately withdraw all time-limit termination notices that have been issued by the Department of Human Services (DHS),**
- 2) Devote surplus funds to maintain rapid re-housing rental support until every participant has the resources they need to afford housing,**
- 3) Increase permanent affordable housing vouchers in next year's budget so that rapid re-housing participants can transition into a program that better maintains housing**

stability, including Targeted Affordable Housing for families and Local Rent Supplement Program tenant vouchers, and

- 4) **Reform rapid re-housing legislatively so that DC residents cannot be terminated for a time limit until they can afford rent without further assistance.**

As to the last point, this is the language **we recommend amending the BSA for FY22 and FY23** with language that was originally introduced last summer in the Budget Support Act but then withdrawn because of the fiscal impact:

“(g) A new subsection (e) is added to section 22b of the Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code § 4-754.36b), to read as follows:

“(e) In the remainder of fiscal year 2022 and all of fiscal year 2023, a provider may only exit a client pursuant to this section if the Mayor determines that the client has a reasonable likelihood of sustaining housing stability independently of the rapid re-housing program. Such a determination shall be based on the client’s rent burden at the time of program exit, the client’s job stability and income, and other factors known to cause housing instability.”.

Civil Rights Legislation

As we laid out [here](#), the DC Council recently unanimously passed the *Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022*, which will update our eviction laws and reduce barriers to rental housing. Not all of the law will go into effect, however, until it receives funding in the budget. **We are asking the Council to devote the \$450,000 needed in FY23 to implement the Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022. We are also asking the Council to pass and fund the Human Rights Enhancement Amendment Act of 2021.**

Utility and Rent Relief

With the moratoria on evictions and utility shut offs lifted, it is critical that DC maintains sufficient funding for rent and utility relief. DC must ensure residents can access sufficient funds to pay back rent and utility arrears (including phone and internet) to prevent massive displacement, trauma, and homelessness. We are still looking into the utility investments. For rent relief, we recommended an additional \$187 million in FY22 and \$200 million in FY23—all in the Emergency Rental Assistance Program (ERAP). It looks like the Mayor has proposed increasing ERAP by \$73.9M in FY22 and \$27.7M in FY23 above the approved FY22 budget. That’s a great start, particularly when in years past the Mayor has regularly cut ERAP funds in her proposal, but we still have far to go to meet the need. **We are asking for an additional \$113.1M in FY22 and an additional \$172.3M in FY23. We also ask that the Council move forward the permanent legislation for the Emergency Rental Assistance Reform Amendment Act of 2021.**

Repairing Public Housing

Mayor Bowser invested \$50M into repairing public housing, more than she has ever invested before, and the same as the total amount of funding for repairs the last two fiscal years. It is an excellent start, and we look forward to the Council **finding the remaining \$10M** and, just as importantly, building in some requirements to ensure that the money is spent well to meet the urgent needs of public housing residents.

DCHA has recently indicated a primary focus on getting vacant public units ready for occupancy, with a goal of seven hundred units back online within the next year. While that is an encouraging

goal, it just cannot be the only one; substantial attention must still be given to families living in deplorable conditions in current units.

We continue to urge the Council to **strongly support the protections originally introduced in the *Public Housing Preservation and Tenant Protection Amendment Act of 2020* and memorialize the right to return**, a principle that DCHA administrations have publicly supported without formalizing. The legislation would memorialize DCHA's stated commitment to its residents, ensuring that public housing residents can rightfully access the housing that is intended for them upon any property redevelopment.

Building Deeply Affordable Housing

While the Mayor put in nearly \$500M for the Housing Production Trust Fund and appears to have matched enough operating dollars to build deeply affordable housing with that money, we are still **asking the Council to restore the \$82M that should have been spent on building housing for the lowest income DC residents to that purpose. We are also asking the Council to develop greater enforcement and oversight mechanisms to ensure that the money dedicated for building housing for residents making 0-30% of Area Median Income is actually spent in accordance with statutory requirements.**

The Housing Production Trust Fund is *the* fundamental source for creating and preserving affordable housing in DC. The intention of the HPTF is quite deliberately expressed within the guidelines that specify how the funds are to be used. A couple of years ago, in acknowledgment of the inequitable distribution of the HPTF housing creation, the Council increased the 0-30% AMI percentage allocation to fifty percent of the total HPTF. Disappointingly, that increase, alone, has failed to address the overall oversight and budget issues impacting the appropriate distribution of the HPTF. While the HPTF guidelines are strong in intention, they mean nothing if combined with a lack of oversight, execution, and funding. DHCD has repeatedly failed to meet its responsibility to the lowest income D.C. residents (0-30% AMI), even before Council increased the allocation. The agency has also consistently overestimated its 0-30% production levels. In 2019, only thirteen percent (13%) of the HPTF was used for 0-30% AMI, even *less* than DHCD's own provided estimate. For FY20, despite the mayoral increase to the HPTF and a change requiring that fifty percent (50%) of the fund be used for 0-30% AMI housing creation, *only eighteen percent (18%)* of the fund was used to create housing for the lowest-income level. For FY21, DHCD originally projected that a mere 27% of funds would be used for 0-30%. Unfortunately, even that estimate went unmet. For FY22, it appears as though only 24% of funds will go towards 0-30%.

The mayor's budget makes a substantial \$498M investment in the Housing Production Trust Fund. We applaud the sustained investment in affordable housing creation. However, funding without provisions to ensure that money is spent as intended is not an effective method for the most vulnerable communities. Most recently, the Inspector General detailed that \$82 million of the HPTF money meant for 0-30% AMI was misspent in 2020. It is apparent that broad goals and simply raising the statutory levels in writing are insufficient to solve for the issue of 0-30% AMI unit underdevelopment. Perhaps it is time to take more explicit measures to uphold funding allocations by separating the 0-30% AMI allocation money from the total amount in the HPTF. Certainly, the Council should utilize additional mechanisms to increase its own ability to successfully administer the oversight necessary to achieve its legislative intent and ensure that funds meant for 0-30% housing creation are being used as intended. **As members of the Fair Budget Coalition, we join the request to restore the misspent \$82 million to the 0-30% AMI bucket and implement legislative protections.**

We are pleased to see the more than \$40M multi-year budget announcement for LRSP matching/operating funds in the mayor's budget dollars to actually build the 0-30% AMI units that could be built with significant HPTF investments. We appreciate the intention to fund the requisite matching LRSP money for these units, but the lack of clarity around that funding and concerns related to rising costs still raise uncertainty as to whether the investment is truly adequate to match the substantial HPTF investment and projects in the future. We urge this Committee to really examine this issue to **make sure that adequate matching funding is in the budget to support the creation of extremely low-income housing.**

Summary

We ask the Council to prioritize the following:

Funding Increases (above Mayor's proposal):

- Targeted Affordable Housing for 1040 families: \$27.72 million,
- Local Rent Supplement Program (LRSP) Tenant Vouchers:
 - \$17.33 million for 800 families,
 - \$1.3 million for 60 returning citizens
- Reentry Housing Pilot: \$1.8 million,
- Project Reconnect: \$300,000,
- Rapid Rehousing: enough in FY22 and FY23 to stop families from being terminated (TBD)
- ERAP: \$113.1M in FY22 and an additional \$172.3M in FY23,
- Eviction Record Sealing Authority and Fairness in Renting Act: \$450,000,
- Public housing repairs: \$10M for FY23

Budget Support Act or policy changes:

- Require PEP-V programs to comply with the Homeless Services Reform Act, including critical due process protections,
- Amend the Local Rent Supplement Program statute to remove barriers,
- Amend the BSA to prohibit time limit terminations from rapid rehousing for anyone who cannot afford rent on their own,
- Restore the misspent \$82 million in HPTF to the 0-30% AMI bucket and implement legislative protections,
- Pass:
 - *Human Rights Enhancement Amendment Act of 2021*
 - *Public Housing Preservation and Tenant Protection Amendment Act of 2020*
 - *Emergency Rental Assistance Reform Amendment Act of 2021.*

DC Council members,

We, the undersigned organizations, join together to ask you to stop Mayor Bowser from terminating DC residents from the rapid re-housing program for hitting an arbitrary time limit. This year, as many as 913 families are facing time limit terminations. The Bowser Administration estimates that 90% of these families would not be able to afford rent on their own if their subsidy was terminated.

The lack of affordable housing in the District of Columbia is a structural, systemic problem with deep roots that demands comprehensive and sustained solutions. Cutting DC residents from rental assistance for hitting a time limit when they cannot afford market rent on their own is unfair, unjust, and will lead to increased evictions and homelessness--disproportionately harming Black residents and other communities of color.

We ask you to:

- 1) Demand that the Mayor immediately withdraw all time-limit termination notices that have been issued by the Department of Human Services (DHS),
- 2) Devote surplus funds to maintain rapid re-housing rental support until every participant has the resources they need to afford housing,
- 3) Increase permanent affordable housing vouchers in next year's budget so that rapid re-housing participants can transition into a program that better maintains housing stability, including Targeted Affordable Housing for families and Local Rent Supplement Program tenant vouchers, and
- 4) Reform rapid re-housing legislatively so that DC residents cannot be terminated for a time limit until they can afford rent without further assistance.

Sincerely,

- 1) Amara Legal Center
- 2) Asian Pacific American Legal Resource Center
- 3) Asian/Pacific Islander Domestic Violence Resource Project
- 4) Black Swan Academy
- 5) Dr. Nia Bodrick, Pediatrician
- 6) Bread for the City
- 7) Cancel Rent DC
- 8) Capital Pride Alliance
- 9) Children's Law Center
- 10) Coalition for Smarter Growth
- 11) DC Action
- 12) DC Asthma Coalition
- 13) DC Coalition Against Domestic Violence
- 14) DC for Democracy
- 15) DC Fiscal Policy Institute
- 16) DC KinCare Alliance
- 17) DC Tenants' Rights Center
- 18) DC Statehood Green Party
- 19) District Alliance for Safe Housing, Inc
- 20) Empower DC
- 21) Equal Rights Center
- 22) Fair Budget Coalition
- 23) Valerie Schneider, Director, Fair Housing Clinic, Howard University School of Law

- 24) Fay Law Group, P.A.
- 25) Dr. Eduardo Fox, Pediatrician
- 26) Friendship Place
- 27) GLAA
- 28) Yael Cannon, Associate Professor and Director; Marta Beresin, Visiting Professor; Ashley Nyce, Supervising Attorney/Clinical Teaching Fellow; Lillian Kang, Supervising Attorney/Clinical Teaching Fellow (Health Justice Alliance Law Clinic, Georgetown University Law Center)
- 29) Homeless Children's Playtime Project
- 30) Housing Is a Human Right
- 31) Institute for Public Health Innovation
- 32) Jews United for Justice
- 33) Latino Economic Development Center
- 34) Legal Aid Society of the District of Columbia
- 35) Legal Counsel for the Elderly
- 36) Mother's Outreach Network
- 37) NAACP DC
- 38) National Coalition for the Homeless
- 39) National Homelessness Law Center
- 40) Pathways to Housing DC
- 41) The Platform of Hope
- 42) The Person Center
- 43) Positive Force DC
- 44) Rising for Justice
- 45) Keeshea Turner Roberts, Adjunct Clinical Law Professor
- 46) Save Us Now Inc
- 47) SchoolHouse Connection
- 48) Spaces in Action
- 49) Tzedek DC
- 50) Washington AIDS Partnership
- 51) Washington Lawyers' Committee for Civil Rights and Urban Affairs
- 52) The Washington Legal Clinic for the Homeless
- 53) We Are Family Senior Outreach Network
- 54) Caroline Wick, Practitioner-In-Residence, American University Washington College of Law
- 55) Woodner Tenants' Union
- 56) Yachad