

Written Testimony of The Washington Lawyers' Committee for Civil Rights and Urban Affairs

**District of Columbia Committee on Housing and Neighborhood Revitalization
Performance Oversight Hearing for the District of Columbia Housing Authority**

March 8, 2019

I. INTRODUCTION AND OVERVIEW

The Washington Lawyers' Committee for Civil Rights and Urban Affairs ("Committee") submits this written testimony regarding the District of Columbia Housing Authority's ("DCHA" or "Agency") performance this year. We focus specifically on the Agency's administration of the public housing program and our concerns regarding DCHA's efforts to move responsibility to the private sector. This written testimony supplements the oral testimony delivered before the DC Council on February 22, 2019, as well as the written copy of the oral testimony previously submitted to Councilperson Bonds' office.

There is a crisis in safe, decent and affordable housing in the District of Columbia. Decades of gentrification have stripped the private market of affordable units. Working and low-income families are forced into smaller, more racially segregated and geographically isolated parts of the District or forced out of the District altogether. Tens of thousands of people are on the public housing waiting list and few have much hope of receiving a unit or a voucher to secure housing on the private market.

DCHA paints a dire picture of public housing conditions and the significant costs of repair. While it is well known that public housing in DC is in terrible condition due to decades of DCHA's own neglect, its analysis of the cost of repair appears to be significantly flawed and a wholly inadequate basis for proceeding to dismantle one of the critical sources of affordable housing for DC's most vulnerable citizens, including families with children, persons with disabilities, and seniors. However, that is exactly what DCHA proposes as a solution to cover the cost of repairs – dismantling, or "repositioning", the public housing program in the District and substituting it with various voucher-based (e.g., project-based or tenant-based) subsidies.¹

There is no evidence that DCHA's vague "repositioning" plan is designed to counter the re-segregation of neighborhoods, the widespread displacement of residents, or the adverse impact of these conditions to which families, individuals with disabilities, and seniors are particularly susceptible.² Indeed, the models on which DCHA is drawing have, as explained below, only made such problems worse.

¹ District of Columbia Housing Authority Board of Commissioners Resolution 19-01, To Adopt a Framework for Stabilization and Repositioning DCHA's Portfolio of Properties, available at: <http://www.dchousing.org/docs/ks0tqjcr214.pdf>

² District of Columbia Housing Authority 2018 Oversight and Performance Hearing, District of Columbia Council, Committee on Housing & Neighborhood Revitalization, Responses to Pre-Hearing Questions, February 2018, at Response Nos. 78, 79, 82, available at: <http://dccouncil.us/wp-content/uploads/2018/10/dcha.pdf>; See also, Center for Health Journalism, "In Nation's Capital, Rising Gentrification Undermines Health", July 2017, available at:

To protect residents and ensure effective use of resources, The Committee proposes the following:

1. Require DCHA accountability for implementing a comprehensive repair plan – While the Committee supports an immediate infusion of capital to address the most critical conditions in public housing units pre-identified by DCHA, it should be accompanied by robust enforcement mechanisms to ensure accountability to avoid continued mismanagement and delayed maintenance.
2. Accurately assess the cost of repairs – The City should conduct an independent expert analysis to determine to what extent DCHA’s “Capital Needs Assessment Summary Report” is reliable and accurate.
3. Facilitate meaningful contributions from residents and advocates – The release of funds to DCHA should be conditioned on the implementation of policies and procedures, including establishment of an oversight working group, that will allow residents and advocates to offer meaningful input into the decision making process regarding repairing and stabilizing the public housing portfolio.
4. Obligate DCHA to implement a comprehensive repair plan that benefits residents – The City should create and require adherence to certain principles and guidelines to ensure that the repair plan is implemented in a manner that protects and advances the interests of current and future public housing residents. These principles and guidelines include, but are not limited to:
 - a. Build first whenever demolition is required;
 - b. Conduct repairs and rehabilitation in a manner that minimizes displacement;
 - c. Extend the right to return to all households displaced by repair efforts and facilitate the return of those households;
 - d. Maintain or increase the number of deeply subsidized units that include units suitable for large families; and
 - e. Maintain tenant due process and participation protections that are the hallmark of public housing.

II. CONDITION OF PUBLIC HOUSING AND PURPORTED CAPITAL NEEDS

DCHA contends that the cost of repairing and rehabilitating dilapidated public housing units will cost approximately \$1.3 billion over 10 years.³ That conclusion is based on its contention

<https://www.centerforhealthjournalism.org/2017/07/19/nation%E2%80%99s-capital-rising-gentrification-undermines-health-african-american-community>.

³ Capital Needs Assessment Summary Report: Office of Capital Programs/DCHA Properties, available at: <https://dchousing.sharefile.com/share/view/sc3742d396aa4afbb>; see also District of Columbia Housing Authority Board of Commissioners Resolution 19-01, To Adopt a Framework for Stabilization and Repositioning DCHA’s Portfolio of Properties, available at: <http://www.dchousing.org/docs/ks0tqjcr214.pdf>.

that 7,000 public housing units are plagued with environmental hazards like mold and lead, as well as structural problems such as leaking roofs and insufficient plumbing infrastructure.⁴

Of those 7,000 units, approximately 2,600 units are in “extremely urgent” need of immediate repair and located throughout 14 public housing apartment complexes in the District.⁵ DCHA has stated that making the most critical repairs will cost \$343,088,718 in fiscal year 2019.⁶

Ultimately, DCHA proposes demolition or significant rehabilitation of approximately 2,500 of the public housing units in the worst condition⁷ and substituting a program involving private subsidized development coupled with project-based vouchers or project-based rental assistance programs, such as the Rental Assistance Demonstration (“RAD”) program, or Housing Choice Vouchers, for some unspecified portion of the demolished former public housing units.⁸

However, DCHA has yet to offer sufficient support or explanation for this \$1.3 billion dollar figure. Even a cursory examination suggests that it is inflated. For example, its Capital Needs Assessment (“DCHA Assessment”) fails to identify the scope of repairs necessary in the next one to five years—information vital to understanding what portion of the total funding must be secured in the earliest phases of the project. The DCHA Assessment also contains glaring mathematical and data entry errors. By way of illustration, the cost for one project decreases by approximately \$10 million dollars once the data correctly accounts for two water heaters instead of 300 for a single high-rise building.⁹ Accurate information and clear, coherent analysis is vital to enable the Council to assess DCHA’s Assessment and its contentions regarding funding needs.

Despite some significant inaccuracies in DCHA’s \$1.3 billion dollar estimate, it is undeniable that extensive repairs are necessary and long overdue. The fact that repairs of this magnitude are required is sobering; indeed, these figures and the number of properties identified for repairs underscore the extensiveness of the neglect that has plagued public housing in DC for decades. We understand that the challenge of maintaining public housing has become more acute with HUD’s consistent underfunding, placing more pressure on DCHA and the City.¹⁰

⁴ See Capital Needs Assessment Summary Report: Office of Capital Programs/DCHA Properties, available at: <https://dchousing.sharefile.com/share/view/sc3742d396aa4afbb>; see also District of Columbia Housing Authority Board of Commissioners Resolution 19-01, To Adopt a Framework for Stabilization and Repositioning DCHA’s Portfolio of Properties, available at: <http://www.dchousing.org/docs/ks0tqjcr214.pdf>.

⁵ See Responses to Questions Received from the Local Affordable Housing Advocacy Community Concerning DCHA’s Portfolio Stabilization, attached as Exhibit A.

⁶ See, District of Columbia Housing Authority Board of Commissioners Resolution 19-01, To Adopt a Framework for Stabilization and Repositioning DCHA’s Portfolio of Properties, available at: <http://www.dchousing.org/docs/ks0tqjcr214.pdf>.

⁷ See Capital Needs Assessment Summary Report: Office of Capital Programs/DCHA Properties, available at: <https://dchousing.sharefile.com/share/view/sc3742d396aa4afbb>.

⁸ District of Columbia Housing Authority Board of Commissioners Resolution 19-01, To Adopt a Framework for Stabilization and Repositioning DCHA’s Portfolio of Properties, available at: <http://www.dchousing.org/docs/ks0tqjcr214.pdf>.

⁹ See Capital Needs Assessment Summary Report: Office of Capital Programs/DCHA Properties, available at: <https://dchousing.sharefile.com/share/view/sc3742d396aa4afbb>, (p. 21 specifying 343 water heaters).

¹⁰ District of Columbia Housing Authority 2018 Oversight and Performance Hearing, District of Columbia Council, Committee on Housing & Neighborhood Revitalization, Responses to Pre-Hearing Questions, February 2018, at Response Nos. 78, 79, 82, available at: <http://dccouncil.us/wp-content/uploads/2018/10/dcha.pdf>.

However, DCHA has not provided information that supports its effort to offload an essential, core governmental responsibility to ensure and oversee affordable public housing to private developers. Therefore, the Council should not permit DCHA to move forward with its plan until and unless DCHA demonstrates that its “repositioning” will provide adequate protections for low-income tenants and counter the re-segregation of the City.

III. POTENTIAL PITFALLS OF DCHA’S “REPOSITIONING” PLAN

a. Public Housing Tenants Suffer In RAD Conversions

“Repositioning” or privatizing the public housing stock is not a better way to obtain needed funding for public housing repairs. The low success rates of similar “repositioning” tools including the Rental Assistance Demonstration Program (“RAD”) upon which DCHA’s Resolution appears to be based —has a history of limited oversight of the program and has harmed public housing residents.¹¹

RAD gives public housing authorities the option to remove public housing units from their public housing portfolio, and, to enter into long-term project-based Section 8 contracts with private owners, such as the project-based voucher (“PBV”) or project-based rental assistance (“PBRA”).¹²

The purpose of RAD is to allow public housing authorities to access funding streams, such as Low-Income Housing Tax Credits, that are only available to private owners.¹³ To facilitate access to these sources of funding, the RAD conversion process involves the transfer of public housing ownership from public housing authorities to private single-asset entities.¹⁴ The public housing authority (or a public housing authority controlled entity) may or may not be the managing partner of those private single-asset entities.¹⁵ Thus, while DCHA claims this repositioning is not the privatization of public housing, the RAD conversion process permits the transfer of fee

¹¹ National Housing Law Project Letter to U.S. Department of Housing and Urban Development Secretary Benjamin Carson regarding Concerns with the Rental Assistance Demonstration (RAD) Program (October 11, 2017), available at: <http://files.constantcontact.com/f10f35b7601/0e916d9d-c81f-4ec8-9dbf-d10e2f3880be.pdf>.

¹² National Housing Law Project, Resources, Rental Assistance Demonstration, available at <https://www.nhlp.org/resources/rental-assistance-demonstration-rad/>

¹³ *Id.*; *see also* District of Columbia Housing Authority Board of Commissioners Resolution 19-01, To Adopt a Framework for Stabilization and Repositioning DCHA’s Portfolio of Properties, available at: <http://www.dchousing.org/docs/ks0tqjcr214.pdf>; Shelter Force, The Promise and Peril of HUD’s RAD program, available at: <https://shelterforce.org/2018/07/30/the-promise-and-peril-of-huds-rad-program/>; HUD, *The Evolution of HUD’s Public-Private Partnerships*, available at: https://www.huduser.gov/hud50th/HUD2-048-Public-Private-Partnership_508.pdf; District of Columbia Housing Authority Board of Commissioners Resolution 19-01, To Adopt a Framework for Stabilization and Repositioning DCHA’s Portfolio of Properties, available at: <http://www.dchousing.org/docs/ks0tqjcr214.pdf>.

¹⁴ U.S. Dep’t of Hous. & Urban Dev., PIH No. 2012-32 (HA), REV-2, Rental Assistance Demonstration – Final Implementation (2015); *See also*, The American Bar Association, Journal of Affordable Housing, Narrowly-Tailored Privatization; Volume 26, Number 1, available at: https://www.americanbar.org/content/dam/aba/publications/journal_of_affordable_housing/Volume_26_Number_1/weiss_ah.authcheckdam.pdf

¹⁵ *Id.*

ownership of the land to private developers.¹⁶ It is DCHA’s position that RAD is the “most effective” tool for addressing the immediate capital needs.¹⁷

The first six years of RAD in other jurisdictions, including Baltimore, have exposed numerous examples in which public housing authorities and the U.S. Department of Housing and Urban Development (“HUD”) failed to protect some of the most essential rights afforded to public housing residents. These potential pitfalls have included, but are not limited to:

1. Loss of affordable housing due to exceptions to one-for-one replacement requirements and insufficient oversight by housing authorities resulting from their lacking ownership or controlling interests;
2. Failure to provide, create, or comply with adequate written relocation plans and provision of uninhabitable or inadequately-sized temporary housing for residents;
3. Unlawful re-screening of residents’ income, criminal history, and credit history;
4. Fair housing violations, e.g., familial status discrimination, failures to provide reasonable accommodations to individuals with disabilities, and failures to provide translation services to Limited English Proficient tenants;
5. Transfers to temporary housing that place tenants far from their communities, workplaces, schools, and other support structures and thereby destabilize families.
6. Residents’ limited access to documentation regarding the RAD conversion process and the owner’s redevelopment plan that results in barriers to effective tenant and advocate engagement;
7. Insufficient education of residents regarding RAD conversion and the potential impact on tenants’ rights, particularly various notice requirements and grievance procedures that are the hallmark of public housing, such “rights” education is a requirement in the public housing context;
8. Interference with tenants’ advocacy and rights to organize;
9. Improper leases and house rules that exclude lease termination notification and grievance procedures language as required for public housing residents, as well as issuance of improper notices to vacate.¹⁸

¹⁶ *Id.*

¹⁷ District of Columbia Housing Authority Board of Commissioners Resolution 19-01, To Adopt a Framework for Stabilization and Repositioning DCHA’s Portfolio of Properties, available at: <http://www.dchousing.org/docs/ks0tqjcr214.pdf>. (stating, “...the most effective, available tools for addressing immediate conditions...would involve shifting properties from traditional public housing...to a voucher funding platform...including RAD...”)

¹⁸ *Id.*; see also U.S. HUD Office of Inspector General Report, “The Spokane, WA, Housing Authority Did Not Follow Permanent Relocation Requirements for Its RAD Conversion of the Parsons Apartments,” April 2018, available at: <https://www.hudoig.gov/reports-publications/audit-reports/spokane-wa-housing-authority-did-not-follow-permanent-relocation> (determining that the Spokane Housing Authority failed to follow permanent relocation requirements and allowed for unlawful re-screening of residents to remain or return to their public housing units because the RAD plan utilized low-income housing tax credits); Broadwater, Luke, “Tenants evicted improperly from Baltimore’s privatized public housing, complaint alleges,” The Baltimore Sun, February 8, 2018, available at: <https://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-public-housing-evictions-20180208-story.html> (detailing evictions of former public housing residents residing in newly privatized units where private management failed to give tenants access to the mandated grievance process and issued notices to vacate that did not

As applied to the District, without proper oversight, RAD—or a similar program centered around privatization—could adversely impact numerous seniors, persons with disabilities, and families with children, who are some of the most at-risk members of our community and represent the majority of the residents who will be impacted by DCHA’s “repositioning” plan.¹⁹

Approximately 48% of the properties that DCHA has slated for repairs, whether through demolition, gutting and rehabilitation, or non-gutting and rehabilitation, are home to families with children.²⁰ In these properties, children comprise at least 20% of the population, and in some cases, between 35-50% of the property.²¹ Displacement—a likely outcome of RAD conversions or conversions of public housing to tenant-based vouchers—often increases commute time to work or limits access to public transportation necessary to get to work – jeopardizing jobs, increasing financial instability for families, and inducing anxiety in adults and children.²² Displacement also disturbs access to education and afterschool care for young children.²³ Research shows that high school-aged children forced to relocate are more likely to drop out of school.²⁴ Elderly residents and individuals with disabilities forced to leave their homes and use a voucher to secure housing in a different neighborhood lose access to caretakers and community support; and, have difficulty obtaining prescriptions and medical records.²⁵

b. Voucher Based Programs Are Not a Suitable or Adequate Replacement for Public Housing

It appears that DCHA’s inchoate or unexplained plan will combine a RAD-like program supplemented by a separate conversion mechanism known as “voluntary conversion” – a tool that relies on tenant-based “Housing Choice” Vouchers.²⁶ Including a voucher component generates

comply with federal law); Evans, K. Burnell, “Developer agrees to pay \$340k, boost services in HUD settlement over discrimination complaints in Hopewell,” Richmond Times Dispatch, October 3, 2017, available at: https://www.richmond.com/news/local/central-virginia/tri-cities/developer-agrees-to-pay-k-boost-services-in-hud-settlement/article_cce95eb4-df79-5256-82eb-dae992541bc0.html (describing how Hopewell, Virginia tenants with children and disabilities were forced to relocate to poorer neighborhoods, suffer through overcrowding, and denied a right to return that resulted in a HUD investigation and settlement).

¹⁹ See, District of Columbia Housing Authority 2018 Oversight and Performance Hearing, District of Columbia Council, Committee on Housing & Neighborhood Revitalization, Responses to Pre-Hearing Questions, February 2018. See Attachment #9, DC Housing Authority Public Housing Property List, available at: <http://dccouncil.us/wpcontent/uploads/2018/10/dcha.pdf>; see also, “Public Housing,” DCHA website, available at: <http://www.dchousing.org/topic.aspx?topid=3>. (showing DC public housing primarily houses low income families with children, persons with disabilities, and seniors).

²⁰ See “Public Housing,” District of Columbia Housing Authority website, available at: <http://www.dchousing.org/topic.aspx?topid=3> (providing list of properties and demographics breakdowns per property at property link). We have counted Barry Farm as a public housing property with a significant percentage of families with children based on prior DCHA demographics reporting of the property.)

²¹ See *id.* (showing 36% of the residents at Woodland Terrace and Richardson Dwellings are children while 50% of tenants at Elvans Road are minors).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Center for Health Journalism, “In Nation’s Capital, Rising Gentrification Undermines Health”, July 2017, available at: <https://www.centerforhealthjournalism.org/2017/07/19/nation%E2%80%99s-capital-rising-gentrification-undermines-health-african-american-community>.

²⁶National Housing Law Project, Resources, Rental Assistance Demonstration, available at <https://www.nhlp.org/resources/rental-assistance-demonstration-rad/>

equally problematic results for public housing residents. These programs are not suitable replacements for a robust public housing program that includes designated deeply affordable units.

While in theory RAD and other voucher-based programs are touted as providing additional affordable housing options, those “options” are too often illusory. Many of those in need of such housing (including the homeless and current public housing residents) are not able to access RAD converted housing because the private management companies typically tasked with operating these properties often utilize onerous income, credit, and criminal record screening policies that make it impossible for prospective tenants to qualify to rent the units.²⁷ Housing Choice Voucher holders face significant difficulties using their vouchers, particularly in neighborhoods of choice. As housing advocates constantly see and have often reported to DCHA, voucher holders routinely have their subsidies terminated because they are unable to secure adequate housing before their vouchers expire. Voucher holders also report being denied housing because of failures to meet income and credit worthiness standards. Further, despite protections in the DC Human Rights Act, voucher holders are often unlawfully refused housing by landlords on the basis of their source of income.

Local advocates and legal services providers are concerned that we will lose progress on ending homelessness if we are adding thousands of former public housing residents to the ranks of voucher holders scrambling for housing. That may compound, rather than alleviate, the housing crisis in the District, particularly for people who use wheelchairs or families who require larger units, since units that can accommodate both are already in limited supply.²⁸ Public housing thus continues to be a critical resource for low-income residents. Further, despite recent increases to the voucher payment limits within various housing submarkets (neighborhoods), voucher payment limits are not on par with market rent rates, particularly in the more resource intensive neighborhoods like Wards 1, 2, and 3.

Of equal concern, most voucher holders continue to reside in racially concentrated, under-resourced, and densely populated neighborhoods, namely in Wards 7 and 8.²⁹ The potential racial disparate impact of substituting public housing with vouchers cannot be overstated and is of grave concern to housing advocates.

For these reasons, the Committee asks the Council to ensure that DCHA does not move forward with a “repositioning” plan until that plan is fully disclosed in sufficient detail to meet a

²⁷ U.S. HUD Office of Inspector General Report, “The Spokane, WA, Housing Authority Did Not Follow Permanent Relocation Requirements for Its RAD Conversion of the Parsons Apartments,” April 2018, available at: <https://www.hudoig.gov/reports-publications/audit-reports/spokane-wa-housing-authority-did-not-follow-permanent-relocation> (determining that the Spokane Housing Authority failed to follow permanent relocation requirements and allowed for unlawful re-screening of residents to remain or return to their public housing units because the RAD plan utilized low-income housing tax credits)

²⁸ Peter Tatian, Josh Leopold, et al., *Affordable Housing Needs Assessment for the District of Columbia, Phase II*, An Urban Institute Research Report (May 2015) at 2 and Appendix A, Table A21 or page 132 (describing how only 21% of housing units in DC are three bedrooms, 8% are four bedrooms, and 4% are five or more bedrooms).

²⁹ District of Columbia Housing Authority 2018 Oversight and Performance Hearing, District of Columbia Council, Committee on Housing & Neighborhood Revitalization, Responses to Pre-Hearing Questions, February 2018, at Response Nos. 78, 79, 82, available at: <http://dccouncil.us/wp-content/uploads/2018/10/dcha.pdf>.

rigorous, independent review. That review must consider the needs and rights of public housing tenants. It must ensure that the City retains a direct role in providing affordable housing to its most vulnerable residents, and that clear, measurable requirements imposed on DCHA in exchange for local funds to pay for repairs are enforceable. The repair and preservation of public housing throughout the City is essential to the life, vitality, and culture of the District as a progressive, diverse, inclusive, and generous place.