

Government of the District of Columbia



Office of the Tenant Advocate

Testimony of

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Public Hearing on:

The Proposed Fiscal Year 2023 OTA Budget

Committee on Housing and Executive Administration
The Honorable Anita Bonds, Chairperson
Council of the District of Columbia

on

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10:00 a.m.

Via Virtual Platform

Introduction

Good afternoon Chairperson Bonds, members of the Committee, and staff.

I am Johanna Shreve, Chief Tenant Advocate at the Office of the Tenant Advocate (OTA). Today I will testify on the Mayor's proposed Fiscal Year 2023 (FY23) budget for the agency. I want to thank the Mayor for a budget that reflects a commitment to affordable housing in the District of Columbia, as well as to the OTA and its mission to protect the rights of renters.

At this time last year, I commented on the District's transition to a post-COVID environment; a year later the District still finds itself in a transition state. Countless renters continue to feel the impact of the pandemic and its aftermath; many continue to wonder whether, or for how long, they will be able to pay the rent. As the old saying goes, "the more things change the more they stay the same." As Chief Tenant Advocate, I appreciate the fact that the Committee and the Council have moved forward into the post-COVID environment with this ongoing state of transition firmly in mind.

Today I will briefly summarize the Mayor's proposed Fiscal Year 2023 budget (FY23 proposed budget) for the Office of the Tenant Advocate, and I will discuss the agency with reference to both its current fiscal year activities and my vision for its future.

Summary of the Proposed Fiscal Year 2023 OTA Budget

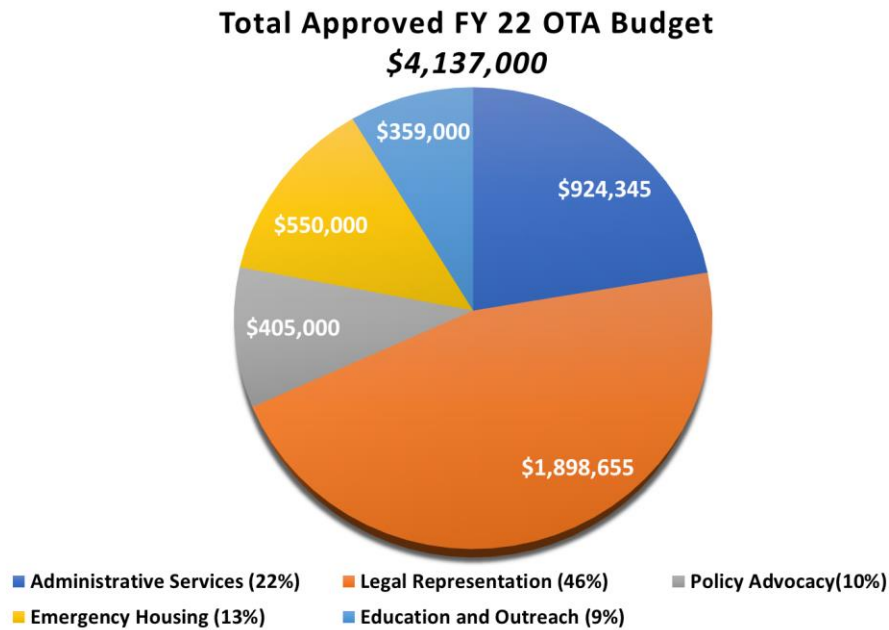
The Mayor's total proposed FY23 operating budget for the agency is \$4,421,256, which represents an increase of 6.9 percent over the approved FY22 budget. Local funds account for \$3,265,840, or roughly 74 percent of the proposed total for FY23; Special Purpose Revenue (SPR) funds account for \$643,736, or about 15 percent; and, federal funds account for the remaining \$511,680, or about 11 percent.

The FY23 proposed budget reduces the agency's FTE count from 33 to 29.3. This reflects the elimination of four (4) of nine (9) federally funded temporary FTE positions that were added to the OTA's budget for FY22 using federal funds. The proposed budget reflects a gross reduction of nine FTEs as follows: one (1) position under Activity 1090 (Performance Management); seven (7) positions under Activity 3015 (In-House Legal Representation); and, one (1) position under Activity 5010 (OTA Educational Institute). Five (5) of the nine (9) federally funded temporary FTE positions are restored under The District Recovery Plan (DCRP).

Current OTA Operational Performance

I will next address how the agency allocates its current fiscal year budget to fulfill its statutory mandates. I will then address how I believe these programmatic investments will need to be supplemented to support future initiatives. The chart

below shows how the agency's approved budget for FY22 is allocated among its five major programmatic areas: Administrative Services; Legal Representation; Policy Advocacy; Education and Outreach; and, Emergency Housing Assistance.



Administrative Services

The funding for Administrative Services is \$924,345 or 22 percent of the total FY22 budget. It consists of five (5) FTEs. This branch administers a variety of management functions. It handles contract administration; customer service (i.e. case intake) on a daily basis; eviction data collection on a weekly basis; and, the posting of information on the agency's website. It also receives single-family dwelling TOPA notices and reviews them for legal and technical sufficiency; handles employee time reporting; sends rapid response letters to tenants

affected by TOPA and eviction filings; administers COVID-19 policies for the agency; and manages the office supplies inventory. Finally, it coordinates Emergency Housing Assistance (which includes the housing of tenants as well as moving and storage of the tenant's personal belongings).

Education and outreach

The funding for the Education and Outreach Branch is \$359,000, or 9 percent of the agency's total FY22 budget. This branch consists of two (2) FTEs and is responsible for reaching out to and educating the community about renters' rights. Regular presentations include: Renters Rights 101; tenant association formation and governance; and a non-profit community training. In FY21 and FY22 to date, the Branch has participated in 190 events and has engaged 3,855 attendees.

During the public health emergency, the team worked closely with DHS staff at outreach events, and established a tenant advisory consultation program that helped Congress Park I & II tenants exercise their TOPA rights. Large ads on the exterior of Metro buses and other media were deployed to more effectively reach underserved parts of the renter community. The advertising campaign was targeted at areas of the District most affected by food insecurity and the pandemic, including majority Black and Hispanic tenant populations and lower-

income renters in Wards 1, 5, 7, and 8. While the Court paused evictions during the limited public health emergency from mid-January to mid-February, the agency did not pause its efforts to reach tenants at risk of eviction who may be unaware of the resources available to assist them.

In particular, the agency is developing the following new strategies to meet the tenant community's needs:

1. Expanding tenant association outreach and educational services to include a Tenant Association Peer Mentorship Program and a Tenant Association Certification Program;
2. Creating educational materials on evictions and other tenant rights that will include four new tutorial videos: (1) requirements that a landlord must meet before filing an eviction action; (2) tenant defenses to an eviction action; (3) a two-part tutorial on the Landlord and Tenant Court process; and (4) the TOPA process for housing accommodations with five or more units;
3. Placing tutorials on OTA's social media sites such as Twitter, sharing them with tenant associations and other community leaders, and presenting them at ANC meetings and other community events;

4. Identifying credible messengers and developing new community partners to serve as “force multipliers”; and
5. Supplementing our Renters Rights 101 presentation with a Renters Rights 202 presentation to educate tenants about the Rental Housing Commission’s comprehensive revision of the rental housing regulations at DCMR Title 14, which became effective on December 31, 2021.

Legal services

The funding for the Legal Branch is \$1,898,655, or 46% of the agency’s total FY22 budget. The legal team consists of eight (8) FTEs. The services provided include brief legal services for matters that can be resolved with a single phone call, generally within 30 minutes; assisting in the drafting of legal documents such as tenant petitions; writing demand or cease and desist letters to landlords on behalf of clients; referring clients to outside attorneys or legal service providers; and representing tenants in court when the agency deems it to be in the public interest.

As the demand for these services has continued to grow during and after the Public Health Emergency, the team has improved its delivery of services to our clients. In the first quarter of FY22, the Branch had a total of 1,874 tenant and

tenant association contacts. Of these contacts, 1,328 were handled by attorney advisors and case managers, and 446 were handled by the agency's Tenant Hotline.

Legal branch successes

Beginning in FY13, the agency has collected data regarding the financial returns to tenants resulting from legal representation by the OTA, including damage awards, settlement agreements, and rent refunds and rollbacks. The numbers have been consistently striking. From FY13 through FY21, legal branch representation resulted in a cumulative total of \$23,778,874 in returns to tenants. In the first quarter of FY22, the amount is \$385,949.

Vanguard Eviction Diversion Program

In the wake of the pandemic, it is clear that District tenants need affordable legal services more than ever. I wish to thank the Mayor and the Council for the infusion of federal funding in the FY22 budget for the agency's Vanguard Eviction Diversion Program. This enhancement allows the agency to onboard additional legal staff on a temporary basis to help prevent evictions. The agency is moving forward with the Vanguard Eviction Diversion Program in the following ways. The agency now serves as one of the Court's satellite locations under a Memorandum of Understanding with the Landlord and Tenant Branch of D.C. Superior Court.

The satellite site provides tenants who are otherwise unable to participate in virtual hearings with a comfortable and welcoming “virtual court” environment, as well as immediate access to OTA resources and services. Through a second MOU with the D.C. Superior Court, the agency receives on a weekly basis eviction filings data that allow us to reach out to tenants facing evictions and inform them of their rights and our services.

Initially, the agency had planned to hire three (3) attorney-advisors for this program. As noted, however, the FY23 proposed budget would eliminate a total of four (4) temporary FTE positions, including two of the temporary attorney-advisor positions. Accordingly, now that we are aware that funding is not available for a full two-year period, we will discontinue the hiring process for these two positions.

Policy advocacy

The funding for the Policy Branch is \$405,000, or ten (10) percent of the agency’s FY22 approved budget. The Policy Branch consists of three (3) FTEs. It spearheads the OTA’s advocacy in all three branches of government: legislative, executive, and judicial. The OTA’s policy advocacy has helped lead to (1) enacted legislation that protects tenant rights and limits evictions during and after the

public health emergency; (2) rulemakings and agency guidance by sister agencies that will help to effectuate the remedial purposes of the District's tenant protection laws; and (3) judicial and administrative decisions that better reflect the Council's legislative intentions and purposes.

Policy branch successes

Working together with our community and government partners, the OTA's FY22 policy successes include legislation¹ that will make permanent a number of emergency and temporary eviction protections that the agency has advocated for over the years. Key provisions include the prohibition on the filing of eviction actions either for *de minimis* amounts of unpaid rent or where the landlord does not have a basic business license. The same legislation will help ensure that renters are not forever burdened by the albatross of an old eviction record.

¹ Bill 24-96, the "Fairness in Renting and Eviction Record Sealing Authority Amendment Act of 2022" (approved 3/1/22, Mayoral response due 3/28/22; temporary legislation containing many similar provisions – Law 24-62, the "Fairness in Renting Temporary Amendment Act of 2022" (effective 2/18/22-10/1/22), and Law 24-75, the "Tenant Safe Harbor Temporary Amendment Act of 2021" (effective 2/24/22-10/7/22) – is currently in effect.

The current two-year moratorium on Voluntary Agreements (VA) in rent controlled apartments,² which took effect in FY22, temporarily addresses a longstanding OTA concern – namely, the use of VAs to effectively eliminate the affordability of rent controlled units an entire building at a time. Given the futility to date of “mend it don’t end it,” as I have previously testified, I believe the time has come to repeal the VA provision from the District's rent control law entirely and permanently.

On the regulatory front, between 2016 and 2021 the OTA engaged the Rental Housing Commission (RHC) and other interested agencies in the RHC’s first major overhaul in 35 years of the implementing regulations for the Rental Housing Act. The new regulations³ that took effect on December 31st incorporated many OTA recommendations – including explicit protections against “*de facto* rent ceiling” practices that some landlords use to destabilize the rent in rent-stabilized housing.

² Law 23-246, the “Voluntary Agreement Moratorium Amendment Act of 2020” (effective 3/26/21; applicable 10/1/21).

³ Proposed rulemakings published 8/2/19; 11/20/20; and 8/20/21.

The OTA is also working closely with DOEE and DHCD on implementing the housing affordability protections of the Building Energy Performance Standards (BEPS) program, particularly through grant assistance programs. Our goal in this collaboration is to protect tenants in rent controlled apartments against exorbitant rent surcharges that landlords may be able to impose to help pay for BEPS improvements.

Ongoing policy priorities

For the remainder of FY22 and FY23, the OTA's policy priorities include (a) working with the Committee to enhance the rights of tenants who are displaced from their homes in emergency circumstances; (b) addressing the scourge of housing disrepairs and deferred maintenance in all parts of the District; (c) building on similar legislation in 2017,⁴ developing further residential lease reforms to protect the tenant's reasonable contractual expectations; and (d) regarding the agency's lien authority⁵ to recoup the agency's emergency housing expenditures from derelict landlords, I believe that such landlords should be liable

⁴ L21-210, the "Residential Lease Amendment Act of 2016" (effective 2/18/17).

⁵ DC Official Code § 42-3531.15.

for OTA's expenditures for hotel stays of up to 60 days per tenant rather than the current 30 days.

Emergency Housing Assistance

The funding for the Emergency Housing Assistance Program is \$550,000, or 13 percent of the agency's FY22 budget. This activity is supported by one (1) FTE. In FY22 to date, the program has expended \$223,227 on hotel stays and has served 137 families who have been displaced through no fault of their own. Of these, 82 families lost their homes due to a fire and 69 families lost their homes due to a government closure. So far in FY22, the agency has spent 72 percent more than it did as of this time in FY21 (\$129,707). Thus, we do anticipate spending pressure in this area.

Where the agency is headed and future needs

I will now enumerate several areas of need for the agency based on my vision for its future and my bird's eye view of the tenant community's growing needs.

Funding for two new operational budget costs

Starting in FY22, the OTA pays for the personnel costs for our Agency Fiscal Officer (AFO) with OCFO, as well as our Human Resources representative with

DCHR, out of its Special Purpose Revenue Fund. I would request that the OTA be allocated permanent funding for these costs.

Office location move anticipated in the summer of FY23

In ongoing discussions with the Department of General Services, we have been told to expect to move out of the Reeves Building and into a new location during the summer of FY23. We do not know where the OTA will move to, nor do we know whether we will have to pay rent or utilities, or whether we will have any other new financial obligations, such as security.

Making new Education & Outreach FTEs permanent

I believe the two new federally funded temporary Education and Outreach staff created in the FY22 budget should be made permanent. Given the responsibilities of this Branch – which include technical advisory consultations in addition to education and outreach activities – covering the entire District with just two employees is a stretch to say the least. The Education and Outreach Branch is making great strides in reaching underserved communities; it is imperative that we keep this momentum going beyond FY22.

NPS costs

With respect to Education and Outreach, we would also like to request funding for some non-personnel costs that include such items as updated signage

and materials for outreach events. Large ads across the side of buses and other tools come at a cost that is repaid to the tenant community by making them aware of their rights, empowering them to form tenant associations, and providing them with materials to help them to take more control of their housing situations. As mentioned earlier in my testimony, new trainings will be required to make tenants aware of their new rights and of commensurate changes to the OTA's Tenant Bill of Rights. Finally, we are discussing with the Real Estate Commission significant revisions to the tenant rights certification test to ensure that property management staff throughout the District know the rules.

Agency Growth

I believe time has come to ask the Council to consider providing us with staff whose sole responsibility would be to research and analyze changes in the District's housing market. Such staff would be responsible for exploring common issues regarding policy and other matters, such as the following:

1. The impact between and among rental housing data points, for example, the District's vacancy rate, rent levels, rent caps under rent control, and levels of housing provider profitability; and

2. The impact of inflation on seniors and other vulnerable populations with respect to housing and food insecurity.

Having a dedicated staffer trained in statistical research and analysis would help promote the agency's goal of providing the Council and the Mayor's office with policy proposals that are as data-driven as possible. It would also allow the agency to be responsive to questions the agency has been asked historically and, more recently, with increasing frequency.

IT Systems Upgrade

Last year, I requested IT systems upgrade funding in the amount of \$300,000. I ask the Council to review this proposal, which is again attached to my testimony today. Improving the agency's IT capacity will promote functionality and create efficiencies across the agency in the following ways:

1. Improving the way we provide "brief services" assistance to thousands of tenants every year, thus allowing the attorney team to devote more time and attention to matters requiring legal expertise including impact litigation;
2. Improving our methods of collecting data, generating reports, and tracking intake issues for problem areas in the law for policy development purposes;

3. Allowing us to create a cohesive emergency housing management system and thus improving communications with tenants, housing providers, and other government entities, including DCRA, HSEMA, DHS, the DC Council, and the office of the Mayor; and
4. Improving our ability to meet new Council requests and communicate with tenants regarding the agency's receipt of copies of certain legal notices.

Conclusion

This concludes my testimony. Thank you again, Chairperson Bonds, and I welcome any questions you and other members may have.

OTA IT System Proposal

With its growing workload and expanding responsibilities, the Office of the Tenant Advocate requires an IT system that provides a cohesive solution to OTA's needs. The following are examples of the different technological tools needed to properly perform OTA's functions:

Legal Branch

OTA's legal branch provides "brief services" assistance to thousands of tenants every year. In addition, we provide negotiation, pre-litigation, and litigation assistance to many other tenants. There are a number of ways in which our services to the DC tenant community would be improved with the use of technology.

Brief Services Section:

1. Step-by-step guide to answer tenant questions or guide them to the right place (on OTA's website)
2. Electronic meeting request system (allowing tenants to request a meeting with a Case Management Specialist or Attorney Advisor through OTA's website)
3. Electronic intake process (compatible with an iPad application that would allow tenants to submit their personal information securely and in advance of meeting with an OTA legal team member)
4. The electronic system would be linked to OTA's telephone system (allowing phone calls to be properly routed and tracked as intakes)
5. File Management System (Remotely accessible network allowing agency-wide search of documents drafted on behalf of tenants)
6. Brief Services Case Tracking

Litigation Section

1. Case-Tracking
2. Conducting conflict checks
3. Allowing for collaboration with outside law firms and legal service providers

Data Collection

1. Optimizing OTA's data entry process
2. Allowing the entry of multiple issues per case

Report Creation

Creating reports for OTA's budget and oversight hearings, annual reports, and at other times as needed. The reporting system would automatically create and update charts, graphs, etc. The following are examples of data fields that would be tracked:

1. Most common issues
2. Issue trends (are certain issues increasing / decreasing?)
3. Number of cases litigated and in what forum
 - a. LTB

- b. Small Claims
 - c. OAH
 - d. Tenant Petitions
 - e. Housing Conditions Court
 - f. RHC
 - g. Superior Court
 - h. Court of Appeals
4. Result
- a. Negotiated satisfactory outcome prior to filing complaint
 - b. Mediated & resolved
 - c. Resolved post-filing w/o mediation
 - d. Went to trial
 - e. Went to appeal

The report creation functionality would assist OTA's policy and education & outreach branches as well.

Policy Branch

OTA's Policy Branch develops the agency's positions and strategies with respect to advocating on behalf of tenants for changes and improvements to District laws and policies. To most effectively develop and prioritize policy initiatives, it is imperative that the agency's policy advocacy be as data driven as possible, and as informed as possible by the legal and policy concerns that matter most to the District's tenant community, particularly the agency's own clients.

With the proper upgrades to the agency's data collection system, the Legal Branch would be able to provide more comprehensive client data for the Policy Branch to review and assess for policy-making purposes. The agency's own client intake data could then be better deployed to supplement the data the Policy Branch receives from outside sources whether from outside tenant attorneys, legal service providers, or advocacy organizations, thus adding to the breadth and depth of available data. Doing so would allow the Policy Branch to more systemically collect and review data that is (1) multi-sourced, accurate, and concrete; (2) nimble and flexible in terms of creating impactful data visualizations and analyses and products that can both take into account overarching legal and societal shortcomings and arrive at more data-driven solutions; and (3) provide more meaningful support for the agency's policy recommendations to the Council, the Mayor, and relevant sister agencies.

Technological upgrades would result in a database that:

- Can be programmed to identify policy potential concerns and greater patterns that our clients may be dealing with through keyword searches and tagging legal citations on client files;
- Can filter through the data based on any of its data fields, so that, for example, we could query what are common complaints for a specific landlord;
- Allows the user to manipulate data fields -- additions, deletions, modifications, and adjustments to better suit our needs as new tracking concerns are identified;
- Is user friendly such that it fosters systematic and consistent daily use by the Legal and Administrative Branch, so that the data collected is consistently accurate;
- Collects both quantitative and qualitative data, so that we can best understand in a multifaceted way what issues tenants are enduring; and,

- Collects demographic data so that we research what societal trends might exist that may impact certain groups over others.

Emergency Housing Branch

OTA aims to create a seamless and cohesive emergency housing management system that will allow for communication with tenants; housing providers; and government agencies such as DCRA, HSEMA, DHS, DC Council, and the office of the Mayor. OTA's new IT solution will allow for better collaboration and a seamless transfer of relevant data among the above parties. The following is an example of how that process might work:

1. New EHAP intake started by the agency first to respond.
2. Relevant building and tenant information entered.
3. All parties notified of ongoing services provided to the tenants, the costs of those services, and the expiration date of the services.

Tenants may be able to apply online to receive emergency housing assistance.

Storage and transport of tenant belongings would be electronically tracked, allowing each tenant to itemize belongings and upload photographs prior to storage.