

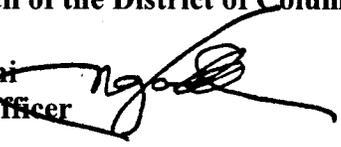
**Government of the District of Columbia
Office of the Chief Financial Officer**



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Vincent C. Gray
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi
Chief Financial Officer 

DATE: March 13, 2009

SUBJECT: Fiscal Impact Statement: "Office of Administrative Hearings
Amendment Act of 2009"

REFERENCE: Bill 18-68, as Introduced

Conclusion

Funds are not sufficient in the FY 2009 through FY 2012 budget and financial plan to implement the provisions of the proposed legislation. Specifically, funds are not sufficient to implement subsection 2(a), which would require the Office of Administrative Hearings to include within its jurisdiction adjudicated cases of the Housing Finance Agency in accordance with Subchapters V and VII of the Rental Housing Act of 1985.

Background

The intent of the proposed bill is to provide tenants of properties financed by the District of Columbia Housing Finance Agency (HFA) with access to procedures for tenant petitions before the Office of Administrative Hearings (OAH) in accordance with Subchapter V and Subchapter VII of the Rental Housing Act of 1985 (RHA).¹ Subchapter V addresses retaliatory actions, including evictions, conciliation and arbitration services, discrimination against elderly tenants or families with children, tenants' right to organize, and penalties and damages. Subchapter VII provides for relocation advisory services and relocation assistance for tenants displaced by substantial rehabilitation, demolition, or housing discontinuance.

¹ Effective July 17, 1985. D.C. Law 6-10; D.C. Official Code § 42-3501 *et seq.*

Specifically, subsection 2(a) of the proposed legislation would amend the Office of Administrative Hearings Establishment Act of 2001² to include within OAH's jurisdiction adjudicated cases of the HFA that are in accordance with Subchapters V and VII of the RHA.

Subsection 2(d) provides that in cases before OAH in which zoning regulations are the *primary*³ issue in the case, OAH would be required to notify the affected Advisory Neighborhood Commission (ANC), by first class mail, the hearing date and include a copy of any decision issued. Subsection 2(d) also provides that if the issue before OAH would permit the building of an improvement on the land, then the matter would be required to be referred to the Zoning Commission or the Board of Zoning Adjustment, as appropriate.

Section 3 provides that Subchapters V and VII of the RHA are applicable to housing projects assisted by the HFA.⁴

Section 4 would change to the form of mail to be used in correspondence between the Rent Administrator and a non-petitioning party, housing provider, or tenant regarding rent adjustment issues. Currently, notices of hearings and copies of decisions are required to be sent by certified mail. The proposed bill would allow for such mailings to be sent via first-class mail.

Financial Plan Impact

Funds are not sufficient in the FY 2009 through FY 2012 budget and financial plan to implement the provisions of the proposed legislation. Specifically, funds are not sufficient to implement subsection 2(a) of the proposed bill, which would require OAH to include within its jurisdiction adjudicated cases of HFA in accordance with Subchapters V and VII of the RHA. This would create the need for OAH to hire an additional legal assistant and staff attorney. Sufficient funds for these positions have not been included in the budget and financial plan for OAH. The table and notes below describe in detail the cost impact of these positions on the budget and financial plan.

Providing that Subchapters V and VII of the Rental Housing Act are applicable to housing projects assisted by the HFA does *not* create a new cost for the HFA or the District. Current law already requires the HFA to establish, by rulemaking, procedures, conditions, and protections to be provided to tenants in accordance with Subchapters V and VII. Effectively, this provision simply replaces an existing requirement to establish regulations with a law.

OAH and the Office of Revenue Analysis (ORA) have estimated that changing the mailing requirement for certain correspondence sent by the Rent Administrator could save OAH between

² Effective March 6, 2002. D.C. Law 14-76; D.C. Official Code § 2-1831.03.

³ OAH has indicated that if this requirement were to be expanded *beyond* cases where zoning regulations are the primary issue, OAH could face unbudgeted expenditure pressures since many cases may indirectly involve zoning regulations.

⁴ See the note regarding this provision in the "Financial Plan Impact" section describing why this provision does not create a new cost for the District.

\$15,600 and \$18,700 per year.⁵ When factoring in that additional mailings would be made if and when subsection 2(a) of the proposed bill is funded⁶ (and therefore becomes effective), the net postage savings are calculated to be reduced to approximately \$9,000 to \$13,000 per year.⁷

Fiscal Impact on the Budget and Financial Plan					
B18-68, "Office of Administrative Hearings Amendment Act of 2009"					
	FY 2009	FY 2010	FY 2011	FY 2012	4-Year Total
Cost, Additional OAH Staff*	\$0*	(\$115,843)	(\$119,897)	(\$124,094)	(\$359,834)
Net postage savings**	\$6,500 - \$7,792	\$9,000 - \$13,000	\$9,000 - \$13,000	\$9,000 - \$13,000	\$33,500 - \$46,792
Total	\$6,500 - \$7,792	(\$102,843 - 106,843)	(\$106,897 - \$110,897)	(\$111,094 - \$115,094)	(\$313,042 - \$326,334)

* The subsection of the proposed bill which would require this additional staff would apply upon the inclusion of its fiscal effect in an approved budget and financial plan. It is assumed that the earliest this would occur would be as part of the FY 2010 budget; therefore it is assumed that this would not be effective until FY 2010 and would not have a cost in FY 2009. These costs include an additional 18% to account for the cost of benefits and are inflated by 3.5% annually, based on the Washington Metropolitan Area consumer price index for 2008.

** See footnote # 7 for a detailed explanation of these savings. For FY 2009 the savings are assumed to be for a partial fiscal year assuming an effective date of June 1, 2009 (5/12 of a fiscal year). The FY 2009 postage savings do not assume that additional postage related to the adjudication of RFA cases by OAH would be required in FY 2009 since it is assumed that this requirement would not be funded (and therefore would not take effect) until FY 2010.

⁵ A range is used since mailing costs are based on the weight of the mailings, which varies from case to case.

⁶ The calculations for this fiscal impact statement assume an effective date for subsection 2(a) of October, 1 2009, the first day of FY2010.

⁷ This calculation assumes that the number of new cases brought before OAH under the proposed bill would be approximately 55.4 per year. FY2008 data indicate that out of the approximately 100,000 units under rent control, 419 RHA cases were brought before OAH. Since there are approximately 13,223 HFA units, a simple ratio (419/100,000 = X / 13,223) shows that OAH could expect approximately 55.4 additional Subchapter V and VII cases per year under the proposed bill. Using data on how much it costs OAH for each set of mailings related to an RHA case, OAH and ORA have calculated the range of additional postage costs referenced in the body of this fiscal impact statement as a reduction in overall postage-related savings (since another provision in the proposed bill would significantly reduce overall postage costs for OAH). However, it should be noted that cases related to HFA units may be different in substance, number, and scope than rent control cases currently brought before OAH. Therefore, the estimation on net postage savings (overall postage savings minus new postage costs) is only an estimate and the actual net postage savings could be higher or lower than this amount.