October 7, 2019

Tamitha M. Davis-Rama
Administrator, Family Services Administration
DC Department of Human Services
64 New York Ave, NE
Washington, DC 20024

VIA EMAIL AND FIRST CLASS MAIL

Dear Ms. Davis-Rama:

Please find attached the comments of the undersigned organizations on the proposed regulations on the Homeless Services Reform Act of 2005 published on September 6, 2019. We welcome an opportunity to discuss these comments with your team in person prior to the final comments being published.

Our comments are grounded in our collective experience working with and learning from thousands of clients who have applied for or received homeless and housing services from the Department of Human Services (DHS) over the years. Many of us receive input not just from individual clients with legal cases, but also from regular engagement with community members who have experience in a wide array of DHS programs. While many of our comments are legal or technical in nature, we are fully aware that our experience working with clients has led us to embrace certain values and ideals, and we thought it might be helpful to be explicit about our leanings as a way to frame the content of our comments.

First, the DC government is required to comply with the Administrative Procedure Act (APA). Among other things, the APA requires that any policy the agency uses to implement a program follow rulemaking requirements.[1] Throughout these regulations, there are references to including critical program requirements in program rules or contracts, neither of which comply with the APA's requirements for public promulgation of rules. These regulations are also silent on how entire programs work (such as the Homeless Prevention Program), how eligibility is determined (in any of the housing programs DHS operates, most notably Targeted Affordable Housing, which the regulations are completely silent on), and the extent and type of assistance offered to eligible applicants (such as how rent is calculated in housing programs or how long assistance lasts). While we believe these regulations facially violate the APA in these areas, it is also important to note that any decision that DHS or providers make is subject to challenge if rules have not been properly promulgated.

We assure you that this assertion is well-grounded in both law and in policy. There is considerable supportive case law, even case law specifically holding DHS to this standard—invalidating income guidelines,[2] emergency assistance criteria,[3] and calculation of public

[1] See D.C. Code §2–502(6)(A) (defining a rule as "the whole or any part of any Mayor's or agency's statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Mayor or of any agency.")
[2] Webb v. DHS, 618 A.2d 147 (1992)

assistance payments[4] when no or inadequate rules were promulgated. The policy undergirding the law highlights the importance of the law, namely that people deserve to know with consistency and transparency the rules that will be applied to them and those rules must be made through the proper public regulatory process. Applicants deserve to know whether they are eligible for a program or what they must show to prove eligibility prior to applying for a program. Participants deserve to know how much rent they can lawfully be asked to pay while in a program. They deserve to know whether they can count on continuing to receive help if they comply with specific requirements, or not. And they deserve to be subject to consistent, fair, nondiscriminatory, and non-arbitrary decision-making.

Over the years, we've been pleased to see the District shift to a more Housing First approach to homeless services, not just in its permanent supportive housing program but across its programs. We are concerned that the regulations before us evidence a retreat from best practices and the philosophy of Housing First. We have tried to highlight some changes that would better align programs with the Housing First model. Of particular note, we do not support a mandatory services model for any housing or shelter program and were surprised to see that services are now mandatory in Rapid Re-Housing. According to the National Alliance to End Homelessness (NAEH): "A key element of rapid re-housing is the "Housing First" philosophy, which offers housing without preconditions such as employment, income, lack of a criminal background, or sobriety. If issues such as these need to be addressed, the household can address them most effectively once it is in housing… All participation in services should be voluntary and driven by the household."[5] We've also noted where applicable that clients should be allowed and encouraged to "drive" their services and case management plans—too often there are references to providers developing plans without a mention of the client's (we think primary) role.

Speaking of Rapid Re-Housing, we continue to oppose strict time limits that create a cliff unrelated to an individual's ability to sustain housing. We were disappointed to see that these new regulations delete the requirement that providers consider the "totality of the circumstances" before deciding whether to extend the rental subsidy--instead providers can now refuse an extension based solely on the participant's length of time in the program. Once again we turn to NAEH, oft-cited by the District as the premiere expert on rapid re-housing, for guidance as to how "progressive engagement" should work in rapid re-housing. In its "Rapid Re-Housing Progressive Engagement Guide," NAEH describes a process that determines extension of assistance based on housing stability and whether "the household will return to homelessness if not provided with further assistance."[6] No time limit is mentioned. The "Stability Conversation Guide" does not even include a question about how long the participant has received assistance. In DC, a fear of scarcity of resources seems to be driving the agency's strict time limit policy rather than best practices or data—and certainly not input or experiences of the client and advocacy community, who have collectively been raising concerns about the harm resulting from this time limit for years. (We also note that there is data that supports that a perception of economic scarcity "produce[s] racial bias in the distribution of economic resources."[7]) Just like

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[3] Rorie v. DHS, 403 A.2d 1148 (1979)
[4] Junghans v. DHS, 289 A.2d 17 (1972)
[5] https://endhomelessness.org/resource/rapid-re-housing-a-history-and-core-components/
[6] https://endhomelessness.org/resource/progressive-engagement-stability-conversation-guide/
[7] See e.g. https://www.ncbi.nlm.nih.gov/pubmed/28910122

the agency rightly determined that strict TANF time limits hurt children and should be softened, so should the agency reconsider having a strict time limit for Rapid Re-Housing.

Finally, we center these comments on an ideology that *all* of the District's public benefits, including emergency shelter, should be low barrier. DC is not following best practices by having such a high barrier family shelter system. The U.S. Interagency Council on Homelessness recommends that jurisdictions: "adopt a Housing First approach and create low-barrier access to emergency shelter."[8] We believe that the agency has developed a high barrier emergency shelter system both because of a perception of scarcity of resources *and* because of implicit or explicit bias: an unsupported belief that families are prone to lying or "gaming the system" in order to get into shelter. These regulations bake that myth into every aspect of family emergency shelter intake, most obviously in the agency's determination that an applicant's own statement *can never be considered* credible. This reading controverts the plain meaning of "credible evidence" and unequivocally contradicts the legislative intent of that section. (As discussed more fully below, Chairman Mendelson verified *three* times in discussion of that provision at first reading that credible evidence would include an applicant's own statement, including oral statements: "The standard would permit an oral statement, if it's credible than that would meet the burden;" "If your question is whether oral evidence is permitted, of course it would be;" and "If it's credible, yes."[9])

Similarly, the agency's incredibly onerous requirements for families to prove District residency evidence an agency position that families cannot be taken at their word that they live here and intend to stay here—and even if they manage to provide acceptable proof of residency, the agency could still search and find "conflicting" information to conclude that they are not DC residents. We again note that this is a stricter standard for residency than any other public benefit, and most likely for any other program in DC.[10] Meanwhile, homeless parents and children go without shelter, risking serious harm. We hope that the District will look at homeless families as consumers and trusted partners who are in some of the worst situations of their lives; therefore treated humanely, with respect, and with trust.

We appreciate the opportunity to provide these comments and look forward to discussing our concerns and ideas with you. Please contact Amber Harding at (202) 328-5503, amber@legalclinic.org or Kathy Zeisel at (202) 467-4900 (x547), KZeisel@ChildrensLawCenter.org if you have any questions.

[8] https://www.usich.gov/resources/uploads/asset_library/emergency-shelter-key-considerations.pdf
[9] http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4199 (starting at 2:14).
[10] Just Friday, for example, the District released proposed regulations for the Department of Human Resources that defines a resident (for purposes of obtaining employment with the District government that requires or prioritizes District residents) as "an individual who primarily lives in the District of Columbia and intends the District of Columbia to be his or her home." 6 DCMR 399.1. For verification, merely a District identification card and an indication that the applicant will pay DC taxes are required. 6 DCMR 303.3 And if that isn't available, a variety of other types of documents are accepted, including a "sworn affidavit." 6 DCMR 303.4(i). Available: https://www.dcregs.dc.gov/Common/NoticeDetail.aspx?NoticeId=N0086487.

Sincerely,

Bread for the City
Children's Law Center
DC Coalition Against Domestic Violence
Legal Aid Society of the District of Columbia
Washington Lawyers' Committee for Civil Rights and Urban Affairs
Washington Legal Clinic for the Homeless

Section 2501, General Eligibility Criteria for Continuum of Care Services

Residency

We have four main areas of concerns within this section. First, we are concerned that the regulations lack any guidance on how the residency verification exemption for those seeking shelter due to domestic violence, sexual assault, human trafficking, refugee status, or asylum will operate. Second, is that many public benefits provided by the District for District residents but not administered by the Department are not included as acceptable forms of showing District residency, except at the Department's discretion. Third, the proposed regulations do not expand upon the statutory definition of acceptable proof of residency, despite the Department's ability (and stated intention) to do so through these regulations. We have proposed additional documents that we believe should be sufficient to demonstrate District residency. Finally, the section interpreting DC Code §4-753.02(3)(a-3) may directly conflict with statutory language and creates an unwieldy, unlawful standard.

2501.2(c)Residency Verification Exemption for Domestic Violence, Sexual Assault, Human Trafficking, Refugee Status, Asylum Seeker

The purpose of this mandatory exemption for residency is to recognize that people fleeing from violence, trafficking, or another country will not be able to provide verification of residency at intake and should be provided safe harbor. We believe that further clarity and guidance is needed to ensure that this section is implemented consistent with that intent.

Regarding the domestic violence exemption, safety is a human right and everyone should be able to have peace in their home. Sadly, this is not the case for victims of domestic violence. In the 2013 final rule change, HUD recognized that short-termed supported housing, like emergency shelters, should not deny admission, evict or terminate "an individual solely on the basis that the individual is a victim of domestic violence, dating violence, or stalking or sexual assault." Section 5.2005(b)(1). Domestic violence victims should not have to provide proof that they are fleeing violence from their home. A victim's word should be enough to obtain safe housing. However, currently victims are being forced to give additional narratives, beyond the initial intake, involving proof of domestic violence and proof of residency. This goes against everything HUD sought to regulate in 2013. Adding a new section (2501.2(c)(3) below) will give shelter and housing providers more clarity regarding the intake process for domestic violence victims, as well as help providers stay in compliance with their obligations under VAWA.

Therefore, the suggested language is:

> 2501.2 (c) the Department shall determine that a person seeking shelter **who is a victim, or is the parent or guardian of a minor victim, of actions relating to domestic violence, sexual assault, or human trafficking, or is asserting refugee or asylee status** is a resident of the District without receiving demonstration of District residency in accordance with Section 2(32) of the Act (D.C. Official Code 4-751.01 (32)).

2501.2(c)(1) defines "a refugee" in accordance with immigration law, but it is the definition used to determine whether refugee status is granted, not whether a person claiming refugee status can enter the U.S. and begin the process. At entry into the U.S., an asylum officer undertakes an interview to determine if the applicant has "credible fear" and then the applicant begins the

process of seeking refugee status. Not only do you not want shelter intake workers with no immigration or international law expertise to be assessing whether an applicant has a "well-founded fear" and is "unable to return" to their country, it would defeat the purpose of assuring safety and shelter without proof of residency to then require that refugees overcome a high burden of proof to establish they are entitled to the exemption. We recommend removing this section or, at the very least, including the added section below (3).

2501.2(c)(2) For the definition of asylee, we could not find this definition in immigration legal standards and are unsure where it came from. There is no requirement that asylees enter the U.S. "on their own." In addition, at the point of application for emergency shelter, the asylee may not yet have officially applied for asylum. Once again, it would defeat the purpose of assuring safety and shelter without proof of residency to then require that asylees overcome a high burden of proof to establish they are entitled to the exemption. We recommend removing this section or, at the very least, including the added section below (3).

Add:

2501.2(c) (3) Any applicant who identifies as a victim of a covered offense or as a refugee or asylee who is seeking shelter:

(a) shall not be required to provide evidence to substantiate their experience of domestic violence, sexual assault or human trafficking or status as a refugee or asylee or be required to meet with additional housing staff or other service providers to be identified as such.

(b) shall be permitted to self-certify as a victim of a covered offense or as a refugee or asylee.

2501.3(a) Receipt of Public Assistance

To demonstrate residency, families should be able to provide evidence that they have already been determined eligible to receive District funded benefits, which may be administered by other agencies besides the Department of Human Services, including the Child and Family Services Agency, Department of Disability Services, and the Department of Behavioral Health.[11]

Particularly as the Department is mandated by D.C. Code §4-753.02 and proposed 2501.5 to search databases regarding receipt of assistance from other District agencies to which the Department has access, it would be consistent to clarify that proof of receipt of these benefits is

[11] Examples include the Grandparent Caregiver Subsidy. D.C. Code §4-251.03(a)(6) requires that grandparents be a District resident to receive this subsidy, as defined by D.C. Code §4-205.3 ((a) A resident of the District of Columbia is one who is living in the District of Columbia voluntarily and not for a temporary purpose; that is, one with no intention of presently removing himself or herself therefrom. A child is residing in the District if he or she is making his or her home in the District.; (b) Temporary absence from the District, with subsequent returns to the District, or intent to return when the purposes of the absence have been accomplished, shall not interrupt continuity of residence; (c) Residence as defined for eligibility purposes shall not depend upon the reason for which the individual entered the District, except insofar as it may bear on whether he is there for a temporary purpose. Other examples include Department of Disability Services, Department of Health, and Department of Behavioral Health services. See D.C. Code §7-761.02(2), which defines a Department of Disability Services consumer as a "resident of the District of Columbia who is receiving, or eligible to receive, services from the Department on Disability Services;" see also 34 DCMR 3403.1(b),which requires that consumers of Department of Behavioral Health services must be a bona fide resident of the District as defined by D.C. Code §7-1131.02(29).

sufficient to establish District residency. This should be explicit, not left within the Department's discretion under 2501.3(b)(12), to prevent any confusion or misuse of discretion.

To address this concern, we propose the following revision to 2501.3(a):

- "Providing evidence that the individual or family is receiving public assistance from the District, **either** as administered by the Department, **or by another District agency.**"

To further clarify that receipt of other benefits for District residents, documentation of proof of receipt of these benefits could also be explicitly added as acceptable forms of documenting residency, as discussed below.

2501.3(b) Documents to Demonstrate Residency

Based on discussions at the time of the HSRA legislation, we expected that the Department would use the opportunity of drafting the regulations to further clarify some of the other documents they might accept to demonstrate residency, while still leaving a "catchall." That the proposed regulations only recite the documents listed in D.C. Code § 4-751.01(32) is a missed opportunity to add a higher level of transparency, consistency, and notice than internal Department guidance and to minimize appeals. The regulations are an appropriate and useful place for an expanded list of documents that the Department has determined demonstrate residency.

We acknowledge it would not be possible or preferable to come up with a full exhaustive list of all documents which could establish residency. In order to allow the Department continued flexibility to further expand this list in the future, the provision allowing them to accept other documents, proposed 2501.3(b)(12), should be retained, with the addition of the following language: "Any other document that reasonably identifies the applicant as a District resident, as determined by the Department, **or that is determined to be credible evidence of residency including attestation where no other form of documentation can reasonably be obtained**."[12] However, additional clarity is needed to ensure that certain documents are guaranteed to be accepted when those documents clearly show residency, in keeping with the letter and spirit of the law.

School Attendance in the District

We are concerned that 2501.3(b)(2) is unintentionally restrictive. As written, "evidence that the individual or a member of the family is attending school in the District" leaves room for confusion regarding students who are enrolled but are on break or have absences and students who have been placed at out of jurisdiction schools by a District educational agency due to special education needs.

We propose that **2501.3(b)(2)** be amended as follows: "evidence that the individual or a member of the family is attending ~~school in the District~~ **or enrolled in a Local Education Agency**

[12] This is consistent with the agency's response to Council questions during the legislative process that "Families that are undocumented can demonstrate residency by providing documentation of school enrollment, receipt of Alliance benefits and/or through attestation." (June 28, 2017 submission, Question 17.)

(LEA) within the District of Columbia **or receiving or being evaluated for Early Intervention or Early Stages services**

Referring to the Local Education Agency (LEA) rather than restricting attendance to "in the District" would eliminate any possible confusion regarding children who are enrolled in a District of Columbia Public School or District charter school that has placed the child into a non-public school setting in Maryland or Virginia. Non-public placements are reserved for students with high levels of special education needs and eligible schools which may be funded by District schools are issued a certificate of approval by the Office of the State Superintendent of Education. Currently there are only four non-public schools within the District certified by OSSE (out of forty total certified schools)[13] meaning nearly all District students with the highest needs must attend school in Maryland or Virginia even though they are enrolled in a District school. Changing the wording from "attending" to "enrolled" would allow families in this situation to establish their residency without any confusion for intake staff. Using enrollment rather than attendance would also be more accurate over summer or other breaks when school is not in session.

Including students who are receiving services or going through the evaluation process through Strong Start (Early Intervention) or Early Stages (IDEA- Part C services) allows capture of families with students who are not yet school age, but have already been determined residents-- i.e. families with young children aged 0-5 who have been determined to be DC residents for these early intervention services should be eligible for homeless services as well. Advocates raised concerns about the ability of families with only young children in the household to easily establish their residency.[14] This clarification would capture at least a part of this population.

Other Documentary Proof of Residency

Advocates also raised concerns at the time of the Homeless Services Reform Act of 2017 that the proposed documentation requirements would place a particularly high burden on youth aging out of foster care and undocumented individuals and families.[15] For youth exiting the District foster care system, adding documentation of recent exit, including a letter, as provided by a social worker, guardian *ad litem*, or other involved professional would address some of this concern. Because neglect court cases are confidential, and so in many cases practically impossible for an individual to obtain records without a court order, it would be overly restrictive to require actual court documents from the case. This population may have great difficulty supplying other documents because even though they are considered District residents, the Child and Family Services Agency likely has had to place them in another jurisdiction for care.[16]

Families with young children who are undocumented still interact with the court system, and may have medical records and medical bills that verify their addresses, even if they do not have

[13] OSSE, Approved Nonpublic Schools and Programs List, September 13, 2019. Available: https://osse.dc.gov/publication/osse-approved-nonpublic-schools-and-programs-list.

[14] See Testimony of Kathy Zeisel June 14, 2017, Public Hearing B-22-0293, the "Homeless Services Reform Act of 2017", at 8.

[15] Id.

[16] According to CFSA, there is a lack of DC foster homes and almost half of District children must be placed in Maryland. *See* CFSA, "Become a Foster or Adoptive Parent," (no date). Available: https://cfsa.dc.gov/service/become-foster-or-adoptive-parent.

insurance and pay for these services out of pocket. Adding medical records or medical bills, or court orders showing a District address as additional forms of verifying residency would address some of these concerns that this population may find it particularly difficult to demonstrate their District residency. Expanding this list would also allow applicants more opportunity to use the written verification provision of 2501.4, which allows a written verification of residency where the applicant also has a document that is listed in Section 2501.3 issued within the past two years. Finally, as mentioned above, DHS told the DC Council that "attestation" would be accepted from undocumented immigrants under the new law: "Families that are undocumented can demonstrate residency by providing documentation of school enrollment, receipt of Alliance benefits **and/or through attestation."**[17]

Additionally, the proposed regulations seek to define having a current bank statement with a non-District address as clear and convincing evidence that someone is not a District resident (2501.6(c)(6)), however the proposed list of residency documents does not allow an applicant to use a banking statement showing a District residence as an acceptable proof of residency. It is not reasonable that the same statement could provide no proof of District residency, but could be clear and convincing evidence of non-District residency.

To correct this inconsistency, either a banking statement should be added to the list of acceptable proof of District residency, as proposed below, or a banking statement with a non-District address should be removed from the list of documents showing non-District residency in section 2501.6(c).

We suggest that the following documents be added to 2501.3(b) as acceptable proof of residency:

- **Veteran's Administration or other pension benefits statement to DC address**
- **Health insurance document showing a residential address in the District (last 180 days)**
- **Medical or behavioral health records or medical billing statement showing a residential address in the District (last 180 days)**
- **Renters insurance (last 60 days) for a residential address in the District**
- **Banking document showing a residential address in the District (last 60 days)**
- **A current Court order or other paperwork issued by a Court within the last year showing a District address, including but not limited to paperwork from a housing conditions, eviction, custody, divorce, child support, protective order, or other criminal or civil proceeding**
- **Documentation from a social worker, Guardian *ad litem* or other involved professional stating that the applicant has had a neglect case closed in the District in the last six months**
- **Evidence of receipt of services from a District agency, including but not limited to, the Department of Disability Services, The Rehabilitation Services Administration, and the Department of Behavioral Health.**
- **Evidence of receipt of financial benefit from a District agency**
- **Proof of residency maintained by District agencies in other relevant databases to which the Department has access.**

[17] June 28, 2017 submission to DC Council, Question 17.

Once again, we recommend that (12) be amended to state "Any other document that reasonably identifies the applicant as a District resident, as determined by the Department, **or that is determined to be credible evidence of residency**."

2501.5 Requirement to Search Other Databases

We support adding specificity regarding the requirement in D.C. Code §4-753.02(a-2) that the Department search Department and other databases by including DCHA, other Department-maintained databases, assistance from other District agencies, and other District agency databases to which the Department has access (proposed §2501.5). It is our understanding that the Department is also able to access income information regarding the receipt of income from the Social Security Administration, and would support the explicit inclusion of a search of Social Security information to which the Department has access to this provision. We hope this is an indicator that the Department will make further data-sharing agreements with other agencies to help even more eligible families receive homeless services without overburdening applicants.

However, it is not clear based on the list of documents required by proposed §2501.3(b) that some evidence that an applicant is a District resident found in one of these databases during this search process would necessarily be accepted as proof of District residency. While the Department could accept this proof under §2501.3(b)(12), which allows the Department to determine additional documents it may accept, we do not believe this should be left to the Department's discretion, especially since D.C. Code §4-753.02(a-2)[18] and the proposed regulation make the search of Department databases and others to which the Department has access mandatory.

This concern would be addressed by adopting the proposals discussed above regarding residency, restated here:

- **Amend 2501.3(a) as follows:** "Providing evidence that the individual or family is receiving public assistance from the District, **either** as administered by the Department, **or by another District agency.**"
- **Add to 2501.3(b):**
    - **Proof of receipt of other assistance for District residents from a District agency other than the Department, including but not limited to the Grandparent Caregivers Subsidy, Department of Disability Services or Rehabilitation Services Administration services.**
    - **Evidence of receipt of financial benefit from a District agency**
    - **Proof of residency maintained by District agencies in other relevant databases to which the Department has access.**

2501.6 Clear and Convincing Evidence Standard for Residency

We have significant concerns about the drafting of this provision, including that, as written, the regulations both contravene the statutory purpose, and are internally inconsistent.

[18] "(a-2) In determining whether an applicant can demonstrate residency pursuant to §4-751.01(32), the Department shall search Department databases and other data systems to which it has access to assist individuals and families in demonstrating residency."

The new language of the HSRA states: "If in consideration of the relevant factors, the Department can demonstrate, by clear and convincing evidence, that an applicant is not a resident of the District, the Department may determine that the applicant is ineligible to receive services within the Continuum of Care." §4-753.02(a-3). We read this section as clarifying that the burden is on the District to determine that an applicant is *not* a District resident when an applicant claims residency. That is, after all, the general standard applied to applications for public benefits-- a presumption of eligibility. We read "the relevant factors" as the elements of residency contained in the definition (not receiving public benefits from another jurisdiction, living in DC voluntarily and not for a temporary purpose, and able to provide verification of residency).

DHS seems to be interpreting this section in a very different way, one that would create an untenably high burden for applicants to prove residency. It appears from these regulations that DHS believes this section gives them carte blanche to "investigate" someone's residency, and conclude that someone is not a resident if there is any indication (one document) that they have resided in another jurisdiction. While there is no legislative history discussing this provision we do not believe this is a reading that is consistent with the language and context of such language in the statute.

However, even assuming the agency's interpretation of the statute is correct, for the purpose of these comments, the proposed regulatory language as drafted seeks to create a list of certain documents that conclusively constitute "clear and convincing evidence" of non-District residency, without any consideration of factors that an applicant may present which indicate residency. This conceptualization of evidentiary standards is completely out of line with definitions of evidentiary standards and how they are weighed in judicial and administrative proceedings. Generally, one indicia or contradiction in evidence is not going to be strong enough to conclusively prove something by such a high evidentiary standard. Both statements (testimony) and documents are considered to be evidence in judicial proceedings, and all evidence is weighed to determine if the evidentiary standard has been met. The proposed definition of "clear and convincing evidence" is also problematic. While the regulation would define "clear and convincing evidence as "reasonable certainty or high probability," case law and legal treatises would generally require at least a showing of high probability, or substantially more likely to be true than untrue.[19] **We thus recommend striking the phrase "reasonable certainty" from Section 2501.6(b).**

The regulations must also make it clear that for the Department to demonstrate clear and convincing evidence that the applicant is not a resident, this requires that the District weigh the strength of evidence on both sides. Both the statute (D.C. Code §4-753.02(a-3)) and proposed 2501.6(a) state that the Department "may" determine that an applicant is ineligible for services if the applicant is not a resident of the District. While this could, in theory, offer the Department

[19] For instance, clear and convincing evidence is described as "clear, explicit, and unequivocal evidence so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind" (9A Am. Jur. Pl. & Pr. Forms Evidence § 163) and "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established" (Blackson v. United States, 897 A.2d 187 (D.C. 2006)). This definition if further supported by the holding in Colorado v. New Mexico (467 U.S. 310 (1984)) that "clear and convincing" means that the evidence is highly and substantially more likely to be true than untrue such that the fact finder must be convinced that the contention is highly probable.

the opportunity to decide that, even though there is *per se* "clear and convincing evidence" by their own understanding, they will not deny the applicant eligibility for services. In practice, however, we do not expect that intake workers would understand and use the provision in this manner, because as drafted this would be the Department saying they have proved someone is not a resident but will offer them services anyway. The Department has consistently maintained that it will use the provisions of the HSRA to deny services to anyone it considers a non-resident so it is difficult to imagine this scenario.

We also want to raise concerns that there is neither guidance about how any of the documents would come into the hands of the agency, nor guidance on how extensive the "investigation" into someone's residency will be, after they have already proven their residency pursuant to the statute. DHS cannot require that applicants provide additional documentation at intake beyond what is required in the statute (one piece of verification or evidence that the applicant receives public benefits). That would completely subvert the intent of the statute-- in fact, DHS had originally proposed that two types of verification be required, but the DC Council definitively opposed and amended that proposal to make it clear that one type of verification was sufficient.

We recommend that the agency **add**:

1) **a clear statement that the Department is required to weigh all evidence in reaching its determination, by clear and convincing evidence, that an applicant is not a resident.**
2) **a clear prohibition against *requiring* that applicants provide additional documents other than what is minimally required to verify residency as part of the intake process** (because that would unlawfully shift the burden directly onto applicants to prove residency).
3) **protection of the right of an applicant to review any evidence that the District holds and to present all of their evidence of residency** if the District is claiming it has clear and convincing evidence that the applicant is not a resident including the chance to explain any contradictory indicators of residency through statements and documents.

Without a clear requirement to balance all testimonial and documentary evidence, in practice this runs an incredibly high risk of labeling many bona fide residents of the District as non-residents with no meaningful right to appeal a decision left entirely within the Department's discretion.

2501.6(c) should state that "For the purposes of this subsection, **evidence of non-District residency could include, but is not limited to:**

This would create an operable standard by which both intake workers and applicants can have notice of the types of evidence that may tend to show non-District residency, while still preserving the requirement that all evidence be considered in determining whether there is clear and convincing evidence of non-District residency.

To make this point even more explicit, there should also be a section added as follows:

> **2501.6(d): In considering whether the Department has demonstrated by clear and convincing evidence that an applicant is not a resident of the District, the District**

must consider all available evidence, including verbal or written statements and documentary evidence showing District residency.

This provision is necessary not only to ensure that applicants have a full opportunity to demonstrate their residency, but also because the Department's own hands should not be tied when there are situations where there is extremely strong proof of District residency and one or two contradictory pieces of evidence with good cause. For example, an applicant may have a banking statement mailed to a non-District residence because their District address is not a safe, reliable, or confidential place for them to receive mail. Or an applicant may have gone through a divorce but still be listed on a mortgage in another jurisdiction while the property goes through re-financing, despite having permanently relocated to the District. Regulations cannot anticipate all of the circumstances through which a District resident may have good reason for contradictory residency documents that do not rise to the level of clear and convincing evidence of non-residency, making the inclusion of a clear requirement to balance all evidence necessary.

Our concerns are further elevated because several of the indicia of non-residency listed in proposed 2501.6(c) may not be probative in some situations. This makes it even more important that the regulations, if they list documents that may show non-residency are explicit that all evidence be weighed.

2501.6(c) "Clear and convincing evidence" that the applicant is *not* a DC resident
Not one of the items listed here is clear and convincing evidence on its own that an applicant is not a DC resident, nor should it be accepted without the opportunity for the applicant to provide any additional information to provide context or explanation for the document.

(1) Driver's license or identification from another jurisdiction
In DC, you do not have to convert your out-of-state driver's license to a DC license until you have resided here for more than 30 days.[20] And, there is no requirement to convert out-of-state identification cards. As you are probably aware, there are many challenges for people experiencing homelessness in obtaining a DC identification card or driver's license, including the fees required and the requirement to show DC residency. While there are some accommodations for people who are homeless, the first step would be verifying homelessness, which will be challenging if the very agency that is responsible for verifying homelessness is claiming that the person is not a DC resident precisely because she does not yet have a DC license or is totally in compliance with the law and has not obtained a DC identification card. In addition, because this process of converting these forms of identification can take time, this requirement could be found to impose a durational residency requirement in violation of the constitutional right to travel. **We recommend removing this section.**

(2) Current utility bills from another jurisdiction
We recommend **clarifying what "current" means** as someone could receive a utility bill and have vacated that unit shortly thereafter or receive a bill for a period long after they have vacated because they continue to owe money even though there is no additional usage on the account. In addition, sometimes landlords are responsible for placing a tenant on and off a utility bill (such

[20] https://dmv.dc.gov/service/convert-out-state-driver-licenses

as for water) but fail to timely do so, so the bill might not provide much information about the applicant's current residency.

(3) Valid voter identification
Voter enrollment in another jurisdiction is not particularly probative of non-residency as people who move may remain enrolled but not vote in their previous jurisdiction. The National Voter Registration Act prohibits removal of a voter from the voter rolls simply for failing to vote; rather, the jurisdiction must wait until a voter fails to vote in two federal elections and fails to respond to a mailing, or mail sent to their address of record is returned undeliverable.[21] This means that for a voter who has forgotten to send notice to their previous jurisdiction that they have moved, it may be years before their registration is stricken even though they do not intend to and do not vote in that jurisdiction. Many jurisdictions also do not mandate communication between states when residents register to vote or for a driver's license in a new jurisdiction – as of December 2017, only thirteen states require that election officials notify other states when a voter registration applicant indicates previous registration in another state, and only five states require that election officials send notice to voters to verify their registration when they receive notice that the voter has obtained a driver's license in another state.[22] The scope of multiple voter registrations is shown in a 2012 Pew study which found that 1 in 8 voter registrations nationally are inaccurate due to people failing to "unregister" or because voters are deceased, with over 2.75 million people nationally registered in more than one state.[23]

Having that the voter registration must be "valid" in the proposed regulations is insufficient to assuage this concern, particularly as this would likely require an intake worker to engage in a sophisticated analysis of whether or not an applicant's voter registration remained "valid" in their previous jurisdiction. To note also, while voting in multiple jurisdictions in the same election is illegal, being registered in more than one jurisdiction is not. The District should encourage voter registration rather than use it as a tool against low-income individuals.

(4) Lease agreement in applicant's name and (5) Current mortgage statement
while these documents may be relevant, they are certainly not clear and convincing evidence on their own that an applicant is not a DC resident. The lease agreement should be valid and unexpired. The mortgage statement must be in the person's name.

(6) Current bank statement
A current bank statement that indicates an out-of-state address is only slightly relevant to residency and certainly is not clear and convincing evidence that an applicant is not a DC resident. Valid reasons for using another address for banking or financial documents could include protecting financial information from an abuser living in the primary residence; living in a shelter and not feeling comfortable receiving mail there; forwarding mail to a friend or relative's address due to moving homes frequently/couch-surfing so that something important

[21] National Association of Secretaries of State, "NASS Report: Maintenance of State Voter Registration Lists," December 2017. Available https://www.nass.org/sites/default/files/reports/nass-report-voter-reg-maintenance-final-dec17.pdf.
[22] Id. Neither Virginia nor Maryland currently has laws requiring either of these practices.
[23] The Pew Center on the States, Feb. 2012. "Inaccurate, Costly, and Inefficient: Evidence That America's Voter Registration System Needs an Upgrade." Available https://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewupgradingvoterregistrationpdf.pdf.

will not be lost; a family has overlooked updating an account address due to the day to day needs of being unstably housed; a tenant did not want important mail sent to their residence in the District because the landlord failed to provide secure mailboxes or they are frequently broken or in disrepair.

(7) Currently receives public assistance in another jurisdiction
This section should be removed as it is duplicative of the section in the definition of resident.

(8) Children enrolled in school in another jurisdiction
There are valid and legally permissible reasons why a bona fide District resident may have a child who attends school in another jurisdiction. As worded, this provision is not limited to children who form part of the applicant household, meaning it could be read to apply even where an applicant does not have custody of a child who resides in another jurisdiction and is not applying for shelter or housing services to include that child. A child could also be attending school in another jurisdiction as a non-resident student pursuant to that jurisdiction's school enrollment rules.

Children may also attend school in another jurisdiction pursuant to a joint custody arrangement, either with or without a court order. This could be the case if, for example, a child is in the custody of the other parent or another caregiver and the child is not currently a member of the applicant household, or where separated parents who live in different jurisdictions each have the legal right to enroll the child in school in that jurisdiction and the parents have chosen a school in the other jurisdiction.[24] This does not require a formal court order, nor should DHS be allowed to require a formal court order in these circumstances because establishing such an order would take several weeks at a minimum, and having to file is a huge burden to place on a family experiencing homelessness.

Finally, the McKinney Vento Act, 42 U.S.C. 11432(g)(3), may give a homeless student the right to attend school in another jurisdiction as a homeless student, despite the family being residents of the District.[25]

The regulations should not require that a family uproot children from schools which they legally are entitled to attend and enroll them into District schools solely for the purpose of being able to access Continuum of Care services, where the family can demonstrate District residency.

(9) Indicia to show applicant is in the District for a "temporary purpose"
Participating in a legal proceeding in the District or seeking medical care at a facility in the District could both, if anything, be evidence of DC residency. We agree that applicants are not DC residents under the HSRA if they are here for one of those two reasons and have stated that

[24] For reference, the District's own residency regulations for school enrollment allow separated parents who share joint custody to enroll children in a District school if one parent is a bona fide District resident, whether or not there is a formal custody arrangement. 5A DCMR 5001.6-5001.7.
[25] This would include a homeless non-resident student in a Maryland school despite being a District resident if the family is in Maryland only for a temporary purpose and does not abandon District residency. The residency verifier provision in D.C. Code §4-751.01(32)(B) was intended to allow a family in exactly this situation to demonstrate their District residency. These school enrollment decisions under McKinney Vento are guided by what is in the student's best interests.

they intend to move back home afterwards. But that is not what this section says. What might be more helpful here is a regulations clarifying how long of a period of time is contemplated by the language "temporary."

In summary, we suggest the following changes be made if the list of indicia of non-residency remains listed:

- STRIKE 2501.6 (c)(1), (3), (6) and (7)
- 2501.6(c)(2) Clarify what it means to be "current" and in the applicant's name.
- 2501.6(c)(4) should mirror the language used in the residency section, "The applicant has a **valid unexpired** lease agreement in the applicant's name in another jurisdiction"
- 2501.6(c)(5) language should mirror the above, "The applicant has a current mortgage statement **in the applicant's name** for a residential address in another jurisdiction;"
- 2501.6(c)(6): This section, "a current bank statement that indicates a residential address in another jurisdiction" should either be stricken, or a correlating section allowing a current bank statement showing a District residential address to be used as proof of District residency should be added to 2501.3(b).
- 2501.6(c)(8) should read:
    - "The applicant's child**[**ren**]** are enrolled in school in another jurisdiction, **except that this provision shall not include children who:**
        - **(i) are students who are enrolled as homeless students in another jurisdiction pursuant to the McKinney-Vento Act, 42 U.S.C. 11432(g)(3) or**
        - **(ii) are enrolled in a Local Education Agency (LEA) in another jurisdiction pursuant to a custody arrangement, whether or not there is a formal court order, or**
        - **(iii) are not included as part of the family unit seeking shelter or housing services**
- 2501.6(c)(9) We recommend redrafting this section. The standard for what constitutes a "temporary purpose" should include factors related to whether the applicant's intends to remain behind the finishing of business that may itself be temporary.
- 2501.6(c)(10): Any other relevant or conflicting residency factor **that, when weighed against all other evidence**, **demonstrates by clear and convincing evidence** that the applicant does not reside in the District

2501.7 Credible Evidence to Overcome Presumption of Safe Housing

There are several major concerns with this section of the regulations. First, the regulations would preclude an applicant's statement from ever being considered credible. Second, the definition does not encompass situations where a family cannot safely inhabit housing due to having no access to the housing. Third, the list of acceptable forms of "credible evidence" includes many forms of evidence which suggest the agency seeks to require a much higher burden of proof than "credible evidence." This list should be revised and expanded, including by adding a catchall provision, as discussed below. Finally, we recommend greater guidance given to how this burden shifting should work in practice.

Applicant statements alone can provide credible evidence. Credible evidence is generally understood simply as evidence that is worthy of belief.[26] Courts regularly must make judicial determinations based only on their assessment of the relative credibility of sworn statements by witnesses. In the District, generally all people with personal knowledge, including parties in their own cases, are considered competent to act as witnesses.[27] The regulation's exclusion of applicant's own statements from being "credible evidence" would be without analogue in other types of fact-finding proceedings.

Legislative history unequivocally supports that an applicant's own statement was intended to be included in the "credible evidence" standard. After the Committee rejected the Administration's proposal to require "clear and convincing evidence" to overcome this presumption of safe housing, Chairman Mendelson proposed an amendment at first reading that brought the standard down to "credible evidence." During the discussion on the amendment, Chairman Mendelson was specifically asked by Councilmember Grosso if the standard would include a "credible oral statement" similar to the HEARTH Act standard.[28] Mendelson verified *three* times that credible evidence would include an applicant's own oral statement ("The standard would permit an oral statement, if it's credible than that would meet the burden;" "If your question is whether oral evidence is permitted, of course it would be;" and "If it's credible, yes.")[29] When Councilmember Silverman asked Chairman Mendelson to explain what credible evidence was, he responded that it was: "about the lowest standard of proof that is available;" "worthy of belief;" and "meant to be a low barrier."[30]

By excluding the applicant's own statements entirely, the Department implies that it does not ever believe that an applicant can or will provide credible or truthful information during an intake, a dismaying attitude that further heightens barriers for the most vulnerable seeking services. It could certainly be the case that an intake worker does not find a particular applicant to be credible and reasonably requests additional information, but the regulation language allows no ability to make such a case-by-case determination. The currently drafted regulation appears to

[26] For instance, credible evidence has been described as "the quality of evidence, which after critical analysis, the court would find sufficient upon which to base a decision on the issue if no contrary evidence were submitted" (Rendall v. Commissioner, 535 F.3d 1221, 1225 (10th Cir. 2008)) and; "such testimony, exhibits, or other evidence that you find worthy of belief" (O'Malley, Grenig, & Lee, Fed. Jury. Prac. & Instr. Civil Comp HB § 8:5) and; "evidence of any kind that appears worthy of belief" (H.R. 2167, 116th Congress, 1st Session (April 9, 2019)); and, elsewhere in the D.C. code, as "evidence that indicates that a child is an abused or neglected child, including the statement of any person worthy of belief" (D.C. Code Ann. §4-1301.02). The Final Committee Report for B22-0293 mirrors this standard in stating that the burden is on an applicant "to simply provide believable evidence. (Final Committee Report at pg 3, http://lims.dccouncil.us/Download/38138/B22-0293-CommitteeReport2.pdf)

[27] D.C. Code §§14-301-306 See also Federal Rules of Evidence 601 through 606.

[28] The HEARTH Act states that: "any oral statement from an individual or family seeking homeless assistance that is found to be credible shall be considered credible evidence for purposes of this clause." 42 U.S.C. §11302(a)(5)(A)(iii).

[29] http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4199 (starting at 2:14).

[30] The Final Committee Report for B22-0293 also does not support that the legislative intent of this provision to exclude applicant's own statements. The Report notes that the Committee Print struck altogether a proposed provision that applicants listed on a lease or occupancy agreement had to overcome the presumption of safe housing by clear and convincing evidence, and notes that the final amended provision "strikes the balance of providing the agency with space for additional questioning while lowering the burden on the applicant to simply provide believable evidence." Final Committee Report at pg 3, http://lims.dccouncil.us/Download/38138/B22-0293-CommitteeReport2.pdf.

be implementing the much higher "clear and convincing evidence" standard that was removed from the HSRA legislation by the Committee. For all of these reasons, the restriction on the use of an applicant's own statement to provide credible evidence should be stricken.

Further, the list of acceptable "credible evidence" is unnecessarily restrictive and amounts to a requirement for evidence that rises far above the level of being simply "credible." The list does not allow an applicant to provide photographs of unsafe conditions which may be readily apparent in a photograph. They also do not provide for credible statements by other witnesses other than a District agency or social worker. Restricting reports of housing conditions to coming solely from a social worker (which is not defined, but would seem to exclude many qualified professionals who provide in-home services in the District) is unnecessarily restrictive. There is no reason to support, for example, that a Registered Nurse or Family Support Worker home visitor would provide a less reliable report than a social worker. [31]

Other family members or other people with firsthand knowledge could also provide credible evidence about an applicant's safety or ability to access housing. In particular, if a family has been part of a household in which the head of household has told them they cannot return, the head of household's statement would be the only possible evidence that the applicant could not return to that housing, beyond their own statement of course. The provisions regarding medical diagnosis should also clarify that a family or family member must have a relevant diagnosis. Applicants should also be able to self-certify that they have a medical diagnosis impacting their health, if their statement is believable, so that ability to access a doctor is not another barrier.[32] Finally, we have proposed a "catchall" section below. As currently drafted, the regulation's definition of forms of "credible evidence" is arguably exhaustive, as there is no language that credible evidence is not limited to what is on this list, nor is there a "catchall" provision listed in 2501.7(c). Adding a catchall provision is important to make sure that the Department's own hands are not tied to consider other credible evidence that an applicant may present.

- **In summary, we propose that:**
    - **2501.7(b) should read as follows**: For the purposes of this subsection, "credible evidence" means information or documentation~~, other than the applicant's own statement,~~ that supports the applicant's assertion that the individual or family cannot safely inhabit **or access** the housing associated with the lease or occupancy agreement.
    - **2501.7(c)** should either read as follows: **"credible evidence includes, but is not limited to:"**, or a catchall provision should be added.
    - **2501.7(c) should read as follows (additions in bold):**

[31] District home-visiting programs include many run through the Department of Health, including the DC Healthy Start Project. These programs employ a variety of different professionals to provide in-home services. Other in-home services may be provided through Community Support Workers through a Core Service Agency (through DBH) who are also not required to be licensed social workers.

[32] This would be in line with the Americans with Disabilities Act requirement that the agency cannot request additional documentation if the medical condition or need is obvious. *See* Settlement Agreement, The United States and the District of Columbia, found at https://www.ada.gov/dc_shelter.htm ("When a requesting individual's disability is known to Shelter Staff, or is readily apparent, information about the disability shall not be requested unless it is necessary to evaluate the disability-related need for the modification.")

        - (1) Documentation from a government agency that the housing is unsafe or uninhabitable
        - (2) Police report or court order indicating that the housing arrangement is unsafe
        - (3) Correspondence or report from a social worker **or other service or medical professional** stating that the housing or housing arrangement is unsafe **or that a family is not able to access the housing**
        - (4) Medical records documenting a medical diagnosis that renders the housing unsafe **for the individual, family, or member of the family unit,** such as asthma, mold allergy, or other similar medical condition
        - **(5) Photographs of current conditions that impact the ability to safely inhabit or access the housing**
        - **(6) Oral or written statement by an applicant that they or a member of the household have a medical diagnosis that renders the housing unsafe for the individual, family, or member of the family unit.**
        - **(7) Oral or written statement by another family member, relative, friend, or other individual with personal knowledge of the situation that the individual or family cannot safely inhabit or access the housing associated with the lease or occupancy agreement**
        - **(8) Any other document, statement, or evidence which offers reasonable grounds for supporting that the individual or family cannot safely inhabit or access the housing associated with the lease or occupancy agreement**
    - Add a section similar to 2501.2(c) (3) (above): **"Any applicant who identifies as a victim of a covered offense who is seeking shelter:**
      (a) shall not be required to provide evidence to substantiate their experience of domestic violence, sexual assault or human trafficking or be required to meet with additional housing staff or other service providers to be identified as such.
      (b) shall be permitted to self-certify as a victim of a covered offense."

Finally, we believe that the agency should add language to provide guidance to intake workers as to how the burden shifting works in the assessment of safe housing. We have attached a sample "flowchart" based on our legal analysis of this section. In particular, DHS should:

- **Prohibit requiring that applicants submit leases or occupancy agreements of places they have stayed as a condition of applying for shelter.** Requiring the applicant to provide such information would shift the burden for proving eligibility onto the applicant, when the burden is clearly on the Department to "determine" that they have an ownership or tenancy interest.
- Clarify that it is the Department's burden to determine that 1) the ownership or lease interest is **current** that 2) any lease or occupancy interest is **written and has the applicant's name listed on it** and 3) that the **housing is safe**.

2501.8 Redetermining Eligibility

We have concerns about Section 2501.8(b), which seeks to define "new and relevant information that may lead to a redetermination of eligibility no more than once every 180 days." In

2501.8(b)(1), there is no cross-reference here protecting participants who did not have to demonstrate residency pursuant to 2501.2(c) (those seeking shelter by reason of domestic violence, sexual assault, human trafficking, refugee status, or asylum). This exemption should be added to this subsection to ensure protection for survivors who experienced violence before or while in shelter. In addition, a person currently participating in a District HSRA-covered program should be per se District residents.

Second, 2501.8(b)(2) refers to program financial eligibility requirements and the financial means to find safe housing; however, there are not currently published regulations which establish financial eligibility requirements for any current shelter or housing programs within the Continuum of Care. It is thus entirely unclear how this provision could or would be applied. As such, any enforcement of this provision would likely be invalidated under the Administrative Procedure Act and due process protections. In addition, it is concerning that a family could be saving money to exit shelter and be terminated not because they have access to safe housing, but because they have finally secured the financial means to exit to housing. In other words, the "access to other safe housing" seems to be what the agency is trying to get at, not the financial means to "find safe housing."

As for (3) "the individual or family has access to safe housing or a safe place to stay," this seems like a clear end run around the protections embodied in the statute for ensuring that anyone determined ineligible by reasons of "identification as a tenant on a residential lease or occupancy agreement"[33] including that the client cannot be determined ineligible if she "cannot safely inhabit the housing associated with the lease or occupancy agreement that identifies the individual or family as a tenant."[34] The legislative intent is clear: that redetermining eligibility of a current participant in a program for reasons of that participant having another place to go would be limited by these protections. Otherwise, this would make the restrictions on diversions from Interim Eligibility placements meaningless, because it would create a higher standard for finding someone ineligible within the first 12 days of assistance than it would after the person had been in the program for much longer, and had a much higher expectation of continuing assistance. Interim Eligibility was restricted to only the first 12 days and provided safeguards for outplacements precisely to avoid clients being in insecure limbo their entire time, and recognizing the higher expectation of due process and permanency after residing in a program longer.

Similarly, 2501.8(e) expands the statutory language in a way that impermissibly narrows the protection of that provision. As stated above, a client cannot be determined ineligible if she "cannot safely inhabit the housing associated with the lease or occupancy agreement that identifies the individual or family as a tenant."[35] The regulation narrows the scope of this protection by adding the words "due to a dangerous condition that threatens the health or safety of the individual or family." This language should be stricken. Interpreting "cannot safely inhabit" as requiring a dangerous condition is not consistent with the intent, or plain language of the section. This section was intended to protect clients who are unable to access the housing both dues to unsafe conditions *and* due to lack of access. For instance, a tenant who has been

[33] §4-753.02(b-1)(1)(B).
[34] §4-753.02(b-1)(1)(B)(2).
[35] §4-753.02(b-1)(1)(B)(2).

wrongfully evicted from an apartment, cannot safely inhabit the apartment, but there will be no dangerous condition present. Similarly, a domestic violence survivor may have fled an apartment because her abuser followed her there, but it would be a stretch to argue that an abuser's knowledge of her location constitutes a "dangerous condition" of the unit itself.

2501.8(d) defines good cause for when shelter absences of more than 4 consecutive days will not trigger a redetermination of eligibility. We do support that there is a catchall provision allowing for compelling situations that require absences (2501.8(d)(5)). However, we have concerns that (d)(2), "death of an immediate family member" is too narrow in its use of "immediate," though this term is not defined. The HSRA takes a broad definitional approach to what constitutes a family unit, a valuable recognition that blood relationships or marriage alone do not define how families define themselves. We believe this provision is intended to allow a family to be absent from shelter placement when necessary due to the death of a relative or family member, whether or not that family member is part of the family unit receiving shelter services. We recommend removing the word "immediate" to effect this purpose, and clarifying this provision can apply to a family member or relative to include fictive kin (such as a godmother who raised someone as a mother-figure but to whom the family has no legal or blood relationship).

For clarity's sake, 2501.8 should also include a cross reference to the right to appeal a "redetermined eligibility" determination. Under D.C. Code §4-754.36b(a)(2), redetermined eligibility under this section is considered a "program exit." This section will need to cross reference the statutory section as the emergency and proposed regulations do not include a specific "Program Exits" section. We suggest referencing and quoting the statutory language.

In summary, we recommend the following changes:

- 2501.8(a): Except as provided in paragraph ~~(b)~~ **(c)** of this subsection….
  This is a technical correction rather than a substantive one. The reference to (b) appears to have been taken directly from the statute but the section is actually referring to the exceptions listed in (c).
- 2501.8(b)(1), amend as follows: The individual or family is a resident of another **jurisdiction, except that this provision shall not apply to those seeking shelter by reason of domestic violence, sexual assault, human trafficking, refugee status, or asylum in accordance with 2501.2(c).**
- Strike 2501.8(b)(2)
- Strike 2501.8(b)(3)
- 2501.8(d), amend as follows: "Death of a~~n immediate~~ family member **or relative, regardless of blood relationship, marriage or other legally defined relationship**
- 2501.8(e) Strike "due to a dangerous condition that threatens the health or safety of the individual or family."
- Add a provision regarding appeal: "**2501.8(g): An individual or family shall have the right to written notice and appeal of a determination that the Department has redetermined that the individual or family is not eligible, in accordance with DC Code §4-754.36 and DCMR 2550.1. Any client who requests a fair hearing within 15 days of receipt of notice of a program exit**

shall continue to remain in the housing program pending a final decision from the fair hearing proceedings."

2507.2-2507.5 Intake for Families – Eligibility Determination

Previously, the regulations specified that only one head of household needs to be present at the time of an application for family shelter. However, the proposed 2507.2 would require that **both** heads of households be present at the time of application.

We strongly oppose this addition of an additional barrier for families seeking shelter. Applications for TANF, SNAP, or Medicaid do not require two heads of household to be present for an application – in fact, these programs have application requirements that generally designate only one individual as "head of household" even in two-parent families. [36]

Further, families who cannot make both parents or heads of household available at the time of the application may be pushed to break up the family, leading to further destabilization for the family. While the proposed regulations seek to encompass "good cause" to excuse the absence of a head of household, the proposed definition of good cause is both too narrow and would increase documentary requirements for an application, adding yet another hurdle for families. We are greatly concerned that the Department would not accept an applicant's own statements about the good cause, given their position that an applicant's own statement does not constitute "credible evidence" in other contexts (see presumption of safe housing section above). And in fact, one of the good cause grounds, hospitalization, explicitly requires "verified documentation." (2507.2)(a). To require a family in crisis seeking emergency services to verify that a head of household is hospitalized, or that there is another emergency, is another burden that is simply inconsistent with the needs and realities of families seeking crisis services.

For a family in crisis, there are also many good causes that could prevent two heads of household from being at an intake. While the good cause exceptions look to emergencies, for a family in crisis even non-emergencies can be huge barriers. These could include regular employment or childcare obligations during the intake center hours– a family who is in need of shelter should not have to put employment or income at risk to be present at the time of application or have to pay for other childcare, as well as other issues like lack of reliable transportation.

[36] For example, for Medicaid, 29 DCMR 9501.2 states that "The application and any required verification may be submitted by: (a) The applicant; (b) An adult who is in the applicant's household or family; see also ESA Policy Manual Part III, 1.6.1., "in the case of a two-parent family, either parent may be designated as the head." For TANF, see D.C. Code §4-2051.9(a)(" Application for public assistance shall be accepted from, or on behalf of, any person who believes himself or herself eligible for public assistance."; see also ESA Policy Manual Section III, 1.6.1, "In the case of an eligible two-parent family, the principal wage earner (see below for definition) shall be designated as head of household. In cases in which both parents meet the principal wage earner test, the household may choose who is to be designated as the head of household." For SNAP, see ESA Policy Manual Section III 1.6.1., "Households are permitted to select an adult to serve as the head of the household." The Combined Application for DC for Food Stamps, Cash Assistance, Medicaid and Alliance only includes a signature line for one applicant Available https://dhs.dc.gov/sites/default/files/dc/sites/dhs/publication/attachments/Combined_Application_December-2015_%28English_%202_0.pdf).

The good cause section also includes drafting errors (including reference to a family member "absent from shelter placement," 2507.2(c) and "the period of absence," presumably from a shelter placement, rather than not being present at the time of application, 2507.2(a).)

The best and simplest way to address these multiple concerns is to amend this provision as follows:

- 2507.2 If a family includes more than one (1) head of household, **only one** head of household must be present at the time of application. ~~The Department may make exceptions for good cause in the following circumstances~~ [strike (a)-(e)]

In 2507.3, we recommend limiting this to only the types of documentation necessary to determining eligibility for family shelter. There is no criterion for which employment status and history, income and source of income or assets are relevant to family shelter eligibility; therefore we recommend that you strike (c), (d) and (e).

In 2507.10, we recommend that this section be clear whether it is about eligibility for the Continuum of Care or about shelter eligibility. It is internally inconsistent.

Add:

1. It should also be explicit within this section that families who are denied a shelter placement but are placed into the prevention program at the time of their application should be issued the required notice that they have been determined not eligible for shelter. Being placed into a prevention program (referred to in this section as "prevention and diversion services," for which there are notably no regulations offered) rather than shelter is a determination by the Department that the family has a safe place to stay for at least one night and is thus not in need of shelter. Without being issued a notice that clearly refers to this denial of eligibility, however, a family who disagrees with the Department's assessment that they have safe housing for that night cannot easily assert their right to appeal, meaning mistakes that could have been reviewed and overturned will instead jeopardize the safety of the family. To address this concern, we suggest the following new subsection:
    - **A client found eligible for prevention and diversion services but not offered immediate shelter placement shall be issued a notice of denial of shelter services in accordance with the requirements of 2507.10.**
2. We recommend adding a section that safe housing further, clarifying that **safe housing is *not*:**
    a. **inaccessible or hazardous for applicants with disabilities,**
    b. **overcrowded,**
    c. **housing where family members are separated from each other,**
    d. **housing where family members are forced to participate in or be exposed to illegal activity,**
    e. **housing that is unsafe for any member of the family, including but not limited to emotional, sexual or physical abuse.**
    f. **housing that has conditions which is unhealthy or unsafe for family members, including those with medical conditions and/or disabilities**

Interim Eligibility Standards and Appeals (2507.5-2507.6 and 2508)

Placement into Interim Eligibility

We suggest that Section 2507.5 be amended to make Interim Eligibility mandatory. This change is necessary to account for the removal of the provision regarding a grace period to demonstrate residency. We believe the Department's intent is to streamline their process to use interim eligibility rather than the grace period in these situations but this wording change from permissive to required would ensure that. The revised Section 2507.5 would read as follows:

- 2507.5 If the Department or its designee is unable to determine eligibility for shelter within the same business day in which the family submitted its application for shelter, the Department or its designee **shall** ~~may~~ place the family in an Interim Eligibility Placement for a period not to exceed three (3) days. The Department or its designee may extend that period up to three (3) times, but except as provided under the Act, an interim eligibility placement shall not exceed twelve (12) days.

Sections 2507.5 and 2507.6 should also make explicit that for the purposes of these subsections, "designee" of the Department includes the Shelter Hotline and that shelter placements made through the Shelter Hotline shall be considered Interim Eligibility Placements. Current practice is that applicants who enter shelter through placement by the Shelter Hotline must subsequently complete intake at the VWFRC where they could be issued a denial without a clear right to stay in the shelter where they have already been placed for a night while they appeal this decision. This back-and-forth and uncertainty is detrimental to families. This clarification could be accomplished through the following language:

- **2507.5:** insert **"**If the Department or its designee, **including the Shelter Hotline,"** into this section
- **2507.6:** A family shall be placed in an Interim Eligibility Placement pursuant to Subsection 2507.5 if the family:…
- (b) Agrees to participate in diversion services and family mediation, if appropriate; **or**
- **(c) If the family applies for and is placed in shelter through the Shelter Hotline**

The provision regarding "safe housing" in Section 2507.7(a) should also be revised so that it is in line with Section 2501.7's allowance for an applicant listed on a lease to overcome the presumption of safe housing by credible evidence. As currently drafted, 2507.7(a) would categorically exclude a primary leaseholder, however 2501.7 does not preclude primary leaseholders from overcoming the presumption. Elimination of the phrase primary lease holder does not erase the ability of Department to use the presumption of safe housing provision should the applicant be listed on or have primary lease or ownership interest in housing, and to allow the applicant to overcome this presumption by providing credible evidence as provided in Section 2501.7. While primary leaseholders have greater legal handles to enforce their rights to live in habitable apartments, sometimes they need a brief respite in shelter while they are working on getting a landlord to make repairs, particularly if the conditions are creating a "material risk to health or safety." We have found that intake workers are often unduly focused on the legal rights of a tenant, which can be hard to assess by a non-lawyer, when their focus under the law should be purely on whether the applicant has a safe place to reside that night with their children.

We propose the following revision:

- Section 2507.7: For purposes of this section, a "safe place to stay" shall be determined by the following standards:
  - (a) Whether the family is in a housing situation where ~~they are not the primary lease holder and~~ pursuant to the District's building, health, and sanitary code there is a material risk to health or safety, or a material risk of damage to personal property, should the family remain in the housing situation~~;~~

We also have concerns about the reference to "diversion services and family mediation" in Section 2507.6(b). There need to be regulations further defining the policies and procedures that encompass diversion services and family mediation, including protocol for determining if such services are appropriate. "Family mediation" should also be required to be provided by a qualified professional such as a licensed mental health professional, social worker, or other similarly credentialed professional who has been specifically trained in facilitating mediation. We are concerned about the quality and appropriateness of such services absent these protections.

Notice Provisions

Section 2508.1 addresses written notice for families placed in Interim Eligibility. We suggest that the language in this section mirror language about notice used throughout the regulations in the following way by stating that all information will be "clear and detailed."[37] Because the time frame for a final eligibility determination and appeal if eligibility are denied are so short, we recommend that the notice should also include a statement of what information the Department needs to finalize its determination and information about the determination and appeal timelines.

With these suggestions, the section would read as follows;

- 2508.1 "A provider shall provide written notice to any family placed in an Interim Eligibility Placement which shall include the following information:
  - (a) **A clear and detailed statement that** the family is being placed in an Interim Eligibility Placement because the Department or its designee could not determine the family's eligibility on the same business day in which the family submitted its application for shelter
  - (b) **A clear and detailed statement that** an Interim Eligibility Placement is not a permanent shelter placement, but a temporary placement for the family to give the Department or its designee additional time to determine whether the family is eligible for shelter;
  - **(c) A clear and detailed statement of what additional information is needed by the Department to complete the eligibility determination or explanation why the Department is not yet able to finalize an eligibility determination**

[37] See, e.g., proposed Sections 2507.10(c) and (e)(notice regarding initial eligibility); 2508.4(c), (d), and (e) (denial following Interim Eligibility placement); 2524.3 (notice of terminations; uses both "clear and complete" and "clear and detailed").

- **(d) A clear and detailed statement that** the family shall be offered prevention and diversion services
- **(e) A clear and detailed statement of the timeline the Department must follow in reaching a final eligibility determination**
- **(f) A clear and detailed statement of the appeal rights the family will have if the Department determines the family is not eligible**

Section 2508.4 addresses denial notices issued after an Interim Eligibility placement. In addition to the provisions required to be part of a notice of denial after Interim Eligibility Placement, we suggest adding a requirement that the notice include a list of legal service providers who may be able to assist with the appeal. Especially because the timeframe for requesting an appeal and given the expedited hearing schedule, it is essential to ensuring clients a change at representation that they know how to contact counsel as quickly as possible should they like this type of assistance. We suggest this be added as:

- **2508.4: (h) A list of legal service providers who may be available to assist with an appeal or provide legal advice**

Appeal Provisions:

The proposed regulations seek to add additional requirements and hurdles for clients to appeal a denial of eligibility following an interim eligibility placement, including requiring that these appeals be made in writing and include written documentation, including a copy of the written denial notice and a statement of arguments for why the family is eligible (essentially, a legal brief).

We strongly oppose these requirements from a policy perspective as more burdensome than any other appeal within the HSRA especially given that the timeframe to request this appeal and maintain benefits pending hearing is only 48 hours,[38] but even more crucially, **the proposed regulations are impermissible contraventions of the plain statutory language regarding appeals.**

D.C. Code §4-754.41(a) requires that the Office of Administrative Hearings grant a fair hearing to appeal any decision listed in §4-754.41(b) to any client or client representative "who requests such a hearing, orally or in writing, within 90 days of receiving written notice of the adverse action…A request for a fair hearing shall be made to the client's provider, the Department, the Mayor, or the Mayor's designee. If the request is made orally, the individual receiving the request shall promptly acknowledge the request, reduce it to writing, and file the request for a fair hearing with the Office of Administrative Hearings." Included in the list of decisions subject to this provision is a request to review any decision of a provider of services to "deny eligibility for shelter following an interim eligibility placement." D. C. Code §4-754.41(b)(2)(E).

The proposed regulations requirement that the appeal be requested in writing contradicts the clear language of the statute. The regulation also does not allow filing of a request by a client representative. To bring this proposed regulation in line with the statute, the proposed requirement in Section 2508.5 to make this appeal in writing should be stricken and replaced

[38] D.C. Code §4-754.41 (d-1)

with the standard already articulated in Sections 2550.4 and 2550.5[39] that oral requests be reduced to writing and that they may be made by a client representative.

From a policy perspective, the proposed appeals section would create a higher appeal burden than any other HSRA burden. Families seeking emergency shelter are those in crisis, and restricting appeals to this extent would not reduce homelessness, but would narrow the door to those with legitimate need for shelter who lack the legal sophistication or bandwidth to immediately appeal a shelter denial in the face of being told they need to leave shelter. Notably, this provision could also have an adverse effect of making families less reluctant to accept diversion services, because being placed into interim eligibility requires the family agree to participate in diversion services. One reading of this provision is that a family could refuse diversion services to bypass interim eligibility and immediately secure more protections against termination.[40]

We also do not believe that having a family provide a written notice of their denial as a requirement for a filing with the Office of Administrative Hearings (proposed 2508.5(a)). Given the 48-hour timeframe to appeal this determination and maintain benefits pending, this is another logistical hurdle that seems tailored to discourage appeals.

There is no reason why the client could not be asked to bring the notice to an Administrative Review or the OAH at the time of a hearing, instead of having them manage the logistics of trying to fax, email, or deliver the notice to OAH. As the issuer of the notice, the Department would be in the best position to meet this burden and provide a copy of their own notice. In theory if a client filed a request for hearing when there was no denial actually issued, the Department could ask to dismiss an appeal, however, given the complicated nature of filing and that we believe many clients with legitimate appeals choose not to navigate this process, it is far-fetched to believe this type of unnecessary appeal is frequent.

As to proposed 2508.5(c), we do not object to an explicit appeal requirement in this section that a client appealing a denial notice must include their daytime telephone number, email address, or mailing address as part of their appeal request. Normal procedure at the Office of Administrative Hearings already requires this type of contact information from the petitioner.[41] However, to better align this regulatory provision with HSRA appeal rights, however, a statement should be added to the regulations that where pursuant to the requirements of D.C. Code 4-754.41(a) that a Provider, Department, Mayor, or Mayor's designee must reduce an oral request for appeal to

[39] 2550.4 in the proposed regulations reads as follows: "The Mayor shall treat a fair hearing request made by a client representative in the same manner as it would be treated if it were made directly by the client provided, that the Mayor subsequently receives written documentation authorizing the client representative to act on behalf of the client in accordance with the requirements of Section 1005 of the District of Columbia Public Assistance Act of 1982 [reference omitted]. 2550.5 reads as follows: "A request for a fair hearing shall be made to the Office of Administrative Hearings, or to the client's Provider, the Department, or the Mayor. If the request is made orally, the individual receiving the request shall promptly acknowledge the request, reduce it to writing, and file the request for a fair hearing with the Office of Administrative Hearing."

[40] Any attempt to make diversion services mandatory or a prerequisite for a shelter placement would be problematic from a regulatory and policy perspective in the absence of any proposed or actual regulation for these diversion services.

[41] OAH Rule 2808.2

writing, they should be required to ascertain this information from the client or the client file to include this information in the filed request for appeal.

For consistency's sake, the phrase "written notice of the denial of application for shelter" in Section 2508.6 should be replaced with "written notice of denial of eligibility for shelter following an Interim Eligibility Placement." This mirrors the language used in Section 2508.5.

In summary, we suggest the following:

- 2508.5: If the ~~family~~ **client** disagrees with the denial of eligibility **issued** after Interim Eligibility placement, ~~they~~ the **client or client representative** may request a fair hearing before the District of Columbia Office of Administrative Hearings (OAH). A request for a fair hearing ~~shall be made in writing and shall include the following written documentation:~~ **A request for a fair hearing shall be made to the Office of Administrative Hearings, the client's provider, the Department, the Mayor, or the Mayor's designee. If the request is made orally, the individual receiving the request shall promptly acknowledge the request, reduce it to writing, and file the request for a fair hearing with the Office of Administrative Hearings. The request shall include the following information:**
    - **Strike proposed 2508.5(a)**
    - **Strike proposed 2508.5(b)**
    - **Add a new Section 2508.5(a): Daytime telephone number, email address or mailing address for the petitioner. The individual receiving the request shall request or ascertain this information, including from a client file, and include this information in the written request for hearing.**
- 2508.6, replace ""written notice of the denial of application for shelter" in Section 2508.6 should be replaced with "written notice of denial of eligibility for shelter"

2509.1 Family Assessment

We recommend that additional areas of common client needs be added to the family assessment requirement, including mental health, disability, childcare needs, trauma history, and legal needs. Our understanding is that these areas are already encompassed within the SPDAT, so this is not imposing an additional burden on the Department. This would identify these areas as needing to be assessed, however, should the Department move to a different uniform assessment tool, as this Section allows them to do.

We also understand from conversations with the Department that protocol for these assessments requires that they be completed in-person with client input, however, in practice we have heard from many clients that assessments are completed over the phone, or that a professional may even complete the assessment without seeking input from the family, based on the professionals memory about the family's needs. Adding a regulatory provision enshrining this protocol would be the surest protection to ensure families are correctly assessed. We also suggest that families be given the right to request a re-assessment based on changed circumstances in their life, without needing to add or amend an interval specified in the family's Service Plan.

In summary, we recommend the following additions and revisions:

- 2509.1(a) Assess the family's full range of needs, including housing, medical, behavioral, economic, educational, employment, **mental health, disability, childcare, trauma history, and legal** needs.
- 2509.1(c): remove "and priority determination" as obsolete due to that section of previous regulations being removed
- 2509.3 The family shall be re-assessed at specified intervals as determined by the family's Service Plan **and upon request by the family due to new needs or change in circumstances as identified by the family.**
- **Add 2509.4 All assessments must be completed in-person with the family and the family shall have the opportunity to provide input and new information as part of the assessment.**

Reasonable Modification Provisions Throughout Regulations:

Section 2507, Family Intake

While the proposed regulations in this section mirror the previously enacted regulations, we believe this is an important opportunity to enshrine additional protections for applicants and clients with disabilities that we have seen are needed. In our advocacy experience, we have seen that many applicants at VWFRC and clients in shelter and other programs are not made affirmatively aware of their right to a reasonable accommodation and their disability makes it difficult for them to access this information when it is only provided once or posted. We have seen that a request for reasonable accommodation made in shelter or at the VWFRC is not understood or treated as a request for a reasonable accommodation unless the client explicitly uses the words "reasonable accommodation."[42] While this may be an implementation issue caused by lack of training on the requirements of the Americans with Disabilities Act and other laws establishing disability protections, adding protections in the regulations would further protect those with disabilities seeking shelter services.

One particular area of need encountered by our clients is having a request for the support of an authorized representative or other support person throughout the entire intake and application process (not just completion of the initial application paperwork) at the VWFRC denied informally by an intake worker. For an applicant with a learning disorder, limited literacy, intellectual disability, or other disability that impairs their ability to relay and process information requested and given during the intake interview, this lack of needed support may mean the difference between eligibility and denial for services. Instead of being treated as a request for support or a reasonable modification throughout the entire application process, these

[42] Neither the Americans with Disabilities Act nor Section 504 require that a person with a disability use the specific language "reasonable accommodation" or "reasonable modification" to request one. For a discussion of Section 504 as it relates to federally funded housing programs, *see* Department of Housing and Urban Development, "Section 504: Frequently Asked Questions." Available https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/sect504faq. The EEOC also discussed this in depth as it relates to the employment context in its "Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act", October 17, 2002. Available https://www.eeoc.gov/policy/docs/accommodation.html#N_19_.

clients are simply told this support is against the VWFRC policy,[43] and are not issued any sort of decision they can appeal as to the denial of their request.

We believe that the tendency of intake workers to treat the application form and the intake interview as two separate processes is a misreading of the regulations, which already require assistance throughout the entire "application process." A common sense understanding of this provision would be that the application process necessarily includes the intake interview and any other step the VWFRC requires prior to issuing an applicant a notice of program eligibility or denial.

However, given that this is a repeated problem that clients have encountered, the regulations should include a clear provision that the interview constitutes part of the application process and that an applicant with a disability has the right to request support from either the Provider or intake center or an authorized representative at any stage.

To ensure better access at the intake center, we suggest that section 2507.8 and 2507.9 be amended to add an affirmative duty that families be informed of their right to request a reasonable accommodation at the intake center. Our suggestions are as follows:

- 2507.8: Any application **[that]** requires assistance with filling out the application form may request and receive such assistance **from the intake center or Provider or may have assistance from an authorized representative or other person identified by the applicant**. If a request for assistance is made by an applicant with a disability, or by the authorized representative of an applicant with a disability, the Provider of the intake center shall assist such applicant or authorized representative with any aspect of the application process **necessary to determine eligibility, including an interview,** to ensure that the applicant with a disability has an equal opportunity to submit an application **and receive an eligibility determination**.
- 2507.9: Pursuant to Section 2546, an applicant with a disability may request a reasonable modification at any time during the application process. Requests may be oral or in writing. Oral requests shall be reduced to writing by the applicant, intake or Provider staff, or any person identified by the individual, and submitted in accordance with the provider or intake center policy or procedure. **The intake or Provider staff shall inform all applicants of the reasonable modification policy procedure and have it posted and available for all applicants in an accessible format in multiple languages**.

2505 Youth Placement and RAs in Youth Programs

This section should include an explicit requirement that youth applicants be informed of the reasonable modification policy and it should be posted and available at intake sites in accessible formats to mirror our recommendation that this information be available at the family intake center.

Section 2516 Provider Standards:

[43] This reasoning is legally insufficient, because by definition a request for a reasonable modification is a request to modify an existing policy or procedure due to disability. The previous and proposed HSRA regulations even specify that such modifications shall be provided unless the provider demonstrates that the modification would *fundamentally* alter the nature of the services. 29 DCMR 2546.1.

While Section 2516.14 already requires shelter and housing service providers to provide reasonable modifications, this section should also include an affirmative duty that Providers inform clients of their rights and the reasonable modification policy and procedure. We suggest the following language to be added to Section 2516.4:

- **The Provider staff shall inform all clients of the reasonable modification policy procedure and have it posted and available for all clients in an accessible format**.

Section 2522 Transfers:

While this section as written focuses on Provider-initiated transfers, we believe there should be a section added to make explicit that a client may request transfer to another program or shelter location as a request for reasonable modification. While we have seen Providers initiate transfers when requested by clients, there are sometimes delays in having these requests by clients properly considered as reasonable modifications and there is not an explicit provision identifying that a client may initiate this process. We suggest the following language be added to Section 2522.2 which allows a Provider to transfer clients to ensure the clients receive the most appropriate services available: (additional language in bold)

- 2522.2(b): The Provider identifies and secures for the client a placement with another Provider that more appropriately meets the client's medical, mental health, behavioral, or rehabilitative service needs in accordance with the client's Service Plan **or as required as a reasonable modification for a disability**. If the client is being transferred because of domestic violence or other urgent need, the Provider shall expedite the transfer.

2515 Client Responsibilities

For 2515.12, we propose striking the word "shall" and replacing it with "may." We oppose mandatory services across programs. The U.S. Interagency Council on Homelessness recommends that jurisdictions: "adopt a Housing First approach and create low-barrier access to emergency shelter."[44] The Housing First approach is a voluntary services model.

2522.7-2522.8 – CFSA Removals

We urge the Department of Human Services to revise the regulation to comport with court processes and programmatic realities of the District's child welfare system. We believe that no parent should lose housing based on his/her child's presence in foster care until a court has determined that reunification is no longer likely. We urge the following revision:

2521.7 If a family no longer meets the criteria for family shelter or supportive housing due to the ~~removal of the child or children by the District of Columbia Child and Family Services Agency (CFSA)~~ **(a)(1)(i) commitment of the child or children to the legal custody of the District of Columbia Child and Family Services Agency (CFSA) pursuant to D.C. Code § 16-2320(a)(3)(A) and (ii) the decision of the District of Columbia Family Court to set the child's or children's permanency goal to something other than reunification or return to parent pursuant to D.C. Code § 16-2323(c)**, or **(2)** loss of custody pursuant to an agreement or Court order, and

(b) there are no children remaining in the home, then the parent(s) ~~shall~~ **may** be transferred in accordance with subsection 2521.2 to a shelter or program that assists parents with reunification, if appropriate, based on the circumstances and if

[44] https://www.usich.gov/resources/uploads/asset_library/emergency-shelter-key-considerations.pdf

a placement is available; or, to an individual adult shelter(s), if a placement that assists parents with reunification is not available or appropriate.

Section 2524 Termination:

Reasonable Efforts to Locate Client

Prior to these regulations, the regulations included the provision that:

> "Prior to terminating a client for consecutive unapproved overnight absences totaling more than seventy-two (72) hours pursuant to subsection 2523.1(b)(7), the Provider shall make reasonable efforts to locate the client, including using available contact information. If the absence remains unexplained, the Provider may proceed with termination and provide notice under this section to the extent feasible, which may include posting to the client's unit or making the notice available to the person upon their return to the program."

This requirement has been eliminated in the emergency and proposed regulations. We strongly urge that this requirement be restored.

While D.C. Code §4-754.33(c-1)(1) was amended to waive the requirement that a program provide oral notice to a client before issuing a termination notice to a client absent from temporary shelter or transitional housing for more than 4 consecutive days and not in compliance with program rules regarding absences, this amendment does not require removal of the requirement to attempt to contact a client. Attempting to reach a client by available contact methods before proceeding with termination is such a low bar to ensure that Providers have the best chance to learn information about why participant is absent and to engage a client who may be dealing with a legitimate and significant personal emergency. Trying to contact a participant at 72 hours (3 days) would also not interfere with issuing notice and proceeding with termination at 4 days if the provider is not able to contact a participant.

We recommend that this provision be restored to the regulations as follows:

- **Prior to terminating a client for consecutive unapproved overnight absences in excess of 72 hours, the Provider shall make reasonable efforts to locate the client, including using available contact information including phone call, email and text message. If the absence remains unexplained, the Provider may proceed with termination given notice as required by D.C. Code §4-754.33(c-1)(1).**

2525: Emergency Transfers, Suspensions or Terminations

Under 2525.7, the regulation is missing key language from the statute that requires providers to "endeavor to provide written notice" to clients "at the time that the action is taken." and clarifies that "the time period during which the client may request fair hearing proceedings to appeal… shall not begin until the client has received the subsequent written notice."[45] We recommend adding these critical protections into the regulations.

In 2525.2(b), the Department has not provided any further guidance as to what the section is intended to cover. The Administration advocated for this provision to be added to the HSRA that

[45] §4-754.38(b).

allows providers to use the emergency transfer, termination and suspension process when **"**a client's continued presence at a shelter location materially impairs a provider's ability to provide services to other clients at the location." It was never clear what behavior this provision was intended to cover; and without any regulations clarifying the intent or narrowing the scope of this section, it remains unclear. That lack of clarity is not just unfair to clients who are being asked to abide by a behavioral standard that has not been clearly articulated, but because the client's stay in the program can be terminated under this provision without a pre-termination hearing, or benefits pending an appeal, there is very little meaningful opportunity for agency review prior to the harm occurring. We also note that the language as written has significant potential for unfairly targeting clients with mental illness, in violation of federal disability rights and the HSRA. Providers should be given specific guidance, via enforceable regulations, that this provision is not to be used to terminate clients whose behavior is related to a disability.

Under 2525.11, we recommend replacing "may with "shall" and striking the language "if additional details or clarifications are needed." The Department plays a key role in guarding against improper emergency actions that risk serious harm because the client will be without shelter or services for the pendency of the appeal. But the Department cannot play this role if it depends only on the statement of the provider and does no investigation.

2557: Special Eligibility Criteria for Referral to the Local Rent Supplement Program – Eligibility Requirements

The intent of this section is unclear; it would appear to correspond with D.C. Code § 4–753.07, "Local rent supplement program referrals." However, this code section was repealed and is no longer in effect. If the intent of this section, which notably has been revised since the previous version of the regulations, is to set rules for the Targeted Affordable Housing program, this section is insufficient for this purpose, and the current title of the section obscures its purpose. We have addressed the need for comprehensive Targeted Affordable Housing regulations in a later section of our comments.

We will note that, while this Section appears to have been revised to reflect the current HSRA definitions, there appears to be an error in Section 2557.1(c)(1). This section established eligibility where the "head of household is, or both heads of household if a two (2) parent household are, disabled –". This appears to be mirroring the definition of chronically homeless, however as defined in DC Code §4-751.01(6c)(c) only "*a* head of household" must meet these criteria to qualify as chronically homeless. At a minimum, this provision should be amended as follows:

- 2577.1(c)(1): Head of household is, or **a** ~~both~~ head of household if a two (2)-parent household **is** ~~are~~, disabled and unable to work, as demonstrated by…."

Finally, the language "and unable to work" has been added to the definition mirroring the definition of chronic homelessness. We do not believe we have ever discussed that being unable to work is an eligibility criterion for Targeted Affordable Housing. It seems that a longer discussion of who is eligible for TAH would be helpful to clarify these regulations, as well as clients' expectations.

2599 Definitions:

"Offer"

While the administration stated during the legislative process for the HSRA amendments that no one has ever been terminated for turning down offers of permanent housing (under 2524.1(b)(6)), we have seen many cases over the years and clients are routinely threatened with termination on this basis if they do not want to accept rapid re-housing. There has been a good deal of confusion about what qualifies as an offer. For instance, we do not believe that giving a client a listing for an available unit when they do not qualify for that unit should count as an offer. At the ICH meetings on the HSRA amendments, providers also raised the need for this type of definition.

Proposed definition:

> **"Offer" means the applicant is eligible for, has applied for and the application has been approved by the landlord or other entity offering appropriate permanent housing and the unit has passed a housing inspection and determined to meet Rent Reasonableness Standards**."

Provider's Premises"

During ICH discussions on the HSRA amendments, multiple advocates and providers raised that it would be helpful to have a definition of provider's premises.

Proposed definition:

> **""Provider's premises" means land or buildings that are owned or leased or otherwise controlled by a provider, but does not include public property, such as sidewalks, or housing that is owned by a third party and directly leased by a client, even is the client receives services from the provider in that housing or a provider subsidizes the housing."**

"Severe Weather Conditions" and "severe weather shelter"

To comport with current practice and client input, we propose that the definition be changed to:

> ""Severe weather conditions" means the outdoor conditions whenever the actual or forecasted temperature, including the wind chill factor or heat index, falls below 32 degrees Fahrenheit, **40 degrees Fahrenheit with anticipated precipitation,** rises above 95 degrees Fahrenheit **or when the forecast calls for a tropical storm, hurricane, high winds, severe thunderstorm or significant snowstorm."**

To be consistent with this change, the definition of "Severe weather shelter" should be modified to: "means **shelter that is provided during severe weather conditions."**

"Unaccompanied youth"

The HSRA added a definition of unaccompanied youth but no regulations were promulgated to clarify how youth providers should interpret the new definition. For instance, when we raised concerns during the legislative process that the definition contemplated a higher barrier service model than what currently existed, we were told that the agency would never implement the statute that way. DHS submitted a document to the Council that stated that "the definition does not change who DHS serves through the homeless services system" and that "youth crisis beds in

the District are considered low barrier beds, which operate without documentation requirements." But if the agency intends to interpret the definition in a more generous, low barrier way, the regulations are the place to include that interpretation. For instance, it will be difficult for the youth hotline to assess whether a caller's housing instability is "expected to continue in such status for an extended period of time" without doing a more intensive psychosocial assessment, not to mention that the primary concern of the hotline should be whether the unaccompanied youth caller has a safe place to go *tonight*, not for the foreseeable future. (An "extended period of time" is a phrase that could use some further clarity as well.) Yet now providers will have to choose between following the law, restricting services to applicants who meet this narrow definition of homeless unaccompanied youth, or to violate the law and serve people who need help that night but whose barrier to long term housing stability is not one of the limited list, but is instead that their parents have kicked them out and that there is no affordable housing immediately accessible.

Technical Corrections:

We would also like to note the following technical corrections which need to be made throughout the regulations. These appear to be drafting rather than substantive changes.

- 2513.6: The Program Rules cross reference is incorrect. The correct reference should be 2516.17 (~~2515.17~~)
- References to "supportive housing" need to be struck throughout. Our understanding was that this change was to be uniform throughout the regulations as the amendments to the HSRA removed "supportive housing" as a concept, focusing instead on housing programs. However, this language remains in Sections 2545-2547 regarding Reasonable Modifications. "Supportive housing" should be stricken and replaced with "housing programs" anywhere it appears throughout the regulations.

RAPID REHOUSING REGULATION Comments

We would like the opportunity to revisit and expand upon these comments following the FRSP Task Force and publication of proposed regulations for the FRSP program. The comments below address specific concerns about the Rapid Rehousing program, but we have general concerns we wish to outline as a preliminary matter. First, we have concerns that provisions violate the APA . Second, we are concerned about how the various sections of the regulations will interplay with each other. It is not clear to us how these processes will work together.

Third, we are concerned about the overall philosophy of Rapid Rehousing as illustrated by these regulations. The program was never designed to be a one size fits all solution for all homeless individuals and families, yet the regulations provide little or no flexibility in the administration of the program and provide no guidance for how to screen individuals and families into or out of the program. Fourth, the best practices in homeless services are moving to voluntary services and respecting the will and integrity of the consumer, the regulations propose mandatory services and plans that can be put in place without consent of the consumer. Finally we continue to oppose having an arbitrary time limit unrelated to the client's ability to sustain housing. These issues will be addressed more specifically in the section of the regulations where they apply.

Transparency Concerns:
As drafted, these regulations overall provide very little guidance or clarity for clients or advocates, with critical information such as percentage of income participants are required to pay towards rent, the time period of assistance absent any extension, client responsibilities, recertification procedures and frequency, and many other specifics are left to contract, grants, and Program Rules. Leaving these crucial details to contracts, grants, and Program Rules (which are not required to be easily and publicly accessible by these regulations, nor are they subject to public comment or feedback). It also presents a high risk of inconsistency of programmatic quality between different Rapid Rehousing case management providers. Consistent services should be required between Providers in order to ensure fairness to all consumers- it should not depend on luck of the draw as to the provider about what rules a person has to follow, how much rent they pay, or what level of support they can be provided.

Some crucial details left to contracts, grants, and Program Rules:

- 2527.1: provides that "special eligibility criteria" shall be provided in the Program Rules.
- 2529.4: provides that the specific types of assistance provided to participants can be set by Program Rules.
- 2530.1: "Recertification procedures shall be included in the RRH Provider's Program Rules."
- 2530.2: Provides that recalculation intervals are included in the RRH Provider's Program Rules.
- 2530.4(e): Reconsideration of the change of rental assistance amount is made by the Department, its designee, or the RRH provider, as determined by RRH granted agreement, contract, etc.
- 2531.2: "the time period for receiving RRH financial assistance shall be established in the RRH grant agreement, contract, or by Department policy."
- 2531.3, 2531.4: provides that the manner of requesting an extension and who makes the decision on the extension request are determined by "the RRH grant agreement, contract, or Department policy."
- 2539.6: In the Permanent Supportive Housing Program, the participant's rental portion is determined by "the PSH program's funding source, contract, or grant agreement."

The need for regulations in these areas is discussed in further detail in the sections below.

Voluntariness of Engagement in Services
The best practices in homeless services are voluntary engagement in services. As noted by NAEH, this is also best practices in Rapid Rehousing.[46] Voluntary services can not only increase engagement in services in some cases, but it also respects the fundamental autonomy and dignity

[46] According to the National Alliance to End Homelessness, "[t]here are three core components to rapid re-housing. While a program must make all three available, it is not required that a single entity provide all three services or that a household utilize them all." "Core Components of Rapid Re-Housing, Feb 14, 2014. Available https://endhomelessness.org/rapid-re-housing-works/. Another core component is ensuring that "services provided are client-directed, respectful of individuals' right to self-determination, and voluntary. Unless basic, program-related case management is required by statute or regulation, participation in services should not be required to receive rapid re-housing assistance." Id.

of the people in the program to engage in the services most relevant and important to them.[47] Participation in case management is mandatory under the regulations, but this is not in line with RRH best practices. While we want participants to have consistent, quality case management, case management should be thought of as a tool to help clients address their barriers to housing in a way that engages the family, rather than as a blunt requirement with cookie-cutter case plans that families are forced out of the program for not following precisely.

We suggest that in each section where family participation is mentioned, the regulation be amended to refer to family "direction,", including in the following places:

- § 2511.2: "with active ~~participation~~ **direction** from the family,"
- § 2532.1: "the family "shall ~~participate in~~ **direct** the development of his or her service or case management plan"

Opposition to Time Limits

We remain opposed to any time limit for the program. Our position remains that time limits are arbitrary and not tailored to the individual needs of participants.

2527 RRH Programs – Eligibility Determination, Assessment, and Referral

One of our primary concerns is that the regulations do not create standard eligibility criteria across RRH providers, nor are there explicit eligibility criteria beyond the criteria required to access Continuum of Care services generally. RRH should not be a one-size fits all solution for all individuals or all families as currently used for the vast majority of families in the homeless system, and the lack of eligibility criteria does nothing to show what efforts, if any, the Department proposes to take to address this issue.

We also strongly urge that in Section 2527.2, it should be required rather than permissive that all individuals and families are assessed using an evidence-based assessment tool. There should also be an explicit requirement of when updated assessments should be completed. We suggest the following language:

> 2527.2 "An individual or family ~~may~~ **shall** be assessed…… **Assessments must be updated quarterly or at the request of an individual or family based on changed circumstances.**

2528 Programs – Intake and Housing Search

At intake, the RRH provider should be *required* to complete the uniform, evidence-based assessment tool, such as SPDAT, unless one has been completed in the past year and the client declines to update it at intake.

[47] "Over time, Housing First has come to refer to any program that provides assistance to people experiencing homelessness—not just PSH—that has the following characteristics: 1) "a focus on helping individuals and families access and sustain permanent rental housing as quickly as possible; 2) a variety of services delivered to promote housing stability and individual well-being on an as-needed and entirely voluntary basis; and 3) a standard lease agreement to housing – as opposed to mandated therapy or services compliance (National Alliance to End Homelessness, 2016b)." Gubits, et al. "Understanding Rapid Re-housing; Systematic Review of Rapid Re-housing Outcomes Literature." July 7, 2018. Available https://www.huduser.gov/portal/sites/default/files/pdf/Systematic-Review-of-Rapid-Re-housing.pdf.

As currently worded, the regulation makes it permissive to complete the assessment if not completed in the last year ("the RRH Provider will perform an intake which may include but is not limited to:"), with no room given for the client's direction. There is also no requirement that it be redone if there has been a major life change in the past year. We are concerned that wording it as permissive to complete the assessment, even if it is outdated, sends the messaging that assessments do not need to be updated regularly. However, a frequent issue we hear from client families is that their needs have not been periodically re-assessed, or that their Provider is relying on an outdated assessment in determining their level of needs despite significant changes and barriers in the family's life even when the Provider is aware of these changes. In addition, DHS has frequently stated that one reason that families are not referred to permanent housing from shelter is that families need to be assessed once they are stable on rapid rehousing. However, failing to assess them in rapid rehousing and relying on the shelter assessment undermines this rationale. To acknowledge that some clients may not wish to delve into all of the sensitive areas of the assessment when one has recently been completed, however, our suggestion would allow client direction as to whether to update a recent assessment after a client has been informed how such assessment is used. We suggest that clients be informed about the purpose of the assessment so that they can provide knowing consent about it as they would in other areas of assessment, such as medical or educational assessment where we require informed consent in the law. We suggest:

> o 2528.1(b): "Completing with the participant the uniform, evidence-based assessment tool, such as the SPDAT, ~~if one has not been completed in the last year~~. **if the uniform evidence-based assessment tool has not been completed in the past year, the RRH provider must inform the client how such assessments are used, including that they are used to evaluate for eligibility long term housing subsidies, and complete it with the participant during intake. If the assessment has been completed in the last year, the participant may choose whether or not to update the assessment at intake. The assessment must be conducted in person with the participant's input. If the client declines to the assessment, the client's must sign a form to decline the assessment documenting a knowing waiver of the assessment and that they have been informed about the purpose of the assessment."**

We also recommend striking 2528.2(e) requiring the participant apply for housing assistance with the District of Columbia Housing Authority. As those waitlists have been closed for years, this is not a meaningful provision.

For housing searches, Section 2528.4, the regulation should make clear that additional housing search assistance beyond the specific examples listed in Section 2528.4(a)-(f) could be included where appropriate, to allow the program flexibility to meet individual and family needs. A common issue we hear from clients is that they do not feel supported in their search for housing, and that there is a lack of clarity between shelter, prevention, and RRH providers as to who is actually responsible for assisting a client. Regulations are an opportunity to address this lack of clarity. To address this, we urge that Section 2528.4 should read:

> 2528.4: "The RRH provider ~~may~~ **shall** assist with the housing search and may, including but not limited to, where appropriate…"

Additional language should also be added to acknowledge participant's rights as tenants under District law. As participants are the one signing leases and undertaking all the legal obligations encompassed in tenancy, the regulations should be clear that they do not waive their corresponding legal rights as a requirement for participation in RRH. We suggest:

- 2528.2(a) should include a clarification that participants must "comply with the terms of such lease, ***subject to the participant's rights under law***" to reflect the right to withhold rent due to severe housing code violations. This also affords participants protection against illegal and unenforceable lease clauses, which we see all too frequently in our work as advocates.
- Add an additional subsection: **"It shall not be grounds for any adverse action by the Department if a participant withholds their rental portion in accordance with their legal rights. This protection shall apply even if the participant pays their rental portion to the Department rather than directly to their landlord."**

Finally, Section 2528.5 should be revised to bring it into line with HSRA definitions. While the section refers to "appropriate housing", D.C. Code 4-751.01(4) defines "appropriate permanent housing" as "permanent housing that does not jeopardize the health, safety, or welfare of its occupants, meets the District's building code requirements, and is affordable for the client." While we continue to strongly disagree with the characterization of RRH as "permanent housing" we do acknowledge that it is a current definition in the HSRA. We believe it is necessary to use the specific term "**appropriate permanent housing unit**" (insert the word "permanent") so that there is no ambiguity about what constitutes an "appropriate" unit for the purposes of Rapid Re-Housing.

2529 RRH Programs – Financial Assistance

The regulations should be clear about a total cap of household income that will go to rent and specify that this portion includes both rent and utilities. This would enable applicants to *sustain* housing throughout their time in the program, at a minimum.

We support the exceptions to the Rent Reasonableness Standards for large family sizes and individuals with disabilities, which accounts for difficulties that certain participants face when looking for safe housing. However, we recommend removing the qualification "unless prohibited by the RRH grant agreement or contract." If certain RRH programs are not suited for large families or those with disabilities, this should be explicit in eligibility criteria, not as a restriction once a client is in the program. Refusing to authorize a higher allowance for a client with a disability could also violate that client's right to a reasonable program modification under the Americans with Disabilities Act. We also, as stated above, strongly object to such an important term being left to a grant or contract rather than regulation.

2530.4 Recalculation of rental portion

It should be clear who makes the decision about the request for reconsideration of the rental assistance amount. We understand that the Department, or TCP as its designee, currently makes these decisions, not Providers. This procedure should be clear in the regulations so that participants know who is making initial and reconsideration decisions. There should also be a clear time limit for a decision on a request for reconsideration of calculation of rental assistance.

We propose it be within 10 days. This gives participants an answer in a reasonable amount of time so they can make financial decisions accordingly.

There is also currently no provision in the regulations allowing for further appeal of an initial rental calculation or recalculation. We believe there needs to be clear recourse where a provider inaccurately or arbitrarily increases a tenant rental portion, or when providers fail to respond to the request for recertification. There is no guidance for who conducts reconsiderations, or how they are conducted. In the absence of such clarification, participants should have access to the fair hearing and administrative review processes of Section 2550-2555.

2530.3 Recertification

This section provides no guidance on how the recertification process works with the extension request process (Section 2531). As drafted, we are unclear as advocates how the Department intends these processes to work, or if the Department is even sure how they interact.
If a recertification is an opportunity for the Department to exit the participant from the program, then this section also needs to provide for written notice to participants of their recertification determination with a cross-reference to the rights to notice and appeal (including administrative review and appeal) contained in D.C. Code § 4–754.36b Program exits. Participants should also receive any recertification decision in writing.

This could be accomplished through adding the following language as a new subsection in Section 2530:

> "**If a participant is not recertified in the program, the participant shall have the right to notice and the right to request a fair hearing and administrative review of this determination in accordance with D.C. Code 4–754.36b."**

The intervals for recertifying should be standard across all Providers and stated in regulations rather than left in contracts, grant agreement, or Department policy.

Again, it is unclear if and how a "recertification" determination would operate differently from the consideration of a request for program extension and the timeline and sequence for these requests. Thus, while we have some suggestions as to how a recertification could work, it is incumbent on the Department to provide more clarity in the regulations for these processes. In our limited understanding of how this section works, we support the focus on needs-based assessment at the time of recertification, but it must be a "needs-based assessment" using the uniform tool, preferably one with a housing stability focus. We also strongly suggest other relevant factors be added to 2530.3 in determining whether a participant will be recertified, including consideration of a change in the client's circumstances which lead to additional barriers to achieving housing stability, such as a loss of employment, the participant or a participant's household member being diagnosed with a disability that impedes the participant's ability to work, enduring domestic violence, enduring serious housing code violations in their home, and a catchall that covers any other barriers that may arise. The list should also expressly include the factor of whether not being recertified would put the family at imminent risk of return to homelessness. The analysis should not just be whether "a less or more intensive intervention is required;" the analysis should be whether, without further assistance, the individual or family would be at imminent risk of returning to homelessness.

2531 RRH Programs – Financial Assistance Period and Extension Requests

These provisions not only enshrine the Rapid Re-Housing assistance cliff, which we have consistently opposed, but there is also no definition of what those time limits could be. We firmly oppose leaving the establishment of time limits to RRH grant agreements, contracts, or by Department policy. Program participants and advocates do not have access to grant agreement and contracts, nor are these subject to public comment or input. We have serious notice concerns for participants, who should be able to rely on clear guidelines that are also verifiable so they can ensure they have not been provided incorrect information. We are concerned about transparency. As written, this would allow Rapid Re-Housing to be given for arbitrary or ever-changing or shrinking time periods, despite participants' expectations at the start of the program.

As noted in the previous section, there is also no clarity on how the recertification process and the extension request process are intended to interact. The regulations simply must include this level of clarity, otherwise, each Provider will interpret this process differently and there will be no consistency. For example, if someone has not been recertified, would they still be able to request a program extension and have this be given meaningful consideration? There also needs to be clear guidance in the regulations about the manner of requesting extensions (there should be one standard, not left up to providers and contracts). It should also be clear what entity is making the extension decision so that clients know and understand who is making the decision. There has also been a great lack of clarity at the Fair Hearing stage about which agencies actually have decision-making authority and are thus required to participate in the hearing process.

Given the importance of an extension to many program participants, we also recommend that the regulations should require that RRH providers memorialize an oral request for extension made by the participant and make an effort to obtain the participant's signature on the written request. There should also be a requirement in 2531.3 that the RRH Provider notifies the participant of their right to request an extension at least two weeks before issuance of a Notice of Cessation of Housing Subsidy and Program Exit, or a similar document. The right to request an extension is meaningless if participants are not aware of this right and given the assistance they need to memorialize the request in writing. The regulations should also include an automatic extension of the program's rental assistance where the participant has been approved for an alternative housing subsidy, including but not limited to a PSH or TAH voucher, but has not yet been able to lease up The RRH rental assistance should automatically extend until the lease-up process with the permanent voucher is complete. We understand that this is a usual practice within the Department, but have also seen it inconsistently applied. The application, approval, and housing search process can take time, especially given limited market options that meet program requirements. Families who have been identified as needing a higher level of services should not be placed at risk of homelessness while they transition to that higher level of intervention.

This could be accomplished through the following proposed language:

> **"A program extension shall be granted automatically, without the need for a written or oral request by participant, where the participant has an active application pending for another permanent housing program within the Continuum of Care, including Permanent Supportive Housing. Such extensions shall continue to be granted**

automatically until the time that the participant has entered housing through the other permanent housing program."

Where an extension grant is not automatic, 2531.4 should require weighing all circumstances in reaching a decision on the extension request. We propose using the language from the current FRSP regulations, requiring the Department or its designee to consider the totality of the circumstances when determining whether a participant can be recertified for further assistance. The Department or its designee should also have to consider and document the ability of participant to pay the full market rent of their current unit absent the subsidy. We strongly urge the removal of "A participant's length of time in the RRH Program shall be a valid basis for denial of an extension request" from Section 2531.4 as an enshrinement of the Rapid Rehousing cliff. We propose the following language:

"**When making a determination of whether to grant a participant an extension, the Department or Department's designee shall consider the totality of the circumstances, including but not limited to the likelihood that the participant will be able to retain housing in the long term without assistance.**

The proposed and emergency regulations also allow the participant a right to appeal, but should also have a provision requiring that the participant receive a clear and detailed notice of whether their request has been approved or denied, a clear and detailed statement of the reasons for the determination, and a clear and detailed statement of the right to appeal this determination. The right to appeal does not mean much to a participant who is never provided written notice of the denial, let alone information about the appeal right. In practice, we have seen applicants losing valuable appeal time because they are not clearly informed that their extension request has been denied. It is also important for RRH participants who are approved for an extension to receive notice. This is especially important for participants facing eviction at the end of their subsidy term, who need assurance for themselves and documentation for their landlord and the court about their status in the program. We propose the following language to address this concern:

"Participants shall receive a written notice of the decision to approve or deny a request for extension. Such notice must comply with notice requirements pursuant to DC Code §4-754.33."

<u>2532 RRH Programs – Case Management</u>

While we understand that some of these provisions are already encompassed within Client Rights (Sections 2512 and 2514) and Provider Responsibilities (Sections 2516 and 2519), they should be clearly stated in one place as they relate specifically to Rapid Re-Housing Programs as proposed below:

- **2532.2: The evidence-based assessment tool shall be administered during an in-person meeting with the Participant to ensure the most accurate data.**
- 2532.4 The participant's service or case management plan shall be reviewed and updated regularly, with the participant's participation, direction, **and consent**.
    - As drafted, this provision would seem to allow a case manager to create a case management plan that the participant did not agree to, contrary to the principles of active participation and engagement in the case management process that are part of both the model for Rapid Re-Housing and the client rights defined in 2512.12.

Another major concern we have raised about RRH are serious housing code violations encountered by RRH participants, and inconsistent and inadequate Provider response. While having a requirement for an initial housing code inspection is a start, there are other significant additions that should be made in the regulations to address this concern. In Section 2532.6, in addition to the requirements to include the documentation listed, there should also be an explicit requirement that the RRH provider maintain documentation of housing code violations reported by the participant, housing code enforcement or inspections undertaken by District agencies, and any efforts taken by the case manager to address the housing code violations by contacting the landlord, participant, or a District agency. Unfortunately, we have seen that the responsibility of a case manager in these situations is unclear to both Provider and participant, and the response can vary widely based on assigned caseworker or Provider.

This level of documentation is also necessary because in our client's experiences, caseworker turnover is very high, with some clients having three or more caseworkers within their time in Rapid Re-Housing. While Rapid Re-Housing providers may not be able to control staff turnover, they can prepare for this situation. Documentation of housing conditions in particular would allow a new caseworker to see the previous efforts. We have seen that often for clients, the process of addressing housing concerns begins all over again with a new case manager starting their own investigation, request for repairs, etc., because there is not adequate documentation of previous case manager or Provider efforts to address the conditions. To summarize, we propose the following language be added to the case file requirements listed in 2532.6:

- **A copy of the initial housing inspection for the participant's unit**
- **Documentation of any housing code violation reported by the participant and record of any effort taken by case manager to report the conditions to the private landlord, a District agency, the Department, or other entity, and copies of any subsequent inspection reports or housing code enforcement documentation.**

We have also consistently advocated for clients' rights to consistent and clearly defined case management as directed by the family. To accomplish this, we propose adding a Section 2532.8 which includes participant rights, and Section 2532.9 adding specific training requirements for RRH case managers, in addition to the training already required for Providers under other sections of the HSRA. We suggest the following language:

- **2532.8: Participants shall have the right to actively participate and direct their engagement in case management. Participants shall have the right to:**
    - **Be provided with a copy of their entire participant file upon request**
    - **Be provided with a copy of referrals or requests submitted by a case manager for the participant, including transfer, ADA, extension, or other requests.**
    - **Be provided with a copy of case management standards at the time of their intake with the RRH Provider**
    - **Be provided with name and contact information for case manager and case manager supervisor at time of assignment to RRH Provider and updates as this information changes**

- **Be provided with 24 hours' notice prior to scheduled required meetings, with notice to be provided by text, call, or email according to participant preference**
- **Protection against discrimination from private landlords and a duty on RRH providers to act to address**

- **Add a Section 2532.9: Case managers shall have training in the following areas:**
  - **District housing code violations and enforcement procedures**
  - **Intrafamily and domestic violence**
  - **Discrimination prohibited under the DC Human Rights Act of 1977, Americans with Disabilities Act of 1990, Rehabilitation Act, and Title II of the Civil Rights Act of 1964**

Case managers should also have responsibility in helping address the rampant discrimination clients face in the housing market in the form of source of income and other impermissible discrimination. The regulations should add a case manager responsibility to document and report to Provider and Department any statement or action by a private landlord providing a housing unit for a program participant that constitutes discrimination on the basis of race, color, religion, national origin, language, culture, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability and source of income (add Human Rights and other code citations). The Provider should report discrimination to the District Office of Human Rights as appropriate. The regulations should also state that clients have the right to report violations by the landlord without retaliation from the Department, and that clients have the right to have discriminatory actions by private landlords considered in a request for relocation to another unit or program and in a request for a RRH extension.

2533 Programs – Transfers, Terminations and Program Exits

The regulations should include additional provisions regarding program exits (2533.3); as drafted they only cite to statutory requirements. Program exits, even for reaching time limits, should be subject to additional requirements, as suggested below:

- **The time period for a time limited RRH program shall not start until case manager has been assigned to work with family, since service plan is such an important component of the program.**
- **Time spent in housing search shall not count towards time limit due to widespread housing discrimination against Rapid Re-Housing and length of time lease-up process can take; time for financial assistance with rent should not start until move into unit, and regulations should specify this so that there is no confusion.**
- **The assistance time period shall be reset if transfer required due to move to a new housing unit due to housing code violation, intrafamily offense, reasonable accommodation for a disability, or other emergency situation necessitating a move.**
- **A client shall only be able to be exited from the program where the RRH Provider documents that all required assessments have been completed, the client can no longer be recertified in the program and the client has been**

evaluated for other Continuum of Care programs including TAH and PSH, and referrals made if appropriate.

This section should also cite to the program exit requirements in the law, including the requirement that a client may only be exited when they have been assigned to a provider for substantially all of the client's time in the housing program (D.C. Code §4-756.36b). To ensure compliance with and ability to review this, the regulations should specify that notices of program exit include the starting date the Provider is using in calculating the time period of assistance, the date on which the client was assigned to a Provider, and the date the Provider assigned a case worker.

Participant Moves:
The RRH regulations should include clear provisions for allowing and assisting a client to move to a different housing unit based on housing code violations that are uncorrected, domestic violence, reasonable accommodation, or other emergency. This process could substantially mirror the provisions for moves in the current regulations for the FRSP Program as follows:

- **The Service Provider shall assist a tenant in relocating to a different unit if, at any time during the participant's tenancy:**
  - **(a)The participant needs to move as a reasonable accommodation;**
  - **(b)The participant needs to move as a result of domestic violence;**
  - **(c)The unit has substantial housing code violations which adversely impact the health or safety of the participant's household, which the landlord fails to address after receiving notice of the housing code violation; or**
  - **(d) Other emergency situation where a move is necessary to protect the health or safety of the participant's household**

Additionally, this section should state that the participant's time limit in the program shall be reset if such a move is required. The regulation should also include a clear right to written notice of a relocation decision that includes who made the determination and the reasons for the decision.

Permanent Supportive Housing

2537 PSH Programs – Referral Process
As we have noted in other areas of our comments, we are concerned that many families who would be appropriate for PSH are not screened appropriately. In addition to our earlier comments about mandating the regular and repeat use of an evidence-based assessment during an individual or family's time in Continuum of Care services, we also strongly suggest that Section 2537.3 be amended to make use of an evidence-based assessment tool mandatory rather than permissive for those seeking PSH services. The regulation does not specify another way a family could be assessed, and so it is also more consistent to always require use of the same tool across programs. This section should be amended as follows:

> 2537.3: An individual or family seeking housing in the PSH program ~~may~~ **shall** be assessed using an evidence-based assessment tool…").

We do support Section 2537.4, allowing the Department to submit an individual or family directly to the appropriate CAHP.

We have significant concerns about Section 2537.9. As currently drafted it states: "If the PSH Provider's attempted outreach and engagement are not successful within a period of time, specified by the Provider's Program Rules, of the individual or family's assignment, and if the Department reviews the attempts and finds them sufficient, then the PSH vacancy may be released back to the CAHP." There are multiple issues with this section:

- "outreach and engagement" are not defined, though from Section 2537.8, it appears engagement refers to completing a housing application and beginning the leasing process.
- Because outreach and engagement are not defined, there is no guidance on how to tell if the outreach and engagement is "successful."
- If there is a period of time for outreach and engagement should be set by regulation so it is consistent among providers, not left to Program Rules that are also not subject to public notice and comment.
- Any period of time to begin the leasing process would have to account for good faith efforts by an individual or family to locate housing. This is crucial because it is often impossible for an individual or family to find a unit within the initial voucher period of six months, due to a lack of available options in the market that meet the Rent Reasonableness standard, voucher discrimination by landlords, and the barriers that individual clients face in their lives. This is especially true if the family is larger and if the participant has a disability that impacts their ability to search for housing.
- There is no procedure to allow for extensions of the "time period" for good cause. The regulations should provide for a clear procedure for extensions if the participant has made good faith efforts to locate housing that considers the totality of the circumstances.

Further, releasing a PSH vacancy back to the CAHP would be tantamount to terminating a PSH participant from the program, because they would no longer be receiving that assistance for which they had been found eligible. Such an adverse action requires notice and the opportunity to appeal. As an analogy, when someone receives a Housing Choice Voucher Program voucher and starts the housing search, they may request an extension of time for housing search[48] (usually for a reasonable accommodation or large family size). If the voucher term expires and there is no further extension granted, the applicant will receive a Notice of Denial of Eligibility, which can be appealed through an informal hearing.[49] The HSRA regulations should, at a minimum, include analogous provisions.

2538 PSH Programs – Case Management and Supportive Services

We support that Section 2538.2 explicitly states that a client's refusal of case management services does not relieve the PSH Provider of its responsibilities. Participation in case management services should not be mandatory, especially when working with the highest needs population who may not engage in case management for many reasons. This is consistent with

[48] See 14 D.C.M.R. 5209.1

[49] See 14 D.C.M.R. 8902(j) and (k). The procedural requirements for an informal hearing are outlined in Chapter 89 of Title 14.

operating as Housing First. We would like to see other housing programs adopt this same mentality and voluntariness standard regarding engagement in case management services.

2539 PSH Programs – Rental and Financial Assistance

We have multiple concerns about lack of specific rules and procedures in this section. Section 2539.1 refers to a participant's receipt of a rental subsidy as "subject to applicable income limitations or other eligibility requirements." This provision offers no clues, however, as to what these limits or requirements could be or where they could come from. Section 2539.2 refers to "funding source, contract, or grant agreement" eligibility requirements. This again raises our concern about transparency and the requirements of the Administrative Procedure Act. Other crucial areas left to program rules, funding sources, contracts, or grants include a participant's rental portion, how it is calculated, and whether the participant can receive utility assistance. The regulations should be clear that PSH programs include utility assistance and that participant's rental portions should be capped at 30% of their income. We strongly urge that the 30% include payment towards both rent *and* utilities. The regulations should identify the method by which the participant's income and rental portion will be calculated (such as a HUD worksheet).

We support the following changes:

- 2539.5: strike this section as repetitive of 2539.7
- 2539.6: Each PSH program participant shall contribute a participant's rental portion, which amount shall be ~~determined according to the requirements of the PSH program's funding source, contract, or grant agreement~~ no more than 30% of their income as a rental and utility portion.
- 2539.8(a): strike "and history" following "employment status." While current employment may be relevant for income which would be used to calculate rental assistance, it is not clear how employment history is relevant.
- 2539.7: Each PSH program shall provide utility assistance as needed, if the participant's utilities are not included in the total rental amount and ~~if such assistance is permitted by the PSH program's funding source, contract, or grant agreement~~ the participant's rental portion is not sufficient to cover all utilities.
- 2539.9: The Department must specify who will make a decision about the request for reconsideration – whether it will be the Department or if they will work with another agency such as DCHA. There should also be a clear time limit for an issued decision on a request for reconsideration. We propose 10 days.
- 2539.4: We strongly oppose the ability to transfer a participant to a project-based PSH unit if the participant does not consent. This would strip the client's right to move in the future. If a PSH participant is placed in a specific building with project-based PSH, then they do not have the same right to move in the future that other PSH participants have. The right to move is very important, especially for participants that might need to request a safety transfer in the future or need to move as a reasonable accommodation due to a disability. We oppose the mandatory transfer of families to another PSH placement without their consent overall, but particularly highlight the problem with requiring a participant to transfer to a project-based PSH unit.

2540 PSH Programs - Reporting Change in Income

For Section 2540.1, it is not realistic for PSH program participants to report any changes to their PSH provider "as soon as the change occurs." We believe there should be a reasonableness

standard for reporting the change. We propose the same requirement as in the Housing Choice Voucher Program, which is that a family has thirty days to report the change in income. See 14 D.C.M.R. 5310.1(a). If the family timely reports the change and the result is an increase in the tenant portion, then the increased rent amount becomes effective the first month following a thirty day notice of rent increase. If the result is a decrease in the tenant portion, the new rent amount becomes effective the first of the month after the change is reported. *See id.* We propose this same procedure in the Permanent Supportive Housing Program. This is incredibly important because it often takes participants a significant amount of time to obtain proof of the change in income. For example, if a participant gets fired from a job, it can be extremely hard to get a letter from the employer verifying that fact.

2541 PSH Programs – Unit Identification and Acceptance

We are concerned that the proposed regulations do not reflect the reality of the difficulties PSH clients face in navigating the District housing market and offer inadequate assistance that may seriously jeopardize a client's ability to stay in the PSH program.

2541.2 as drafted would allow the PSH programs funding source, contract, or grant agreement to set the standard for a housing inspection of a qualifying PSH unit. This is one area where the Department should not be afforded any flexibility. District and federal funds should simply not be going to fund housing units that do not comply with the District's and federal housing quality standards. The previous section (2541.1) already refers to use of DCHA's standards for rent allowances. For inspections, the Housing Quality Standards from the Housing Choice Voucher Program should be used. Current practice of the Department has been to have these conducted by the DCHA and we would support this practice continuing. Alternately, the District has clear housing code regulations.[50] This would be an acceptable alternate standard, though there would still need to be a standardized inspection process. To allow for varying practices, procedures, or standards in inspections would almost certainly mean housing units of lower quality for participants and slumlord practices by landlords renting to participants.

This section should read as follows:

2541.2: "An appropriate unit must also pass a housing inspection~~, the standard for which may be determined by the PSH program's funding source, contract, or grant agreement.~~ **using the Housing Quality Standards for the Housing Choice Voucher Program or the District of Columbia Housing Code."**

We also have concerns about various provisions of 2541.3(a), which discusses reasonable efforts to conduct a housing search. This provision should explicitly provide for accommodating clients with disabilities and granting extended time to find housing where a disability impedes a housing search. This should be explicit and built into the program because the program is designed to serve clients with disabilities. It is critical that subsection (a) provide for exceptions in the case of clients with disabilities that impede their ability to search for housing. HCVP participants who are unable to locate housing within the initial search periods due to their disabilities are routinely given extensions; the same should also apply to PSH. There also must be express consideration of the bedroom size and other factors that affect a participant's ability to locate suitable housing. 2541.3(d) should also state that a participant is to accept a unit that meets rent reasonableness standards but also housing inspection standards.

[50] 14 DCMR Chapters 1-9.

- 2541.3(d): add **"and pass a housing inspection"**

We are also concerned that in Section 2541.4, the "reasonable efforts" to find housing should account for the many challenges that participants face in housing searches. Because housing is the goal of the program, it should also be the approach that where a participant is having the most difficulty engaging or locating suitable housing, or is being consistently denied from available housing options, that these are the clients offered the most support. It is disheartening to navigate the rental housing market and be rejected multiple times, especially for participants who may not have rented before. Allowing for discontinuation of the housing search process is the opposite of the approach that the PSH Program should be taking for participants who need additional support.

It is also unclear how meaningful retaining eligibility for PSH is if a housing search is discontinued, because the regulations do not include a mechanism for resumption of the housing search at any point. This would seem to operate as a termination without any right to appeal this determination. At a minimum, this provision must include an appeal provision and mechanism for continuation of the housing search process, but we recommend it be eliminated entirely.

2541.6 addresses PSH responsibility for helping a participant move to another unit. Providers used to be required to assist in previous versions of the regulations, however the emergency and proposed regulations would make this permissive. While for non-emergency elective moves the requirements to exit the lease according to the lease terms and other restrictions generally may be reasonable, the regulations should acknowledge that tenants can break leases without landlord permission under the law and explicitly require PSH assistance to move when needed due to domestic violence, as a reasonable accommodation for a disability, or uncorrected housing code violations which threaten the health and safety of occupants. In these circumstances, it is much less feasible to break a lease without penalty, and there is an emergency need to move. Security deposits and other expenses should also not be barriers for participants to move in such emergencies.

There needs to be language that clarifies that victims of domestic violence are homeless or a part of the system because of violence at home. A participant and their family should not be held accountable or punished because of the abuser's violent behavior. Requiring a landlord's written approval, without also discussing an abuse victim's rights, is misleading and could create further confusion and housing instability for abuse victims. The language should not rely on catchall language in 2541.7 which only states that "good cause" is fleeing domestic violence.

Furthermore, the regulations should clearly state the consequences for landlords and housing providers who do not follow VAWA requirements, such as informing abuse victims of their rights. The current regulations consistently state what happens if a participant violates a rule and gives an exorbitant amount of power to departments, landlords, and case managers. HUD expanded housing rights for abuse victims to address just this. To obfuscate the changes in catchall phrases or unclear language does a disservice to victims of abuse and their advocates.

We propose there be two sections regarding moves with the following revisions:

- 2541.6 Except as provided in [new section], the PSH Provider may assist the PSH program participant to move to an alternate unit as long as the PSH program participant is able to ensure that:
    - (a) Exits the existing lease with the landlord according to the terms of the lease **or the law** or receives the landlord's written approval to exit the lease**, with assistance provided as necessary by the Program**
    - (b) Rent Reasonableness standard **established by the District of Columbia Housing Authority** ~~Department of Housing and Urban Development or the appropriate rent reasonableness standard as established in the PSH grant agreement or by Department policy, as applicable for their household size~~
        - *(This language should mirror the Rent Reasonableness standard in 2541.1)*
    - (c)[no change]
    - (d) [no change]
    - (e) Has the ability to provide for the application fee and any required security deposit, any other initiation fee, and any costs associated with moving without additional assistance from the PSH program**. The PSH program shall assist the participant in locating community security deposit resources and may provide funds for security deposit, application fee, and moving expenses if such funding is available.**
- **New section: The PSH Provider shall assist the PSH program participant to move to an alternate unit, including by providing security deposit, application fee, moving expense, and lease termination fees as necessary, when:**
        - **(a)The participant needs to move as a reasonable accommodation;**
        - **(b)The participant needs to move as a result of domestic violence; or**
        - **(c)The unit has substantial housing code violations which adversely impact the health or safety of the participant's household, which the landlord fails to address after receiving notice of the housing code violation.**
    - **The requirements of 2541.6 (a), (b), (c) and (d) shall not apply to these moves.**

Finally, it is unclear what Section 2541.7 is referring to in defining "good cause." If the intent of this section is to define "good cause" for refusing to meet with a Provider's representative three times to identify an appropriate unit (2541.3(b), the only place in 2541 where the phrase "good cause" appears) then these definitions seem an extremely high burden – while hospitalization would be a good cause to miss such an appointment, much more everyday occurrences that do not rise to the level of "crisis," such as transportation that fell through, should be understood to be good cause, especially when the consequence for those most in need of housing could be loss of PSH assistance. It is further unclear if that is what this section is intended to refer to as it appears to be copied from an earlier Section regarding shelter and refers to "shelter placement" several times. We recommend that 2541.7 be stricken entirely as unnecessary and confusing.

Missing Sections of Regulations

Targeted Affordable Housing (TAH)

While participation in the program is governed by the statute and regulations for either the Housing Choice Voucher Program or the Local Rent Supplement Program, DHS is responsible

for determining which households are referred to the DC Housing Authority to receive TAH. There are no DHS regulations on TAH at this time, meaning that the agency is in violation of the Administrative Procedure Act each time it determines whether a client is or is not eligible for or prioritized for a referral to TAH without properly promulgated rules subject to notice and comment.

The continued lack of published regulations for the Targeted Affordable Housing Program, as well as clear guidance on how clients are transitioned from RRH to Targeted Affordable Housing or Permanent Supportive Housing leaves huge uncertainty about how these programs are administered and leaves clients with many questions and few protections as they transition programs. Regulations should be promulgated to address these areas. Regulations for RRH must also be clear about how clients are screened for eligibility for TAH so that those who are eligible are appropriately and promptly linked to this program.

If the Department no longer plans to implement a Targeted Affordable Housing Program, then they should be explicit about this in discussions with advocates and policy makers. If the intent of Section 2557 of the regulations, Special Eligibility Criteria for Referral to the Local Rent Supplement Program – Eligibility Requirements, is to serve as rules for the Targeted Affordable Housing Program, as noted otherwise in our comments, that section is insufficient for this purpose, and the current title of the section obscures its purpose.

Homeless Prevention Program (HPP)

There are no regulations governing the Homeless Prevention Program, meaning that the agency is in violation of the Administrative Procedure Act each time it determines whether a client is or is not eligible for or prioritized for a referral to HPP without properly promulgated rules subject to notice and comment. (The only regulations ever promulgated were for the federal "HPRP" program, which is not the same as HPP.) Similarly, rules must be published concerning the amount and type of assistance provided by HPP and any grounds for ending such assistance. It would also be helpful to have rules on case management standards. Without rules describing how the program decides who is eligible for utility assistance, a gift card, a rapid re-housing referral or just case management services, and criteria such as qualifications for the professionals who provide mediation services and how to determine whether mediation services are even appropriate, it leaves the agency open to claims of discrimination or unfairness when clients receive disparate types and amounts of services.

Medical Respite

Despite significant changes to the HSRA creating a legal structure for expanding medical respite services, the agency did not publish any regulations to further explain or clarify the program's requirement or procedures.

Client Right to Access Shelter Free of Unnecessary Barriers

We had recommended the addition to the HSRA clarifying that clients have the right to: "A shelter application and entry process that is not unduly burdensome to clients, recognizes the challenges that clients have providing documentation at entry and allows clients to undergo the process protected from inclement weather, including precipitation or severe weather."

Provider Standards: Case Management

While there are section in the regulations on family case management (2511), rapid re-housing case management (2532), and permanent supportive housing case management (2539), we think it would be helpful to have a general provider standard section for case management across programs. We recommended early on that the section at a minimum include the following:

"Providers of case management services shall:

(1) Provide clients with appropriate and accessible case management services based on the presenting needs of the client;

(2) Assist clients with accessing available resources in the community, including, but not limited to, food, clothing, employment, job-training, child-care, utility assistance, financial assistance, and permanent housing, as appropriate;

(3) Require case managers to stay up to date on available resources in the community;

(4) Assign case managers to clients in a timely manner;

(5) Assign a client to a different case manager in a timely manner, as available, upon the client's request;

(6) Notify clients of a change of case managers in a timely manner;

(7) Offer case management services during hours that are convenient for clients, including for clients who are employed;

(8) Require case managers to respond to clients in a timely manner;

(9) Employ a sufficient number of case managers such that all clients have meaningful access to quality case management services."

Determining Access to Safe Housing[1]

Is the family applying for emergency shelter stating that it has nowhere safe to go tonight?

If yes, continue.

If no, STOP. Issue shelter ineligibility notice and refer to homeless prevention services, if appropriate.

Is family seeking shelter for reasons of domestic violence, sexual assault, or human trafficking?

If yes, STOP. Family is eligible. Issue shelter eligibility notice and arrange placement.

If no, continue.

Has DHS made a determination that family is the owner of or is listed on a lease or occupancy agreement for safe housing?

If yes, continue.

If no, STOP. Family is eligible. Issue eligibility notice and arrange placement.

Critical elements:

1. Current, not past, housing;
2. Written agreement giving the family the right to stay in a particular unit;
3. Family must be able to access housing that night; and
4. Housing must be safe.

Examples:

- DHS has copy of current lease for a unit with applicant's name on it and the housing is safe;
- Family has stayed on someone's couch and DHS has a written rental or occupancy agreement for that unit with the applicant's name on it and the housing is safe;
- But→ being part of a household with a voucher or Rapid Re-housing does not count unless the applicant is also on a written lease or occupancy agreement for a unit

Remember: DHS cannot require a family to provide a lease or written agreement. DHS must have that proof before it can ask the applicant to provide any additional evidence.

Can family show, with credible evidence, that they *either* cannot access the housing *or* that the housing is not safe?

If yes, STOP. Family is eligible. Issue eligibility notice and arrange placement.

If unsure, place family in Interim Eligibility and continue investigation or request additional documentation.

If no, STOP. Issue shelter ineligibility notice and refer to homeless prevention services, if appropriate.

What is *credible evidence*?

It is not defined in the HSRA, but in abuse and neglect cases: ""Credible evidence" means any evidence that indicates that a child is an abused or neglected child, including the statement of any person worthy of belief." DC Code §4-1301.02(5). Similarly HUD guidelines explicitly state that oral statement by applicants can be sufficient to meet the "credible evidence" standard.

Examples:

- An oral statement by the applicant or any other person that they cannot return to the housing, and an explanation of why that is
- Phone, in-person or written confirmation that the utilities are off, that the household member is not allowed to return, that housing conditions are so severe it is not safe to return, or any other reason why the applicant cannot return, even for the short term

Remember: Requiring applicants to provide documents that are not reasonably in their possession, such as someone else's lease when the applicant is stating that they are not on that lease is far above the "credible evidence" standard and is not allowed under the HSRA.

[1] This flowchart assumes that the family has already been determined to meet DC residency requirements.