

April 21, 2024

District of Columbia Department of Human Services  
64 New York Avenue NE  
6th Floor  
Washington, DC 20002  
Attn: DaiJuan Wade

Dear Ms. Wade and Director Zeilinger,

Thank you for the opportunity to provide comments to the Department of Human Services (Department) on the Family Re-Housing and Stabilization Program (FRSP, more commonly known as Rapid Re-Housing) regulations published in the District of Columbia Register on March 22, 2024.

First, we would like to raise our belief that the Department’s adoption of these regulations as immediately effective emergency regulations at the same time they were published for consideration as final rules is contrary to District law. The DC Administrative Procedures Act only allows regulations to go into immediate effect if “adoption of a rule is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals.”<sup>1</sup> The Rulemaking Handbook and Publications Style Guide published by the Office of Documents and Administrative Issuances describes the standard as “very strict.”<sup>2</sup> The Department states that the emergency regulations and the “critical policy changes” they put in place are necessary “for the recommencement of FRSP program exits.”<sup>3</sup> However, that does not meet the District’s standard for emergency rulemaking. Exiting thousands of families from FRSP while severely limiting their options for extension increases the likelihood that those families will experience acute housing insecurity or homelessness, which endangers rather than preserves the health, safety, and well-being of District residents.

Each of our organizations is invested in the regulations governing FRSP because we regularly work with families participating in the program. We know that a one-size-fits-all intervention with an arbitrary time limit on assistance – like the Department’s current FRSP model – does not help most families who enter the program achieve long-term housing stability. That is why we have been advocating for reforms to FRSP for years.<sup>4</sup> Representatives from our

---

<sup>1</sup> D.C. Code § 2-505(c).

<sup>2</sup> District of Columbia Office of Documents and Administrative Issuance, *Rulemaking Handbook and Publications Style Manual* (2023), p. 13, available at: <https://www.dcregs.dc.gov/>.

<sup>3</sup> Department of Human Services, Notice of Emergency and Proposed Rulemaking, 71 D.C. Reg. 3298 (March 22, 2024), at 3299.

<sup>4</sup> See Over 50 Organizations and Experts Demand That the DC Council Reform Rapid Re-Housing, Washington Legal Clinic for the Homeless (April 7, 2022), <https://www.legalclinic.org/over-50-organizations-and-experts->

organizations were also members of the FRSP Task Force convened by the Department to recommend changes to the program that would improve the experiences and outcomes of participants.<sup>5</sup> We sincerely appreciate that the proposed regulations implement the recommendation to cap participant rent contributions at 30% of household income.<sup>6</sup> This brings FRSP in line with federal guidelines and other housing programs and will ensure that rent is affordable to each family.<sup>7</sup> Unfortunately, the rest of the proposed regulations run counter to the recommendations made by the FRSP Task Force and disregard the thoughtful feedback and suggestions for reform previously provided by stakeholders – including program participants.

We are deeply concerned with the Department’s “vision” for the future of FRSP set forth in the proposed regulations. The regulations further entrench many of the worst aspects of FRSP. For example, they:

- harden the program’s arbitrary time limit to 12 months for most participants with an absolute maximum of 18 months regardless of their ability to maintain housing;
- implement case management that is voluntary in name only because participants face negative consequences if they opt out; and
- make it more difficult for families to receive an extension in the program.

These changes ignore the reality that due to structural poverty and the District’s systemic lack of affordable housing, most of the families placed in FRSP simply cannot grow their income enough to afford market rent in 12 to 18 months. Under the proposed regulations thousands of families will lose their rental assistance without being connected to any path to long-term housing stability. This is unfair, unjust, and will lead to increased evictions and homelessness in the District with disproportionate harm to Black families who make up 97% of the participants in FRSP.<sup>8</sup>

We would like to highlight the following major substantive issues with the changes the proposed regulations make to the operation of FRSP:

---

[demand-that-the-dc-council-reform-rapid-re-housing/](#); Letter to DC Council Members in Support of the Rapid Re-Housing Reform Amendment Act of 2022, October 20, 2022 (on file with Children’s Law Center).

<sup>5</sup> See *Report to the Director of DC Department of Human Services from the Family Re-housing and Stabilization Program (FRSP) Task Force: Recommendations to Improve Quality, Customer Outcomes, Effectiveness, Efficiency, and Accountability*, Barbara Poppe and Associates (January 15, 2020), <https://dhs.dc.gov/sites/default/files/dc/sites/dhs/publication/attachments/FRSP%20Task%20Force%20Final%20Report%2001152020.pdf>.

<sup>6</sup> Department of Human Services, Notice of Emergency and Proposed Rulemaking, 71 D.C. Reg. 3298 (March 22, 2024), at 3310, § 7808.2.

<sup>7</sup> See Congressional Research Service, *Income Eligibility in HUD Rental Assistance Programs: Frequently Asked Questions*, R42734 Version 12 (Updated March 28, 2017), <https://crsreports.congress.gov/product/pdf/r/r42734/12#:~:text=Once%20a%20family%20is%20determined%20eligible%20for%20HUD,certain%20medical%20costs%2C%20and%20certain%20child%20care%20costs>.

<sup>8</sup> See Amber Harding, Washington Legal Clinic for the Homeless Testimony Before the Committee on Human Services (October 20, 2022), <https://www.legalclinic.org/wp-content/uploads/2022/10/Rapid-Re-housing-Reform-Amendment-Act-testimony-final-10-20-22.pdf>.

## **Voluntary Case Management**

National best practices indicate that case managers should “actively engage participants in voluntary case management and service participation.”<sup>9</sup> Voluntary case management services are a hallmark both of rapid re-housing and, more generally, Housing First programs: “Housing First does not mandate participation in services either before obtaining housing or in order to retain housing.”<sup>10</sup> Voluntary case management services mean client-directed, individualized services without punishment for exercising those choices. Rapid Re-Housing (FRSP and Rapid Re-Housing for individuals) is the only publicly funded housing program in DC that has a mandatory services model. To be clear, the system contemplated by the proposed regulations —allowing clients to “opt out” of case management only within a narrow time band, only allowing clients to choose all or no services (nothing in between), and prohibiting clients who opt out from requesting an extension of rental assistance beyond 12 months—is **not** a voluntary services model. We recommend that the agency create a real voluntary, client-driven case management model, without punitive measures taken for exercising those choices.

## **Financial Incentives**

We recommend striking the new section on Financial Incentives, § 7811, and having greater community input about the role of financial incentives, when they are and are not appropriate, and whether they are at all appropriate in a system where the agency is stating it has no more money to extend critical rental assistance for thousands of families in the program. Our position is that the agency should prioritize extending rental subsidies over developing a new way to spend FRSP dollars in what the agency states is a tight budget.

We encourage the agency to think through, and collect community input on, what impact financial incentives have on increasing the type of actions the agency is hoping to see more of. Our experience is that families are naturally motivated to increase their income and to lease up with permanent vouchers, and if they struggle to do those things at the speed the agency wants to see it done, it is rarely due to lack of motivation or incentives.

## **Extension Criteria**

Despite the statement in the Notice of Emergency and Proposed Rulemaking that the proposed rules “implement the Family Re-Housing [and] Stabilization [Program] Protection

---

<sup>9</sup> Anna Blasco and Kay Moshier McDivitt, Rapid Re-Housing 101, National Alliance to End Homelessness (2016), Slide 49, <https://endhomelessness.org/wp-content/uploads/2016/08/2016-national-slides-rrh-101.pdf>.

<sup>10</sup> Housing First, National Alliance to End Homelessness (March 20, 2022), <https://endhomelessness.org/resource/housing-first/#:~:text=Housing%20First%20does%20not%20mandate%20participation%20in%20services,or%20conditions%20beyond%20those%20of%20a%20typical%20renter.>

Temporary Amendment Act of 2023” (hereafter the Act),<sup>11</sup> § 7812 directly conflicts with the Act and creates a stricter benefits cliff than the program has ever had before.

First, the Act does not allow for a strict time limit of 12 or even 18 months with no extensions, unless the program has run out of funding. The Act explicitly contemplates extensions past 12 months: “[B]eyond 12 months, the Department or Department’s designee shall: 1) Consider the totality of the circumstances; and (2) Grant extensions of time in increments not greater than 6 months, with regular formal reviews every 3 months to ensure that participants are given the support necessary to exit FRSP with stable housing.”<sup>12</sup> Contrary to the Act, § 7812.1 sets the maximum length of assistance at 12 months, with only one 6-month extension possible.

Second, the Act requires extensions to be provided in a broader range of circumstances, when: “The participant has made a good faith effort towards the achievement of goals set forth in an individualized plan with the aim of a targeted progression towards exit from the supports of FRSP, as observed by the service provider at consistent intervals, but cannot yet sustain housing stability independently of FRSP.”<sup>13</sup> The Act does not contemplate restricting the right to request an extension to only those who have not opted out of case management (§§7810.6 and 7812.5(e)) or any of the other requirements for extensions listed in § 7812.5. Requiring participants to have met a long list of specific requirements, without exception or nuance, runs counter to the intent of a “totality of the circumstances” standard.

## **Program Exit**

The Council added D.C. Code § 4-754.36b, “Program exits,” to the Homeless Services Reform Act (HSRA) in 2017.<sup>14</sup> The statute allows for a provider to exit a client from a housing program, as opposed to a termination, when three circumstances have been met: 1) the program is time-limited and the time period has run; 2) the client cannot be recertified in the program; and 3) the client has been with the provider for “substantially all” of the client’s time in the program.

These regulations conflate extension with recertification counter to the plain language of the HSRA. Under the primary canon of statutory interpretation, we first look to the plain meaning of the words in the statute. Recertification is a typical and common phrase used in housing and public benefit programs.<sup>15</sup> The term “recertify” in housing programs means to demonstrate

---

<sup>11</sup> Department of Human Services, Notice of Emergency and Proposed Rulemaking, 71 D.C. Reg. 3298 (March 22, 2024), at 3298 (referencing D.C. Law 25-75, Family Re-Housing Stabilization Protection Temporary Amendment Act of 2023, <https://code.dccouncil.gov/us/dc/council/laws/25-75>).

<sup>12</sup> D.C. Law 25-75, Family Re-Housing Stabilization Protection Temporary Amendment Act of 2023, Sec. 2(b), <https://code.dccouncil.gov/us/dc/council/laws/25-75>.

<sup>13</sup> *Id.*

<sup>14</sup> D.C. Code § 4-754.36b; *See* D.C. Act 22-229, Homeless Services Reform Amendment Act of 2017, Sec. 2, [https://lims.dccouncil.gov/downloads/LIMS/38138/Signed\\_Act/B22-0293-SignedAct.pdf?Id=106317](https://lims.dccouncil.gov/downloads/LIMS/38138/Signed_Act/B22-0293-SignedAct.pdf?Id=106317).

<sup>15</sup> *See e.g.* Recertification for Benefits, Department of Human Services, <https://dhs.dc.gov/service/recertification-benefits>.

continued eligibility for the program, usually certifying that one is still income-eligible for assistance, or showing any changes to household composition or other factors that could impact benefit levels. At the time of the Program Exit amendment, the agency used recertification in many of its public benefit and housing programs but did not at the time have a recertification standard for FRSP. The FRSP regulations did allow for extension requests in 2017 (under the same standard as in the Act). If the D.C. Council in 2017 had meant for recertification to mean extension, they would have used the word extension. Instead, they used a word that refers to a different but common process used by the agency in public benefits and housing programs.

In addition to the overarching concerns detailed above, attached please find a document with detailed comments broken down by section. Ultimately, we would like to see the Department conduct a more thorough review of the proposed regulations to determine what changes should be made to avoid exclusion or premature exit of families that should be eligible for rental assistance through FRSP or a longer-term housing support. We recommend meeting with current FRSP participants and unhoused and low-income District residents to grasp a better understanding of their unique circumstances and the inherent limitations of both case management and the ability to increase rent within a short period of time.

We welcome the opportunity to meet with the Department to discuss how to modify the proposed regulations to successfully improve outcomes for our mutual clients. Please contact Makenna Osborn at [mosborn@childrenslawcenter.org](mailto:mosborn@childrenslawcenter.org) or (202) 978-2282 to schedule a meeting or with any questions relating to these comments. Thank you for your consideration.

Sincerely,

Amber W. Harding  
Brittany Ruffin  
Joshua Drumming  
Charisse Lue  
**Washington Legal Clinic for the Homeless**

Jen Jenkins  
Rais Akbar  
**Legal Aid DC**

Makenna Osborn  
**Children's Law Center**

**Comments on the Department of Human Services Notice of Emergency and Proposed Rulemaking to Amend Chapter 78, Family Re-Housing and Stabilization Program (Published in 71 D.C. Reg. 3298 (March 22, 2024))**

**Submitted by: Washington Legal Clinic for the Homeless, Legal Aid DC, and Children’s Law Center**

---

**CHAPTER 78      FAMILY RE-HOUSING AND STABILIZATION PROGRAM**

**7801   APPLICATION PROCESS**

7801.6 - § 7801.6 requires applicants to provide more documentation than is necessary to establish the type of assistance a family should receive. Also, some of the documentation may be unnecessarily burdensome – for example, documentation of employment history or rental history – if it is required for families to simply apply for the program. This runs counter to the Department’s goal of reducing onerous documentation requirements and increasing the speed of shelter exits. While we appreciate that § 7801.7 allows applicants to sign a declaration stating the requested information in lieu of providing the required documentation, the Department should consider amending the regulations to make provision of the listed documentation suggested, instead of required, in the first place.

7801.8 - § 7801.8 requires that an applicant document multiple factors that relate to their ability to pay 30% of their income in rent. It is unclear why this is a requirement, and why employment history or potential is relevant. The benefit of transitioning to a tenant rent standard of 30% of income is that that level is affordable no matter the income amount, if calculated fairly and accurately.

**7803   ELIGIBILITY CRITERIA**

7803.1 - In § 7803.1(e), the proposed regulations add a new requirement that applicants be “referred by an approved referral source” as defined in § 7803.2 in order to “qualify to enroll into FRSP.” This is counter to § 7801.3 of the regulations, which states that the Eligibility Provider “shall accept applications from each applicant **who requests** [emphasis added] or is referred for FRSP assistance” and could unnecessarily prevent eligible applicants from accessing the program. It is also counter to the Homeless Services Reform Act (HRSA), which requires that all clients in the District’s Continuum of Care have open access to all “services for which they **may** [emphasis added] be eligible” (See D.C. Code § 4-754.32(8)). The Department should strive to uphold the principle that government-run programs should be as open and accessible as possible by ensuring anyone can apply directly to FRSP. The Department and its providers can always deny applications

from families who do not meet the set eligibility criteria for the program but should not set barriers to applying in the first place.

7803.2 - As detailed in the above comment to § 7803.1, it is unclear why the Department has added this additional requirement and we are concerned it will serve as an unnecessary administrative barrier to eligible families in need of housing assistance from being able to submit applications for FRSP.

7803.6 - The proposed regulations remove the requirement that an Eligibility Provider “shall give to the applicant, personally or through an authorized representative, a written Notice of Eligibility Determination” when they have been deemed eligible for FRSP assistance. The proposed regulations would only require that Eligibility Providers enter a favorable written Notice of Eligibility Determination in an applicant’s case file and provide a copy to the applicant upon request. To comply with the HSRA (and due process protections), maintain transparency in the operation of FRSP, and ensure that applicants and their authorized representatives have complete and accurate information about formal determinations regarding an applicant, the regulations should continue requiring the proactive sharing of favorable written Notices of Eligibility Determination for FRSP applicants (*See* version of §§ 7803.45 and 4-754.33(b) that preceded these emergency and proposed regulations).

7803.8 - The proposed regulations remove the requirement that a written Notice of Denial of Eligibility shall state “[t]hat the applicant is being referred to other programs and services that they may qualify for within the Continuum of Care” (*See* version of § 7803.6(e) that preceded these emergency and proposed regulations). At a minimum, the Department should maintain a requirement that any Notice of Denial of Eligibility for FRSP assistance include a statement of what, if any, other programs or services within the Continuum of Care an applicant is being referred to or may qualify for. This is valuable information for applicants, their authorized representatives, and future providers the applicant may work with and ensures that all parties have a clear written record of any referrals an applicant has been told will be made or other services they should consider.

#### **7804 PRIORITY DETERMINATION**

7804.3 - We recommend adding the following clarification to § 7804.3(b) after “placement”: “with a longer length of time being a reason to increase prioritization.”

#### **7806 RE-HOUSING AND STABILIZATION ASSISTANCE OVERVIEW**

7806.1 - The proposed regulations remove the following language from the description of FRSP assistance:

FRSP assistance shall be “needs-based,” meaning that the assistance provided shall be the necessary amount, as determined by the Eligibility Provider and the family, needed for the FRSP applicant to obtain housing and mitigate the likelihood of them returning to homelessness.

We believe this is an important aspect of FRSP assistance and necessary for the program to succeed in its stated goal of supporting participants to “achieve stability in permanent housing” and should be restored to the regulations.

7806.2 - The wording of § 7806.2 suggests that the listed supports shall be provided if “appropriate” for the participant. However, assessment for longer-term housing assistance programs should be mandatory and automatic for all participants. Therefore, we recommend clarifying that § 7806.2(c) shall be provided to all FRSP participants. Additionally, as this subsection is a list of “any or all” appropriate supports that may be provided for FRSP assistance, § 7806.2(e) should be updated to conform with § 7808.7. The updated language should read “Financial assistance in the form of a monthly rental subsidy, **the cost of a security deposit, move-in assistance, and utility assistance . . .**” (new language in bold).

7806.4 - We are concerned that the new regulations place stricter requirements on participants to increase their income, and tie progress toward that goal to a participant’s ability to request and receive and extension of FRSP assistance, and yet also reduce the frequency with which Service Providers are required to conduct formal reviews of a participant’s progress and needs (changing from four reviews at 3, 6, 9, and 12 months to three reviews at 3, 7, and 10 months) It is not fair to tighten progress requirements for participants while also decreasing the opportunities for Service Providers and participants to assess what may be needed for participants to make that progress.

## **7807 UNIT SELECTION**

7807.1 - Under § 7807.1, participation in FRSP is conditioned upon a family’s ability to find and select “a housing unit that passes the FRSP required housing inspection.” However, the regulations do not provide any details on the standards used to determine if a unit passes or fails the inspection. For years families in FRSP have experienced serious housing code violations in units that passed the required inspection, even immediately after moving in. The regulations should include the basic standards the Department or its designees shall use to determine if a unit is habitable. We would be happy to provide further detail on inspection standards the Department could adopt.

7807.13 - The new language in § 7807.13 is overly proscriptive and counter to the well-being of FRSP participants. The new language unnecessarily removes any future discretion from the Department and FRSP Providers to extend a participant’s length of rental assistance when they must relocate during their tenancy period due to conditions out of the participant’s control – including substantial housing code violations, which oftentimes represent a failure of the



Department or its designees conducting the required pre-lease up inspections to identify and require satisfactory correction of housing code violations during the inspection before a family is allowed to move in. When a family relocates during their time in FRSP, they do not have the benefit of at least a year of housing stability that the program is supposed to provide to enable the growth of household income. Under the proposed regulations, a family could be denied an extension in the program due to not growing their income within 12 months, so it is doubly punitive to also prohibit them from possibly receiving an adjustment to their assistance “clock” (their allotted 12 months) if they have had to relocate (*See* § 7812.10 of proposed regulations (“An FRSP participant shall not qualify for an extension . . . unless they have earned the equivalent of at least an average of [30] hours per week at or above the minimum wage . . . for the past [4] months.”)).

Additionally, we are concerned that in practice, this new regulation will severely limit a family’s ability to successfully relocate to safer housing when needed. In our experience, landlords are highly unlikely to agree to lease to an FRSP participant when they have no assurance of at least 12 months of rent (through rental assistance). If the Department is not prepared to include a right to a new period of assistance if a family has to relocate in its FRSP regulations – as advocates have suggested – it can choose not to do so but there is no need for the Department to prohibit any possibility of extending a family’s time in the program if they have had to relocate.

## **7808 RENTAL ASSISTANCE**

7808.2 - We strongly support the change in § 7808.2 to cap a participant household’s contribution toward housing costs at 30% of their adjusted annual income. This is in line with the affordability standards set by other housing programs and less arbitrary and burdensome than the previous 40-60% range for contribution (*See* Office of the Inspector General, Evaluation of the District of Columbia Family Re-Housing and Stabilization Program, OIG Final Report No. 22-I-01JA (January 2022), p. 8). We urge the Department to maintain this change in the final regulations.

Additionally, we recommend that the regulations specify that for the purposes of calculating tenant rent contribution, the Department adopts the definition of “adjusted annual income” used by the federal Department of Housing and Urban Development (HUD) in 24 CFR 5.611. This definition states that the adjusted annual income is calculated by subtracting the following income adjustments from total annual income:

- Dependent deduction
- Childcare deduction
- Disabled assistance deduction
- Medical expenses deduction
- Elderly/disabled household deduction.

7808.3 - We believe that § 7808.3 should be amended to clarify a tenant's rights regarding rental payments, including that tenants shall not be responsible for the provider's portion, as guaranteed in the HRSA (D.C. Code § 4-754.12a(7)). The amended subsection should read (new language in bold):

The FRSP participant must pay the monthly contribution amount for the duration of the FRSP assistance period, **unless there is good cause for non-payment, including, but not limited to, the participant withholding rent due to housing code violations in the unit which the landlord has failed to address after receiving notice of the violations. The FRSP participant shall not be responsible for the provider's portion of the housing subsidy while the client is in the program.**

## **7809 CASE MANAGEMENT SERVICES**

7809.3 - As written, the proposed regulations could result in participants who opt out of case management services before the 90-day deadline not being assessed for eligibility for longer-term housing assistance programs. The Department should amend the regulations to clearly require that *all* FRSP participants shall be assessed for longer-term housing assistance eligibility within the first 90 days of their FRSP assistance period.

## **7810 OPTING OUT OF CASE MANAGEMENT**

7810.1 - Per § 7810.1, the "FRSP participant may opt out of receiving case management services within the first ninety (90) days of the FRSP assistance period." First, 90 days is an insufficient and arbitrary amount of time to opt out of case management. Clients' needs may shift over the course of the assistance period, and the quality of services may also shift. By constraining opt-out ability to 90 days, these regulations refuse to contemplate any potential changes in case management quality or general need/desire for case management. Second, a client-driven service model allows clients to choose the amount and type of services that work for them at any given time. This model requires that clients choose either no services or full case management services. Clients should be able to choose the level and type of services throughout the duration of the subsidy. In fact, clients have the statutory right to "participate in developing the client's service or case management plan, assess progress toward the goals of the plan, and review or update the plan on a regular basis..." (D.C. Code § 4-754.11(12)).

7810.2 - Per § 7810.2, the Department shall deny an FRSP participant's request to opt out of case management services if there are significant concerns about the safety of an individual in the household. While we support the agency and/or provider's efforts to ensure the safety of participants, here we believe the agency is conflating the ability of the provider to check in with the client and the agreement of the client to participate in case management services. Ongoing

participation in case management services does not ensure safety, nor does opting out increase risks.

7810.4 - Per § 7810.4, “If the Department grants the participant’s request to opt out of case management services, then the Service Provider may transfer the participant to another FRSP Service Provider that more appropriately meets the participant’s needs, as permitted under Section 20(a)(2) of the Act (D.C. Official Code § 4-754.34(a)(2)).” Although it is difficult to tell, it is possible that this subsection is meant to facilitate a transfer to a non-case management FRSP provider but do not allow for transfer to another provider for more appropriate case management services if a participant is not satisfied with their assigned provider but does not want to opt out of services entirely. Participants should be given a non-time limited opportunity to transfer to a different service provider if they feel their needs are not being met by their current provider.

7810.5 - § 7810.5 precludes an FRSP participant who has opted out of case management from receiving an updated assessment. This language effectively shuts the door on case management, no matter what changing circumstances or new needs arise. If case management is truly optional, FRSP participants must have the ability to freely revoke and reinstate services. In addition, if this assessment includes updated housing assessments, it will further impair the stated objectives of the program—i.e., to ensure long-term housing stability and prevent a return to homelessness. This provision may also violate the HSRA in that “[f]amilies who are eligible for services within the Continuum of Care shall receive appropriate referrals based on the District’s centralized or coordinated assessment system protocol...” (D.C. Code § 4-753.02(C)(2)).

7810.6 - Per § 7810.6, once an FRSP participant has opted out of case management, DHS claims it can no longer evaluate their progress on their individual plan, thus removing the participant’s ability to be extended in the program. First, a participant’s progress on their plan can be assessed by the client, objective measures, and by the provider to whom a client who opts out of case management is transferred. Second, progress on a client’s plan is not, and should not be, the only reason to grant an extension of housing benefits. Third, extensions should bear no relation to opt-outs. If a participant chooses to opt out of case management, they should not be punished for that choice by getting less housing assistance. For a decision that actually saves the District approximately thousands of dollars per year per family, it would seem prudent not to create such harsh disincentives. Considering the lack of supporting data for the assumption that case management services in rapid re-housing actually help clients “succeed” in increasing income enough to afford market rent, we are concerned that the decision to tie case management to longer assistance periods is based on myths and stereotypes about clients, rather than facts.

7810.7 - While § 7810.7 sets a bare minimum for housing support services, again we recommend that the agency adopt a more flexible voluntary services model that allows clients to decide the type and frequency of services to request.

7810.8 - §§ 7810.8 and .9 reiterate a mandatory service model where housing assistance is conditioned on participation in services. This runs counter to national and local best practices and rapid re-housing design. We again encourage the agency to adopt a true voluntary services model, consistent with its commitment to Housing First.

## **7811 FINANCIAL INCENTIVES**

7811.3 - § 7811.3(a) allows a FRSP participant to receive \$250 if they have “signed a lease in their current housing unit or in a new housing unit supported by a long-term housing voucher, including PSH, TAH, District Child and Family Services Agency (CFSA) Family Unification, District Department of Behavioral Health (DBH), or Section 8, within thirty (30) calendar days of approval for the voucher.” In the last two oversight seasons, DHS has testified that the slow lease-up process is a result of a lack of case managers. We know from our clients that slow lease-ups are caused by a wide range of external factors, including agency response, landlord denials, poor or no case management, and lack of assistance searching for housing or paying application fees. These are the problems the agency should be investing in solving if it wants to speed up the leasing process.

Per § 7811.3(b), “if the [a] participant’s household wages earned and unearned, are enough to afford rent at fifty percent (50%) Rent Burden or less within six (6) months of being in the program, the participant is eligible to receive up to two thousand dollars (\$2,000). If this goal is reached within twelve (12) months of being in the program, the participant is eligible to receive up to one thousand dollars (\$1,000).” While this is undoubtedly written into the regulations to incentivize FRSP participants to rapidly increase their income, families are intrinsically motivated to do so, both to be able to afford basic items and because they know this program will not support them for very long. Nevertheless, the agency’s own data shows that very few people are able to increase their income substantially while in the program. Those who do are the lucky few and rewarding them for that luck seems like less of a priority than better supporting the people who, through no lack of effort or fault of their own, have not been able to increase their income. Furthermore, this provision does not take into account differences in case management quality between different participants’ case managers (some case managers will do quite a lot to aid their clients, while others will do far less) or macro-level economic shifts; if the employment economy, overall, is suffering, making it substantially more difficult to attain a job or demand higher wages at a job, this provision does not accommodate for or take into account such factors.

Per § 7811.3(c), “if the participant has moved in or is planning to move in with family or friends and has a written commitment that they can live at that location for at least a year within six (6) months of being in the program, the participant is eligible to receive up to two thousand dollars (\$2,000). If this goal is reached within twelve (12) months of being in the program, the participant is eligible to receive up to one thousand dollars (\$1,000).” We do not believe the District should be paying people to leave its programs, particularly without any protections in place to prevent

exploitation or abuse of FRSP families. It is difficult to imagine what placements people would break their lease for that would be an improvement in their circumstances. (This provision feels akin to providing a bus ticket to send homeless people, or migrants for that matter, to another jurisdiction.)

Participants' residence in another's home, most likely with no legal right to remain, makes the placement less stable than FRSP. The host may lose their home; another individual may move in, pushing the FRSP participant out; an acrimonious relationship may form between the FRSP participant and their host; or the host may simply change their mind. The regulations are silent as to what recourse is available to a FRSP participant who chooses to leave their subsidized placement for this financial incentive, only to lose their new placement less than a year after receiving it, or what future penalties may be levied on a participant who leaves.

We have had this public policy debate before, when the agency proposed denying people shelter under interim eligibility if they had somewhere else to go in the community. The Council concluded that the risks to clients were too high without safeguards, and the final language in the HSRA required that the community placement be safe, that the placement not jeopardize another person's tenancy, and that the client have a right to reinstatement in shelter if the placement fell through (*See* D.C. Code § 4-753.02(c-1)(6-9)).

Per § 7811.3(d), please see our comments on both (b) and (c), combined.

## **7812 EXTENSION CRITERIA**

7812.1 – While the Family Re-Housing [and] Stabilization [Program] Protection Temporary Amendment Act of 2023 (the Act), as well as prior regulations, condition the right to request extensions on when “[t]here is funding available within FRSP,” the proposed regulations further condition the right on when the agency has enough funding available for “FRSP extensions” (*See* §§ 7812.1 and .2 of proposed regulations). There is not a separate line item in the budget for FRSP extensions. Either FRSP funding is available, or it is not. Allowing the agency to decide whether or not it wants to spend its money on extensions rather than new entries into FRSP or financial incentives for participants most likely to “succeed” without further assistance contravenes the intent of the Act – to allow extensions at all times unless to do so would implicate anti-deficiency concerns. To that end, we also note that a notice in the DC Register, while helpful to inform the public of the agency's unwillingness to further extend assistance to participants, will not relieve the agency from its obligation to provide evidence of its lack of funding when challenged by participants in court.

We disagree, as does a wide coalition of advocates, community members, and providers, with the agency's movement towards an even steeper, more harmful benefits cliff in rapid re-housing. While the practice under the Act and prior regulations was to deny many extension requests (already a harmful practice) it is puzzling to see the agency issue regulations that refuse to consider

any possible scenario – the birth of a child, an education opportunity, a serious illness or disability, or just the fact that 97% of families exited for a time limit cannot afford the rent on their own – where an extension beyond 18 months might be warranted. These proposed (and emergency) regulations remove all discretion from the agency and providers that allowed them to make humane decisions in the face of a crisis, or to prevent a return to homelessness.

7812.7 - We support § 7812.7 but note that the language should be added as a defense to program exits or terminations. The “may” in the last sentence should be a “shall” because otherwise this protection is meaningless – if the rental assistance is cut off before the transition occurs, the client will be in rental arrears.

7812.9 and 7812.10 - We believe that §§ 7812.9 (“the totality of circumstances shall also include the participant’s progress toward attaining employment income....”) and .10 (“an FRSP participant shall not qualify for an extension of FRSP assistance beyond twelve (12) months unless they have earned the equivalent of at least an average of thirty (30) hours per week at or above the minimum wage of the District for the past four (4) months”) contradict the extension standard in the Act; punish FRSP participants who are most in need of the subsidy and who may have received inadequate case management assistance thus far; and potentially violate the source of income discrimination prohibition in the D.C. Human Rights Act (*See* D.C. Code § 2-1402.21(a)). While § 7812.11 attempts to mitigate the harm and possible illegality of the prior sections, it is permissive only (“may”) and does not consider all valid reasons why a person might, through no fault of their own, be able to meet the work requirement.

7812.12 - Per § 7812.12, it is ironic to see the agency take the position that FRSP is not intended to be a bridge to long-term affordable housing. Rapid re-housing is defined in the HSRA as a program intended to help clients “achieve stability in permanent housing such that recipients may remain in housing when assistance ends” (D.C. Code § 4-751.01(31A)). A key recommendation of the FRSP Task Force was to transition FRSP into a bridge housing program, particularly for any family eligible for PSH or TAH. Regardless of whether FRSP is an entitlement, it was certainly designed and intended to exist as a key part of a continuum that included available permanent affordable housing. It was never designed to be used to exit every family from shelter with the full knowledge that it would be short-lived and inadequate assistance to meet the pressing housing needs of those families because the same government refused to adequately fund the housing resources actually needed to meet their needs. As the agency well knows, virtually no FRSP participants will be able to afford market rent at the end twelve- or eighteen-month subsidy. This will push many participants back into homelessness.

**7820 PROGRAM TERMINATION**

7820.4 - The only changes appear to be to more closely mirror the language in the HSRA, which is positive. § 7820.4(a) requires there be a “clear statement” of the termination and the effective date, a phrase that was missing in the previous FRSP regulations. This change better comports with notions of due process and prevents any potential obfuscation of the nature of a termination. This allows a terminated FRSP participant to more competently defend themselves from a termination they believe to be unjustified. We see comparable language added to § 7820.4(b), where a “clear and detailed statement” is required for the factual basis of a termination, and § 7820.4(d), where a “clear and complete statement” is required for the explanation of an FRSP participant’s right to appeal.

**7821 PROGRAM EXIT**

7821.2 - § 7812.2 erroneously conflates recertification with extension when in fact they are very different processes. We recommend that an objective recertification standard be added to the Program Exit section that is not duplicative of the extension process.

7821.3 - Similarly, § 7821.3 does not properly interpret the plain language of the HSRA section on Program Exits. We do not agree that the term “substantially all” equates to 67%. While there is no clear calculation of what “substantially all” means as a percentage, in the corporate context it has been found to be above 85% and in the tax context, above 80% (*See e.g.* Best Practices: How Do We Apply the “Substantially All” Tests?, MASSIE R&D Tax Credits (March 7, 2023), <https://massietaxcredits.com/resources/faqs/faq-of-the-week-how-do-we-apply-the-substantially-all-tests/>).

**7822 SUMMARY OF PROVIDER RESPONSIBILITIES**

7822.2 - These provisions assign the Service Provider responsibility for providing case management services. It should be reiterated that the Service Provider is only responsible for such services if the tenant requests them, and that the Service Provider’s other responsibilities continue even if the tenant refuses case management services.

**7823 PARTICIPANT RIGHTS AND RESPONSIBILITIES**

7823.2 - Participants should be able to opt out of case management services at any time. It is not clear what purpose is served by only permitting a request to opt out in the first 90 days.

**7824 FAIR HEARING AND ADMINISTRATIVE REVIEW**

7824.3 - Only 15 days is too meager an amount of time for a participant to request a hearing and still hold the right to a continuation of FRSP services pending a final decision. 30 days would be more appropriate.