June 2, 2023

Via email only

Brenda Donald
Executive Director
c/o Lorry Bonds
District of Columbia Housing Authority
1133 North Capitol Street NE
Washington, DC 20002
publicationcomments@dchousing.org

Re: Comment to Proposed Rulemaking: Admissions and Continued Occupancy Plan

Dear Director Donald:

We are writing to provide our comments on the public housing regulations published on May 5, 2023. Enclosed you will find a document with detailed comments on each section.

Initially, we would like to note that we are disappointed that these complex and important regulations were published without any meaningful input from tenant advocates. In the past, DCHA has welcomed feedback from advocates before publication. This process has worked well and allowed us to work out problems with proposed regulations informally. The result of DCHA's departure from this past practice is that there are many grave legal issues with these regulations.

In addition, these regulations ignore DCHA's existing public housing regulations, which were carefully drafted over time through a process of subject area experts working with DCHA staff to negotiate and craft regulations. While several regulations did need to be revised, there was no reason to completely ignore the existing regulations when revising them.

As described in more detail below, many of the proposed regulations are in conflict with the United States Constitution, Federal statutes and regulations, HUD guidance, and local law, including the Language Access Act of 2004, the Fairness in Renting Amendment Act of 2022, the Fair Criminal Record Screening for Housing Act, The Rental Housing Act, and the D.C. Human Rights Act. These failings will negatively impact tenants and necessarily spawn litigation.

Further, taken as a whole, these regulations create an increasingly punitive and burdensome compliance structure for tenants, making it easier to remove people from the waiting list and harder to remain in public housing once a person has secured housing.

We would still welcome the opportunity to sit down again with representatives from DCHA to discuss our concerns before the regulations are published as final. While we ultimately may disagree on the issues we have raised, our hope is to narrow the points of disagreement and avoid future legal challenges.

We are also concerned about and vehemently disagree with DCHA's decision to publish these regulations as emergency. The D.C. Administrative Procedures Act only allows for regulations to go into effect immediately if "adoption of a rule is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals." D.C. Code 2-505(c). The Rulemaking Handbook and Publications Style Guide published by the D.C. Office of Documents and Administrative Issuances describes the standard as "very strict" and "one that only applies in limited circumstances." It goes on to say that "[o]nly under very rare circumstances is an emergency rule justified when it will change the status quo." A wholesale change in all of the regulations governing public housing certainly does not rise to that standard.

The document that follows will describe our concerns with these regulations, and proposed suggestions, in greater detail. However, we would like to highlight the following issue areas as ones where changes are especially needed:

1. **Policies Related to Persons with Disabilities (Section 6103) -** The comments below reflect a number of instances where the proposed regulations do not comport with local and federal fair housing law, are confusing, and/or unnecessarily burden tenants.

2. **Waiting list (Section 6302) -** DCHA should prioritize robust outreach when re-opening a waiting list and when updating a waiting list. Posting on DCHA's website and a few publications is insufficient. DCHA needs to engage community organizations and shelters; provide ample lead-up prior to re-opening or updating a waiting list; and perhaps most importantly, keep applicants on inactive status, instead of removing them, if they do not respond timely. Most families on the waiting list have been waiting over a decade to receive housing assistance, and this is the least DCHA can do for them. DCHA should follow HUD's Guidance that "Prior to removing an applicant from a waiting list, PHAs are encouraged to contact an unresponsive applicant through all means available, which may include via mail, phone, email, and text message. If possible, PHAs should use a variety of means to contact a family from the waitlist, and give that family a reasonable period of time to respond with their interest so as to not inadvertently remove an applicant who remains interested but may have moved, changed their contact information, or otherwise are difficult to reach."

3. **Guests (Sections 6201.32-6201.33) -** The guest policies in these regulations make it harder for public housing tenants to maintain family and community connections and contain paternalistic requirements. DCHA should eliminate the requirement to notify

DCHA if a guest will be staying more than 3 days, eliminate the prohibition on former residents who have been evicted staying overnight, and eliminate the penalties for someone else using a public housing tenant's address as their own.

4. **Reexaminations (Chapter 68)** – DCHA's proposed policies around reexaminations make the process significantly more burdensome for both tenants and DCHA staff. There is no reason to make these changes, and they should be reversed.
    a. **Frequency** - DCHA currently performs reexamination every 2 or 3 years. These regulations propose to return reexaminations to annually. The regulations also ignore DCHA's approved MTW authority to only require tenants to report income changes if their income increases by $10,000 or more.
    b. **Criminal background check** - DCHA should not be conducting a criminal background check on all family members annually or at each reexamination. HUD neither requires nor recommends annual criminal background checks for public housing residents. HUD's June 10, 2022 Memorandum on the Implementations on the Office of General Counsel's Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions includes this guidance: "Housing Providers should evict for criminal activity only as a last resort (which includes conducting an individualized assessment to determine if eviction is necessary.)" 24 CFR 5.903 has significant limits on disclosing criminal conviction records even within a PHA.
    c. **Zero renters** - DCHA is proposing to make the recertification requirements for families that report zero income more onerous. There is no basis to treat families that report zero income at their annual recertification any differently than other families. Additionally, DCHA's proposal – that these families must recertify every six months until they have income – is impractical. Not only will this place an incredible administrative burden on families that are no doubt contending with countless other intractable public benefits agencies, but it will also put a very real burden on DCHA. DCHA has not been able to timely process recertifications for years now, and yet it proposes that it will process many more with this rule.
    d. **Reexamination interview** - DCHA is proposing to require that all adult family members attend an in-person reexamination interview. This is extremely onerous and may require several people to take off from work, arrange child care, and/or request reasonable accommodations to not attend. DCHA should continue allowing families to recertify without an interview.

5. **Tenant screening (Section 6203) -** The tenant screening procedures are not consistent with HUD guidance or local DC laws, including the Fair Criminal Record Screening for Housing Act, DC Code 42-3501 *et. seq.*, which specifies what types of criminal records

District landlords can consider and the process they must use to consider them. They are also inconsistent with the Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022, which deals with how and when a District landlord can consider factors like credit and prior eviction cases. DCHA must revise these procedures to comply with relevant laws and guidance.

6. **Grievance procedures (Section 7903) -** DCHA has proposed to reduce the time for filing a grievance from 1 year to 30 days. This is a drastic change at a time when DCHA should be building trust with residents, not squandering it by passing regulations that limit and take away rights they currently have. DCHA is also proposing to eliminate the requirement that a Hearing Officer not be a DCHA employee, to allow the Executive Director to affirmatively overturn a hearing decision, and to limit a tenant's ability to view DCHA's evidence before a hearing. Taken together, these proposed changes severely impact the due process rights of public housing tenants and occupants. The current procedures and timelines are working. DCHA should revert to using them.

7. **Language Access (Section 6104)** - DCHA appears to have ignored local law in drafting its Language Access Plan and the new regulations around language access. DCHA must revise these regulations and its entire Language Access Plan so that they are compliant with the Language Access Act of 2004.

8. **Good Cause** - Throughout these regulations, DCHA creates a heightened standard for what constitutes good cause. Good cause has legal meaning. Instead of trying to minimize the circumstances in which good cause exists to only the most serious situations, DCHA should use a standard more similar to what is currently in place in the voucher program for good cause hearings. There, a hearing officer is required to consider if a tenant had good cause to miss a deadline by 1) determining if they got proper notice, and 2) considering a non-exhaustive list of mitigating circumstances.

We welcome the opportunity to discuss these regulations and our proposed changes with you in greater detail. We recognize that DCHA may have reasons for accelerating the adoption of these regulations, but promulgating them in their current form would have serious negative ramifications for public housing residents.

Thank you very much for your consideration.

Sincerely,

Rebecca Lindhurst
Bread for the City

Kathy Zeisel
Makenna Osborn
Children's Law Center

Lyndsay Niles
Disability Rights DC at University Legal Services

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cc:

Chairman Phil Mendelson, Councilmembers Kenyan McDuffie, Robert White, Anita Bonds, Chistina Henderson, Brianne Nadeau, Brooke Pinto, Matthew Frumin, Janeese Lewis George, Zachary Parker, Charles Allen, Vincey Gray, Trayon White.

Board Chair Raymond Skinner, Commissioners Denise Blackson, Leroy Clay III, Rosa Burbridge, James Dickerson, Ronnie Harris, Katrina D. Jones, Melissa Lee, Christopher Murphy, Jennifer Reed, Theresa Silla.

Chapter 61: Fair Housing and Equal Opportunity

6101 NONDISCRIMINATION

6101.1 - DCHA must additionally note in subsection (b) that DCHA is seeking to further fair housing as part of its obligations to comply with the Fair Housing Act ("FHA"), as a recipient of federal funds, and pursuant to 42 U.S.C. §§ 3608(d) and 3608(e)(5). *See also* 24 CFR § 91.225 (a)(1).

6101.1(i) confusingly only references local applicable civil rights and housing laws, but the DC Human Rights Act is separately referenced in 6103.3. At 6101.1(i), the agency could instead say "Any applicable federal or local laws or ordinances, *including the DC Human Rights Act,* D.C. Code 2-1401.01 *et seq., locally administered by the Office of Human Rights*, and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted."

6101.3 - The citation should be for the DC Code, not the DC Office of Human Rights Website. The citation is D.C. Code § 2-1401.01 *et seq.*

6102 NONDISCRIMINATION

6102.3 & 6102.5(f) - The agency must conform its definition of "familial status" to the definition under the FHA because its current definition is inconsistent with federal law, which courts use to interpret the DC Human Rights Act. *See Paralyzed Veterans of Am. v. Ellerbe Becket Architects & Eng'rs, P.D.*, 950 F. Supp. 393, 405 (D.D.C. 1996) ("D.C. law is applied in the same manner as the parallel federal anti discrimination provisions."). Specifically, the agency's current definition leaves out "parent's designee[s]" that may substitute for parents or legal custodians of one or more minor children and instead inserts "people securing custody of children under the age of eighteen," which is different than the relationships the federal fair housing law intends to cover.

DCHA accordingly should define "familial status" as it is defined under the FHA: "[O]ne or more individuals (who have not yet attained the age of 18 years) being domiciled with . . . a parent or another person having legal custody of such . . . individuals, or the parent's designee." 42 U.S.C. § 3602(k).

6102.6 - DCHA should refer to "protected traits" instead of "factors."

6102.7 - DCHA should also explicitly refer to protections under the D.C. Human Rights Act and any other applicable local laws in its policy on providing information to families and owners

about applicable civil rights laws. In particular, DCHA must inform both families and owners about sources of income discrimination protections.

6102.8 - While we recognize DCHA would find it helpful for participants to report allegations of housing discrimination to the agency, it is important to keep in mind that a participant may feel uncomfortable or unsafe directly reporting housing discrimination to DCHA. For that reason, we recommend the agency neither require nor recommend that a participant report incidents of discrimination to the agency. Additionally, DCHA should notify any participant reporting housing discrimination of their right to file a fair housing complaint with the Department of Housing and Urban Development (for FHA, ADA, or Section 504 of the Rehabilitation Act claims) or the DC Office of Human Rights (for DC Human Rights Act claims).

6102.9 - This subsection should be revised to state that DCHA shall advise a family of their right to file a fair housing complaint. It is currently worded to state only that DCHA may advise a family of their right to file a fair housing complaint.

6102.10 - Upon receipt of a housing discrimination complaint, DCHA should give the person making the complaint the option of either having DCHA investigate using the procedure described below or filing a complaint with HUD or OHR as described above. Therefore, the regulation should read: "Upon receipt of a housing discrimination complaint, a DCHA staff member should advise the family that they have two options. DCHA must advise the family that they can file a complaint with HUD and provide the family with a HUD complaint form and instructions for submitting the form. They must also advise the family that the family may choose to have DCHA investigate the complaint instead. If DCHA investigates the complaint, the steps are:" and then the current (a), (b), and (c) should remain.

6102.11 - The agency appears to be treating its Housing Choice Voucher Program ("HCVP") participants differently than public housing residents. DCHA currently makes the notice of a complaint period 20 days for public housing residents while providing for a 10-day notice period for housing providers and HCVP participants as part of its HCVP rules. The agency should change its public housing notice-related policy to ensure the agency sends notice of a discrimination complaint within 10 business days, not 20 business days. The HCVP policy is within 10 business days, and that is a more reasonable timeframe for someone who is experiencing discrimination. Further, DCHA should emphasize in these situations that complainants have the option of filing their complaint with an outside agency if they desire.

New Regulation - A regulation **6102.12** should be added that says, "DCHA will not notify anyone that a complaint has been made against them without permission from the complainant, but DCHA will not investigate a complaint without notifying the person who is alleged to have discriminated."

6103 POLICIES RELATED TO PERSONS WITH DISABILITIES

6103.3 - As the provider of public housing, DCHA has an obligation to not only comply with its fair housing obligations to provide reasonable accommodations, but it must also provide for reasonable modifications. 24 C.F.R. § 100.203. Although DCHA provides examples of reasonable modifications at 6103.7, the definitions section only references reasonable accommodations. Further, Section 504 of the Rehabilitation Act applies here and means that modifications are also free to the tenant, with some limited exceptions. 29 U.S.C. § 794; 24 C.F.R. Part 8. DCHA's policy should make clear that physical changes to the structure are allowable and should be made without cost to the tenant.

6103.7 - Subsection (i) is confusingly worded. The regulation states that an example of an instance where DCHA must accommodate the needs of a person with disabilities is when a live-in aide is "essential to the care of a person with disabilities" and "is not obligated for the support of the person with disabilities[.] "Because a live-in aide does provide support to a person with a disability, the agency should delete the phrase "is not obligated for the support of the person with disabilities."

6103.12 - DCHA currently anticipates applying different definitions of a "disability" depending on the context in which the disability arises. According to the agency, "[t]he regulatory civil rights definition for persons with disabilities" provided in Exhibit 2-1 applies "for the purpose of obtaining a reasonable accommodation" while "the HUD definition of disability" is to be used "for waiting list preferences and income allowances." Inconsistent application of the definition of a "disability" is highly problematic and will generate disparate outcomes for persons with disabilities depending on the nature of their request or issue. We recommend the agency accordingly apply the FHA and DC Human Rights Act definitions of "disability" across all aspects of public housing to avoid running afoul of the agency's fair housing obligations.

The regulatory civil rights definition for persons with a disability is provided under D.C. Code § 2-1401.02 (5A). DCHA should consistently use the same definition of a disability or person with a disability in all aspects of the public housing program and HCVP.

6103.16 - It is not appropriate for DCHA to use the same verification procedures for disability and the need for accommodation as it does for verifying income. See comments to 6103.19. Therefore the first paragraph of this regulation and subsection (a) should be deleted.

6103.19 - DCHA's reasonable accommodation policy states it "may require the family to sign a consent form so that DCHA may verify the need for the requested accommodation." Pursuant to the *Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under*

the Fair Housing Act (Joint Statement on Reasonable Accommodations), DCHA may not require that a person with a disability sign a consent form to verify a person's disability. That said, the person can provide their own verification letter instead if one is needed. Joint Statement on Reasonable Accommodations at 17.-18. (pages 12-13). The language regarding the requirement to sign a consent form should be removed.

6103.20 - Currently, DCHA's policy for addressing and providing reasonable accommodations lacks sufficient process. To address this deficiency, the agency should publish a specific policy on how it will document, review, and process reasonable accommodation requests.

The Administrative Plan for the HCVP provides that DCHA will review reasonable accommodation within 10 business days. DCHA should similarly be able to review requests from public housing residents within 10 business days to avoid disparate treatment of its HCV participants and public housing residents.

The words "if applicable" should be removed from Subsection (d).

6103.23 - In addition to the forms of communication listed, DCHA should add that ASL interpreters and oral interpreters will be made available to meet the needs of persons with hearing impairments.

6103.24 - Subsection (e) should read "the Fair Housing Amendments Act of 1988."

6104 IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)

6104.1 - As a government agency operating in the District of Columbia, DCHA is subject to the Language Access Act of 2004 (LAA), not just Title VI, 42 U.S.C. § 2000d, which provides protections on the basis of national origin, race, and color, because it is a recipient of federal funds. The agency should accordingly revise its description of the applicable laws to include the LAA. To that end, DCHA should incorporate the LAA's affirmative obligations, which go beyond the requirements of Title VI: "Failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin ***and the District of Columbia Language Access Act of 2004***. This Section 6104 incorporates the Final Guidance to Federal Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007, in the Federal Register."

6104.4 - DCHA should revise the wording of three of the four factors it considers to determine the level of access needed by Persons with LEP to ensure it complies with the LAA. Subsection (a) leaves out a consideration required by the LAA; subsection (c) reads confusingly; and subsection (d) mistakenly refers to costs as one consideration DCHA can take into account.

Pursuant to the LAA, "resources" but not "costs" are a valid factor for the agency to consider. Revised language would read as follows:

In order to determine the level of access needed by Persons with LEP, DCHA shall balance the following four (4) factors:
(a) The number or proportion of Persons with LEP eligible to be served or likely to be *served or* encountered by the public housing program;

(b) The frequency with which Persons with LEP come into contact with the program;

(c) The nature and importance of the program, activity, or service provided by the program to *Persons with LEP*; and

(d) The resources available to DCHA.
…

6104.5 - DCHA should replace the current 6104.5 with a new subsection (below) to ensure DCHA is in compliance with the LAA requirements for a "covered entity's" obligations to meet the needs of Persons with LEP. Currently the newly proposed section below is entirely missing from DCHA's regulations governing the public housing program.

(a)(1) In making the determination under 6104.4(b) of the type of oral language services needed, DCHA shall consult the following sources of data to determine the languages spoken and the number or proportion of limited or no-English proficient persons of the population that are served or encountered, or likely to be served or encountered, by the covered entity in the District of Columbia:

(A) The United States Census Bureau's most current report entitled "Language Use and English Ability, Linguistic Isolation" (or any other successor report);
(B) Any other language-related information;
(C) Census data on language ability indicating that individuals speak English "less than very well";
(D) Local census data relating to language use and English language ability;
(E) Other governmental data, including intake data collected by DCHA and data collected by and made available by District government offices that conduct outreach to communities with limited-English proficient populations, such as the Office of Latino Affairs and the Office of Asian and Pacific Islander Affairs; and
(F) Data collected and made available by the D.C. Language Access Coalition.

(2) DCHA shall annually collect data about the languages spoken and the number or proportion of persons with LEP speaking a given language in the population that is served or encountered, or likely to be served or encountered, by DCHA. DCHA's databases and tracking applications shall contain fields that will capture this information. All information collected under this

section shall be provided to the Language Access Director and made available to the public, upon request, within a reasonable time.

6104.5 - This section should become 6104.6. Further, the language should be updated to ensure DCHA is compliant with its obligations under the LAA of 2004 (D.C. Code § 2-1932(a)): "DCHA shall provide oral language services to Persons with LEP who seek to access or participate in the services, programs, or activities offered by DCHA."

6104.6 DCHA's Language Access Plan

This section should become 6104.7. DCHA's language access plan is out of compliance with the LAA. The current DCHA language access plan must be completely re-written in order to comply with the LAA. Therefore, the current language should be stricken and replaced with the following:

"DCHA's language access plan shall be established in consultation with the Language Access Director, the D.C. Language Access Coalition, the entity's language access coordinator, and agency directors that conduct outreach to limited or no-English populations. DCHA shall update its language access plan every 2 years and shall meet the minimum requirements established under the Language Access Act of 2004 for language access plans for covered entities, at D.C. Code § 2-1934(a)(2)(A)-(E).

(A) The types of oral language services that DCHA will provide and how the determination was reached;

(B) The titles of translated documents that the entity will provide and how the determination was reached;

(C) The number of public contact positions in the entity and the number of bilingual employees in public contact positions;

(D) An evaluation and assessment of the adequacy of the services to be provided; and

(E) A description of the funding and budgetary sources upon which DCHA intends to rely to implement its language access plan.

6104.7 - This section should become 6104.8.

6104.8 - This section should become 6104.9. Further, subsection (a) is not compliant with the LAA. It should read that "DCHA shall provide translations of vital documents into any non-English language spoken by a limited or no-English proficient population that constitutes **3% or 500 individuals,** whichever is less, of the population served or encountered, or likely to be served or encountered, by the covered entity in the District of Columbia. *See* D.C. Code § 2-1933(a)."

This section (6104.8) should additionally note that "If the provisions of this subchapter are contractually imposed on a non-covered entity, subsection (a) of this section shall apply." D.C. Code § 2-1933(b).

6104.9 and 6104.10 - These sections should become 6104.10. Further, sections 6104.9 and 6104.10, as written, should be stricken and replaced with the language below to ensure the agency is complying with D.C. Code 2-1934 (b)-(c).

"(a) DCHA shall designate a language access coordinator who shall report directly to the director of the entity and shall:

(1) Establish and implement the entity's language access plan in consultation with the Language Access Director, the D.C. Language Access Coalition, and the agency directors of government offices that conduct outreach to communities with limited or no-English proficient populations; and

(2) Conduct periodic public meetings with appropriate advance notice to the public.

(b) DCHA shall develop a plan to conduct outreach to communities with limited or no-English proficient populations about its language access plans and about the benefits and services to be offered under this subchapter."

CHAPTER 62 ELIGIBILITY

6201 DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

6201.32 and **6201.33 -** DCHA should remove the language about the requirement that a resident family notify DCHA when overnight guests will be staying in the unit for more than three days. That additional requirement of notification despite an existing rule that ten (10) consecutive days is the limit is extremely paternalistic.

Additionally, current DCHA regulations require written permission of DCHA to exceed the guest stay limits; however, proposed DCHA language adds new criterion that a family may request an exception for valid reasons (i.e.., caretaking of a relative), but that an exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return. These extra requirements are unnecessarily burdensome for tenants and their guests.

While the updated language continues to reflect an ability to request exemptions to the guest stay policies for valid reasons, it removes the current language detailing how a participant can request an exception and DCHA's obligation for response. 14 DCMR § 5320. DCHA should continue to indicate the process by which exceptions can be requested, including where and how exceptions

are submitted. Currently, DCHA must respond to an exception request by mailing a response within thirty days of request receipt. Regulations should continue to specify this deadline and written determination so that participants can expect a response within a reasonable amount of time, ensuring that DCHA has an obligation to respond.

Finally, current regulations expressly allow guests to remain pending an exception request determination. Newly proposed regulations remove language referring to this provision despite a logical implication that the guest would be remaining while the request is being considered. If households are requesting a guest stay exception determination, it is not reasonable for the guest to have to leave the unit while waiting on the determination. Again, DCHA should have an obligation to swiftly make a determination regarding an exception, maintaining the thirty-day response requirement. As long as a request is pending, the household's guest should be able to remain. Current language also allows an exception for live-in aides pending DCHA approval as a "live-in aide." If a family member cannot effectively tend to their needs without their live-in aide and the live-in aide's approval is pending, the family member in need should not be penalized. A live-in aide, necessary for the family member and awaiting DCHA determination, should continue to bypass the standard guest stay deadlines while awaiting a DCHA decision.

6201.34 - 6201.34(b) should be deleted. It is unreasonable to exclude all residents who have been evicted for any reason. Many former residents have family and close friends at DCHA's complexs. They have lived in the community together for years. This ban is overly broad because it applies to people who have been evicted for non-payment of rent, failure to recertify, or other lease violations that have no effect on the property. Anyone who is not barred from the property should be allowed to stay on the property as an overnight guest.

Further, 6201.34(c) should also be deleted. Tenants cannot be expected to be responsible for what their friends and family members do when they are not on the property. Designating someone an unauthorized occupant means that the occupants are at risk of eviction. Public housing residents should not risk eviction because people are using their addresses. Using someone else's address has no impact on the security or the wear and tear on the property, and tenants should not be put at risk of eviction because someone else has used their address.

6201.42 - DCHA should remove the language, "information indicates that the student has established a separate household." No details are provided as to what information could lead DCHA to the finding that a student has "established a separate household." Students are often employed and/or reside in other housing while pursuing their education, but that does not indicate an intention to "establish a separate household." The only information that DCHA should be relying on for a determination of whether a student family member is permanently absent is the information provided by the family at the family's discretion. Family members know and understand whether a family member student has left the family household. DCHA

should not be using broadly undefined categories to potentially bar family member students from their existing households without the family's request or consent.

6201.46 - DCHA's proposed policy does not consider "an individual confined to a medical institution on a permanent basis" to be a family member. We challenge that an individual can ever be confined to a nursing home or hospital on a permanent basis. In *Olmstead v. L.C.*, 527 U.S. 581 (1999), the Supreme Court of the United States reinforced the right of individuals to live in the community. Therefore, a nursing home resident has an absolute right to leave that institution at any time. DCHA should craft an entirely new policy that permits nursing home residents to return to their homes without much administrative burden, while also not counting them as family members while they are in an institution. Such a policy would be consistent with the idea that individuals should not be institutionalized unnecessarily and receive care in the least restrictive setting.

6201.56 - Live-in aides are essential to the care of those who need them. Federal law requires ADA compliance and the ability to request reasonable accommodations. This regulation allows DCHA to disapprove or withdraw approval for a live-in aide based on broad categories. DCHA should be clear about the specific criteria it will consider in determining whether it can exclude or withdraw live-in aides. Broadly permitting disapproval or withdrawal of a live-in aide for potential past acts regardless of whether there was a conviction and/or without consideration to time or other mitigating factors is potentially unlawful, frustrates the reasonable accommodation compliance, is contrary to the spirit of HUD's Affirmatively Furthering Fair Housing guidance, and encourages subjective screening practices. Also, it is unreasonable to deny someone as a live-in aide because they owe a debt to a PHA. This is not related to the safety or security of either the family requesting the live-in aide or the safety of the other tenants in the development and should not be considered more important than the need for a person's disability to be accommodated so that they may have equal access and enjoyment of their housing.

6202 BASIC ELIGIBILITY CRITERIA

6202.5 and **6202.6** - These regulations confirm these specific HUD requirements around income targeting; however, there are no specific policy details as to how DCHA will appropriately track and implement the requirement or credit. DCHA must have a policy in place to monitor its compliance with federal laws.

6202.9 - This regulation should also detail what the notice must include. The federal guidance is clear that the notice must also include a statement informing the family that financial assistance is contingent upon the appropriate submission and verification of documentation of citizenship or eligible immigration status *and* detail the types of documentation required and time period for submission. 24 CFR 5. The manner in which the language is clearly indicated and detailed in the current regs of 14 DCMR 5101.13 is how such regulations should continue to be detailed.

Leaving out such substantial parts of the federal regulations and only opting to broadly summarize pertinent provisions that dictate how DCHA will implement rules is extremely unhelpful to applicants and DCHA staff tasked to properly administer the program. DCHA has already been struggling to properly implement existing laws and program rules. Having a proposed ACOP that leaves out crucial guidance for how DCHA implements its programs will undoubtedly lead to applicant and staff confusion. If the ACOP is not inclusive of all DCHA obligations and responsibilities under federal law and staff are not appropriately trained, DCHA failure to accurately administer the program and meet its obligations under federal law will be essentially guaranteed. DCHA cannot train staff to follow federal law and guidance if staff cannot readily access the plain language of the provisions. Staff must clearly be aware of and educated on all of the DCHA/PHA obligations in the ACOP. If those tasked with administering the program on a daily basis cannot easily refer to the ACOP for every specific provision that applies to their duties and lawful administration of public housing, DCHA will have monumental compliance issues because they will continue to have staff that lacks substantial knowledge of the programs they are responsible for implementing.

6202.34(b) - DCHA should allow tenants who are denied only for debts to go back on the waiting list such that they can be reconsidered after their debt is repaid.

6203 DENIAL OF ADMISSION

6203.3(a) - Under 24 CFR 960.204, HUD requires prohibition of admission for an applicant that has, within the last three years, been evicted from federally assisted housing for drug related activity. However, HUD also permits PHAs to admit the applicant/household within that same time frame if the PHA determines that the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA or that the circumstances leading to eviction no longer exist. It is a positive addition that DCHA is now incorporating that HUD guidance. Despite HUD's three-year "look back" window, however, DCHA has decided to implement a five-year "look back" window. There is no provided reason for the decision to apply a more restrictive standard than HUD requires. When given the option and chance to expand housing opportunities by utilizing the least restrictive requirements for denial, DCHA chooses to create additional barriers for DC residents.

6203.3(b)(3) - Under 24 CFR 960.204, HUD also requires PHAs to establish *standards* for prohibition of admission if the PHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. Therefore, DCHA has discretion in how it implements a policy under which households can be prohibited.

DCHA's proposed policy is that it will consider all credible evidence, including, but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. It proposes that a record or records of arrest will not be used as the sole basis of determining reasonable cause, but still intends to use arrests as a basis for consideration. This proposed policy seems to be in violation of HUD rules that prohibit the use of arrest records as a basis for denial and in violation of DC local "ban the box" and tenant screening laws (*Fair Criminal Records Screening for Housing Act* and the *Eviction Record Sealing and Fairness in Renting Amendment Act*) that prohibit the use of arrest records and the use of sealed eviction records in contemplation of any denial. DCHA must revisit its discretionary policy and craft a policy that is not in violation of federal and DC law.

6203.4 - Under 24 CFR 982.553, HUD permits, but *does not require* PHAs to prohibit admission if they determine a household member is currently engaged in or has engaged in the following for a reasonable amount of time before admission: (1) Drug-related criminal activity; (2) Violent criminal activity; (3) Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or (4) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent). HUD also allows PHAs to determine what constitutes a "reasonable amount of time."

Since HUD *does not require* prohibition for the aforementioned reasons, DCHA has discretion in deciding whether to prohibit and under what conditions it will prohibit. DCHA also has discretion to determine the amount of time before admission in which it will consider the factors *if* it decides to prohibit admission at all. Unfortunately, again, when given the opportunity to minimize barriers to housing for DC residents, DCHA's proposed policy is to utilize any opportunity to impose prohibitions to admission and to choose time frames of consideration that are more restrictive than the time frames HUD imposes for even required prohibitions.

DCHA's proposed policy is to exercise its ability to prohibit households for each of the four discretionary categories. DCHA also chooses to use a five-year time period as the "reasonable" amount of time for consideration of the categories despite HUD having a lesser three-year "look back" period for its required prohibition. DCHA provides no explanation or justification for choosing a longer term than HUD even imposes for required prohibitions. DCHA's policy decision to exercise its discretion to impose more burdensome requirements that perpetuate unfair and discriminatory effects and create additional barriers to housing security is simply punitive.

6203.4(d) - DCHA using its discretion to exercise an ability to prohibit households based on the fourth category, *(4) Other criminal activity which may threaten the health or safety of the owner,*

property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent), is extremely problematic due to the subjectivity and consequential nature of such a prohibition determination. DCHA program participants and applicants should not be subjected to prohibition due to potential frustrations with DCHA employees/agents. DCHA employees and agents also should not be empowered to weaponize their positions to wield such monumental consequences for applicants.

6203.4(e) - DCHA has created an additional and unnecessary category outside of the four HUD categories in which PHAs are permitted to prohibit under 24 CFR 982.553. HUD clearly defines the four discretionary categories, and DCHA's category and definition of "criminal sexual conduct" is not one of them. Thus, it should be removed.

6203.4(f) - DCHA proposes utilizing evidence of criminal activity that includes, but is not limited to, any record of convictions, arrests, or evictions for suspected drug-related or violent criminal activity of household members within the past three years. It also claims that arrest records will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying criminal activity. First, as aforementioned, this proposed policy to use arrest records seems to be in violation of HUD rules that prohibit the use of arrest records as a basis for denial and in violation of DC's "ban the box" law, the *Fair Criminal Records Screening for Housing Act*. DCHA must revisit its policy and craft one that is not in violation of federal and DC law. Second, the assertion that arrest records would not be used as the sole basis for denial *or* as proof that the applicant engaged in disqualifying criminal activity defies logic. There is no other purpose for a desire to utilize arrest records *except for* the purpose of inferring some assumption of truth and proof of any criminal activity alleged within the arrest record. Any assertion by DCHA to the contrary is disingenuous and nonsensical.

6203.5 - Under 24 CFR 960.203(c), the PHA is responsible for screening family behavior and suitability for tenancy. The PHA *may consider* all relevant information, which may include, but is not limited to: (1) An applicant's past performance in meeting financial obligations, especially rent; (2) A record of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences which may adversely affect the health, safety or welfare of other tenants; and (3) A history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants. 24 CFR 960.203(c).

Overall, DCHA's proposed language is broader than the current regulations. While HUD authorizes PHAs to deny admission based on relevant information regarding a family's previous behavior and suitability for tenancy, HUD *does not require* prohibition. DCHA continues to exercise its discretion to be more restrictive and create more opportunities for denial of housing. Its proposed policy states that it *shall deny* families under this section. DCHA should reconsider

its choice and utilize its discretion to actually benefit DC residents by *first* considering the unique circumstances of each family instead of uniformly choosing to *start* with a requirement for denial.

6203.5(i) - DCHA's proposed language to use its discretion to deny families that have allegedly "engaged in or threatened violent or abusive behavior toward DCHA personnel," is particularly problematic due to the inclusion of mere language indicating frustration and the subjectivity and consequential nature of such a prohibition determination. DCHA public housing applicants should not be subjected to prohibition due to potential frustrations with or of DCHA employees. Under DCHA's proposed language, a frustrated applicant that uses a simple curse word could have that action used as justification for denial if the DCHA employee chooses to categorize it as "abusive behavior." DCHA employees should not be empowered to weaponize their positions to wield such monumental consequences for applicants.

6203.5(j) - DCHA's proposed language indicates that it may choose not to deny assistance on a case-by-case basis, but its decision to opt for the "shall deny" qualifier as the default instead of "may deny," as HUD allows, casts doubt on that intention. HUD does not even require consideration of the factors, yet DCHA opts to consider the factors and require denial.

6203.5(k) - While exercising discretion to consider mitigating factors regarding a failure to meet financial obligations is a good use of DCHA's discretion, it further highlights how 6203.5(a) is inappropriate as a default factor for required denial by DCHA.

6203.6 - The HUD Report detailed DCHA's present failure to conduct criminal record screening or maintain criminal records in accordance with HUD regulations. DCHA incorrectly keeps criminal records in the tenant/applicant file. Criminal records should not be easily accessible or kept within a family's file. 24 CFR 5.905 (c). DCHA must have clear provisions for the maintenance of sensitive personal information.

6203.11 - It is good that the current regulation language in 14 DCMR 6109.6, highlighting the mitigating circumstances that should be considered by DCHA when screening for suitability, is *now* incorporated into DCHA's newly proposed 6203. However, DCHA's proposed language fails to include the provision from the current regulation of 14 DCMR 6109.8 that requires DCHA to exercise care and consideration in soliciting personal information concerning an applicant family, including the obligation to obtain appropriate authorization for the release of information and restrict the information's use.

In evaluating suitability, DCHA proposes language that very broadly seeks to examine past performance in meeting financial obligations and overall habits and behaviors within the past three years. In evaluating the financial obligations, DCHA proposes landlord references, including information about eviction filings, late payments, and utility disconnections; utility company references; credit history; pulling court and eviction action records; and personal

references. In evaluating the habits and behaviors, DCHA proposes landlord references, including info on unit cleanliness, unit damage, and neighbor complaints; search of police and court records for convictions and arrests; personal references; and home visits.

DCHA's proposed language makes it clear that this comprehensive level of screening *shall* be performed for applicants. HUD authorizes PHAs to deny admission based on relevant information regarding a family's previous behavior and suitability for tenancy; however, HUD *does not require* prohibition. DCHA continues to exercise its discretion to be more restrictive and create more opportunities to deny housing. Requiring an evaluation of the aforementioned categories for applicant suitability within this proposed policy is overly intrusive, paternalistic, and appears to violate HUD and DC laws. Again, DCHA's claim that arrest records would not be used as the sole basis for denial *or* as proof that the applicant engaged in disqualifying criminal activity defies logic. There is no other purpose for a desire to utilize arrest records *except for* the purpose of inferring some assumption of truth and proof of any criminal activity alleged within the arrest record. Any assertion by DCHA to the contrary is disingenuous.

The newly proposed policy within this section is in violation of HUD rules that prohibit the use of arrest records as a basis for denial and in violation of DC's "ban the box" and tenant screening/eviction record sealing laws (*Fair Criminal Records Screening for Housing Act* and the *Eviction Record Sealing and Fairness in Renting Amendment Act*) that prohibit the use of arrest records and sealed eviction records in contemplation of any denial. DCHA should revise this policy to create lower barrier housing access and to avoid violations of federal and DC law.

6203.13 - If DCHA is exercising its discretion to require prohibition and consideration through the use of "shall" in all sections of the new regulation, this section that details some of the mitigating facts and circumstances that DCHA "considers" before making a decision should also contain the "shall" qualifier. DCHA's language here should be changed to "shall consider" instead of "considers."

CHAPTER 63

6301 THE APPLICATION PROCESS

6301.3 - DCHA should allow for applications to be requested and completed applications to be submitted in-person, as well as by portal, mail or via email. Many families do not have reliable access to the internet, and mail is often unreliable. In addition, when an application is delivered in-person, the family should get a time-stamped copy returned to them.

Additionally, DCHA should clearly state that if the application is incomplete, the family will be notified which specific parts are incomplete and what the family needs to do to complete the

application. If the family identifies a good reason why they cannot complete the application, DCHA should aid, where possible, to complete the application.

Residents living on low-incomes face many bureaucratic barriers when dealing with government agencies and other organizations. DCHA should lower those barriers where possible.

6301.5 - Please see our comments under Chapter 61. Also, DCHA should affirmatively accommodate disabilities before people make requests by taking steps such as providing materials in large print and Braille, having ASL interpreters available at application events and in the DHA building, or providing access to ASL interpreters via video conference. DCHA should consider how each policy and procedure related to application would affect people with mobility challenges and ensure that accommodations exist to ensure equal access.

6301.6 - Please see our comments to Chapter 61. Also, the regulations here should affirmatively say that DCHA will ensure that application materials are available in a variety of languages, including any language that 1,000 members of DC's low-income population speak regardless of whether 5% or 1,000 of DCHA's current customers speak that language, as any low income DC resident could potentially join the waiting list and is therefore "eligible to be served" under the Language Access Act of 2004.

6301.12 - This regulation should be changed to reflect that the bedroom size a family qualifies for may change during their time on the waiting list. This could be accomplished by adding the following sentence: "If a family notifies DCHA that their household size has changed, DCHA will transfer the family to the appropriate waiting list for their current unit size, keeping them in the same order that they would be in based on the time and date or lottery number of their application."

6302 MANAGING THE WAITING LIST

6302.4 - DCHA should not list the brand of software that will be used to maintain the waiting lists in the regulation. By having it in the regulation, it will be harder for DCHA to change vendors if that becomes necessary because a change will be subject to notice and comment. The regulation should simply say "appropriate software," giving DCHA the flexibility to choose and change to whatever software best fits the agency's needs at the time.

6302.10 - HUD recommends that marketing occur "for a significant period of time (e.g. 60 days) prior to the opening of a waiting list to ensure that there is enough time for the information to reach all potential applicants." Public Housing Occupancy (7465.1). DCHA should accept this recommendation and announce the reopening of the waiting list at least 45 days prior to the date applications will be accepted.

6302.10(b) - DCHA should specify that it will distribute notices to homeless shelters, domestic violence shelters, minority organizations, food banks, and legal services organizations as suggested in the HUD Guidebook. While the Guidebook does not specifically suggest medical clinics, DC has a number of clinics that specifically serve people on Medicaid or who are experiencing homelessness. DCHA should also specify that it will provide notices to medical clinics that serve low-income DC residents. Doing outreach in nursing homes and partnering with other DC agencies such as the Department of Human Services and the Department of Aging and Community Living is also important and should be specified in the regulations.

6302.13(b) should include organizations and media that reach eligible populations that are underrepresented in the program.

6302.16 - DCHA should not require people to inform DCHA of changes within 10 business days. Families remain on DCHA's public housing list for many years, decades in some cases and requiring families to update on an annual basis again places another administrative burden on the applicant. The HUD Public Housing Occupancy Guide Waiting List Chapter says at 2.4.1, "PHAs with long waiting lists may find that it is not cost-effective to update the entire waiting list. Instead, these PHAs may decide to update only those applicants who are likely to reach the top of the waiting list within the next twelve (12) months." DCHA is such an agency. The administrative burden of updating information multiple times per year for thousands of families is not necessary and seemingly will result in removal of families if they fail to update annually. Instead, the policy should read:

"DCHA will inform families when they are likely to reach the top of the waiting list within the next 12 months at which time families will be required to notify DCHA of any changes in family size or composition, preference status, or contact information, including current residence, mailing address, and phone number."

6302.18 - The Public Housing Occupancy Guidebook recommends prioritizing transfers for all emergencies (including those for physical hazards, VAWA, and other causes); reasonable accommodations' Demolition, disposition, revitalization, and rehabilitation; and occupancy standards transfers over admissions from the waiting list. DCHA should include all of these categories in its list of transfers that shall take precedence over new admissions.

6302.21 and **6302.22** - If DCHA plans to remove people from the waiting list or simply wishes to update the list, DCHA should contact families through all means available before removing them from the waiting list. DCHA should call, email, and send text messages in addition to sending first class mail. Even for those who have updated DCHA on their current addresses, first class mail is regularly delivered to the wrong address, even when the written address is correct.

People who apply for the public housing waiting list are likely to be housing unstable, meaning that their addresses and phone numbers have changed many times over the 10 or more years that they have been on the public housing waiting list. Further, many people on the waiting list are homeless and do not have fixed addresses, have mental and physical disabilities, lack reliable internet access, and/or have literacy challenges. During the 10 or more years that people have been on the waiting list, they have received little communication from DCHA, so updating their contact information with DCHA was not a top priority. For these reasons, DCHA should partner with other government agencies such as the Department of Human Services and the Department of Aging and Community Living as well as social services agencies to get updated contact information. DCHA should provide forms to update contact information in public libraries, medical clinics, Family Success Centers, food pantries, homeless shelters, Virginia Williams, and other places frequented by people likely to be on the public housing waiting list. The regulations should affirmatively specify that update forms will be available in these locations.

The HUD Public Housing Occupancy Guidebook specifically says at 2.4: "Prior to removing an applicant from a waiting list, PHAs are encouraged to contact an unresponsive applicant through all means available, which may include via mail, phone, email, and text message. If possible, PHAs should use a variety of means to contact a family from the waitlist, and give that family a reasonable period of time to respond with their interest so as to not inadvertently remove an applicant who remains interested but may have moved, changed their contact information, or otherwise are difficult to reach."

DCHA should follow this HUD guidance.

6302.23 - DCHA should allow people to deliver their responses in person, not just by mail or email. DCHA should also accommodate LEPs, people with literacy challenges, and people with disabilities by writing their responses for them or providing other accommodations as necessary.

6302.24 - First, DCHA should never remove people on the waiting list for lack of contact. Instead, DCHA should continue to implement procedures described in 14 DCMR 6103.4 that allow people to be listed as inactive on the waiting list and then restored to their previous position. Nothing in the HUD report prohibits DCHA from keeping this policy. HUD simply requires DCHA to clearly state its policies for removing families from the waiting list and to "develop and maintain records of all actions taken on applicants to its Public Housing Program." (HUD Assessment, Corrective Actions PH 14c and PH 14d). Suddenly clearing people from the waiting list after more than 10 years because they do not respond to a letter or even to two attempts at outreach would be a gross injustice. Further, if DCHA is going to remove people from the waiting list, it should engage in a variety of outreach strategies as described above. Sending one or even two letters to people who have been on the waiting list for years and then removing them if they do not respond within 30 days is unreasonable.

6302.25 - This regulation should be deleted entirely. The mail system is not entirely reliable. DCHA should, as HUD suggests, reach out to families "through all means available" before removing them from the waiting list. The Agency should at the very least try phone, email, and text message before removing a family.

6302.26 - See the above comments. DCHA should try all available means to contact a family before removing the family from the waiting list.

6302.27 - This regulation contradicts all of the regulations above but is a better policy. It should replace 6302.24, 6302.25, and 6302.26. The regulations should be amended to add text and phone to the list of contact methods. If DCHA has reason to believe that the applicant is experiencing homelessness, the Agency should collaborate with DHS, homeless shelters, and other service agencies to get in contact with the applicant. If the applicant is known to be elderly, DCHA should collaborate with DACL.

The proposed policy also says that no informal hearing is required when removing people from the waiting list but 6302.28 describes situations when DCHA might reinstate a family. There must be an established process for a family to seek reinstatement on the waiting list and for those requests to be evaluated. Using the informal hearing process would ensure that those decisions are fair and consistent, not arbitrary. Again, keeping the procedures described in 14 DCMR 6103.4 would be the best method, but if DCHA does not preserve the ability to make someone inactive and then restore them to the waiting list, then DCHA should at least make the informal hearing process available to those who are removed from the list for failure to respond. While HUD does not require DCHA to make the informal hearing process available, it is the process that makes most sense for granting exceptions given the size and structure of DCHA.

6302.28 - DCHA should change this regulation to say: "DCHA may reinstate the family if the lack of response was due to <u>good cause.</u>" DCHA should use a standard for good cause similar to what is currently in place in the voucher program for good cause hearings. There, a hearing officer is required to consider if a tenant had good cause to miss a deadline by 1) determining if they received proper notice, and 2) considering a non-exhaustive list of mitigating circumstances. Given the length of the DCHA waiting list, removing someone from the list is an action with extreme consequences. Tenants should be given the benefit of the doubt as much as possible, given that their removal from the list likely means 10 years or more before they have access to public housing again.

6303 TENANT SELECTION

6303.30 and **6303.31 -** DCHA must specify whether it will use a lottery system or place applicants on the waiting list using the date and time of their application or some combination thereof. DCHA must allow for public comment on its actual selection plan, not announce that it will tell everyone in the notice when the waiting list actually opens. The suggested regulations do not put forth any specificity regarding which system will be used and in 6303.4 state that DCHA's policies must be posted any place where DCHA receives applications and that DCHA will provide a copy of its tenant selection policies upon request. Applicants should have more certainty as to how their applications are handled and DCHA should include the policy in the regulations.

DCHA should also describe how "[f]actors such as deconcentration or income mixing, and income targeting will be considered" and how selection will work for UFAS units and elderly only properties. The current processes are described at 14 DCMR 6112 and 6115.

6303.32 - For the reasons discussed above, DCHA should contact people on the waiting list through all available means, not just mail and/or email. Further, families who do not respond should be put on an inactive list, not removed from the waiting list completely. There must be a process for reinstating anyone who is removed from the waiting list for failure to respond.

All notices should also specify that this is an interview scheduled for the applicant personally, not just a large-scale event. The notices should also make clear whether the person is likely to be assigned housing if found eligible or is simply near the top of the waiting list.

Notices should also contain a procedure for rescheduling the interview if the applicant cannot attend the scheduled time.

Further, as discussed above, 6303.32(c) should be deleted.

6303.34(e) should specify that requests for extensions will be granted liberally.

6303.34(h) - There should also be a process for allowing people to schedule appointments at times that fit in their schedules instead of just assigning appointments.

6303.39 - DCHA should continue to provide applicants who are deemed ineligible with the right to have their application reviewed by an independent third party as described in 14 DCMR 6107.7(a) in addition to the right to have an informal hearing.

Additional regulation:
DCHA should add a regulation **6303.42** in order to retain its policy that "Applicants who were determined ineligible solely by reason of an unpaid debt may, at any time during their inactive

status, provide evidence that the debt has been paid or otherwise resolved. These applicants may be returned to the waiting list with the same date and time of application as the date and time the applicant had when the applicant was placed on inactive status." 14 DCMR 6107.9. This regulation should be added as **6303.42.**

CHAPTER 64

6401 OCCUPANCY STANDARDS

6401.7 - DCHA's proposed occupancy standards do not include a consideration of gender when determining unit size despite HUD guidance that PHA's "may allow families to occupy units of sufficient size so that persons of opposite sex (other than spouses) . . . may have separate bedrooms." 7465.1 REV-2 CHG-1. Under DCHA's proposed policy, children of different genders could be required to share a bedroom. We recommend that DCHA's ACOP adopt the same occupancy standard proposed in its Administrative Plan which states that "[p]ersons of opposite gender (other than spouses, and children under age 5) will be allocated separate bedrooms."

6401.8, 6401.9 - These regulations do not make up for the problems described above. It does not require DCHA to grant an exception in any particular circumstance. It does not even require DCHA to grant an exception if DCHA determines that the exception is justified. DCHA only has to consider the possibility. The regulations do not make clear how families will be notified that exceptions are a possibility or how families may request exceptions. DCHA should, instead, adopt the voucher standards for occupancy in public housing. If DCHA chooses to keep this proposed policy, the regulations should outline a clear and transparent procedure for exceptions. The provisions for requesting an exception based on the reasonable accommodation of a disability would remain relevant regardless of the final policy for occupancy standards.

6402 UNIT OFFERS

6402.4 - Applicants should be allowed to refuse unit offers for good cause. Applicants should also be able to affirmatively remove themselves from a particular site-based waiting list without being removed from all site-based public housing waiting lists. Therefore the text of these regulations should read: "If an Applicant refuses two (2) unit offers from any of the developments where the Applicant is listed on the waitlist <u>without good cause</u>, the Applicant shall be removed from all DCHA public housing wait lists. <u>When an Applicant is first offered a unit at a development where the Applicant is listed on the wait list, the Applicant may ask to be removed from the wait list for that development without effect on the Applicant's placement on other wait lists.</u>" While 6402.8 says that Applicants may refuse to accept a unit offer for good cause, it does not make clear that they will remain on the waiting list if they do so. These changes are important because people's circumstances change during the time that they are on

the waiting list. Their work circumstances, the history of violence that they and their children may have experienced and other trauma make certain neighborhoods, developments, or units unsafe for them. They should be allowed to remove themselves from one site-based waiting list without risking their places on other lists.

Further, HUD Handbook 7465.1 Rev-2 Chapter 5 says that families who refuse unit offers should be placed at the bottom of the waiting list, not removed entirely. DCHA should adopt this policy.

6402.5 - This regulation should make clear that the timeline for accepting or refusing a unit offer does not begin until DCHA actually makes contact with the Applicant by telephone. Applicants should be given 10 days from the date that they were contacted by DCHA to view the unit. This is consistent with the current 14 DCMR 6111.8 and reflects the reality of people's busy and complicated lives, balancing work, childcare, eldercare, their own healthcare needs, transportation difficulties, and more. Applicants should then be given an additional 3 days after viewing the unit to accept or refuse the unit. Applicants who cannot be reached by telephone should be given 21 days to respond to a letter from DCHA and schedule a time to view the unit. Having 21 days to respond to a letter is important because mail does not reliably arrive in a timely manner, and it often takes a number of phone calls to reach the correct person, or any person, at DCHA. Applicants should not be penalized.

6402.8 - A sentence should be added to the end of this regulation to clarify its meaning. "Such a refusal must not adversely affect the family's position on or placement on the public housing waiting list."

6402.9 - Good cause is much too narrowly defined in this regulation. DCHA should strike the definition of good cause contained in this regulation. Good cause has legal meaning, and this regulation creates an unnecessarily heightened standard for what constitutes good cause. Instead, DCHA should use a standard more similar to what is currently in place in the voucher program for good cause hearings. There, a hearing officer is required to consider if a tenant had good cause to miss a deadline by 1) determining if they received proper notice, and 2) considering a non-exhaustive list of mitigating circumstances.

People on the public housing waiting list are desperate for housing, but sometimes a particular unit is not suitable for their family for a variety of reasons. If the good cause standard is to be defined in the regulation, several changes should be made to this regulation. First, undue hardship related to the applicant's race, color, national origin, or other protected class may be a good reason to turn down the unit. It does not run afoul of fair housing law to take into consideration a protected trait when the applicant asserts that the protected trait is relevant to their request. HUD only prohibits turning down a unit based on a prospective neighbor or neighbors' race, color, national origin, or other protected class. For example, an applicant may

have a religious reason for rejecting a unit, and that should be considered. However, an applicant may not turn down a unit because they do not want to live near someone of a particular national origin. This regulation should clarify that that is what it is referring to.

In 6402.9(a), families should be able to self certify domestic violence, sexual assault, or stalking. It is often dangerous to seek a restraining order or other court order. Families should not have to put themselves in that kind of danger in order to secure housing away from their abuser or attacker. Further, there are real considerations related to crew or gang territories. If a family says that they cannot live in a particular location because it would put their children in danger from a particular "crew," that is good cause that should be taken seriously for the safety of both the applicant family and the existing residents of the building or development. Finally, a unit not being compliant with the D.C. Housing Code and/or obvious repair needs should be added to the list of examples of good cause. DCHA has a history of offering units to applicants, and public housing residents wishing to transfer units that are not code compliant, and applicants should not have to choose between waiting decades more for public housing and living in unsafe conditions. HUD Handbook 7465.1 also identifies the existence of lead-based paint as good cause to reject a unit.

CHAPTER 65

6501 ANNUAL INCOME

6501.10 - DCHA's proposed policy does not consider "an individual confined to a medical institution on a permanent basis" to be a family member. We challenge that an individual can *ever* be confined to a nursing home or hospital on a permanent basis. In Olmstead v. L.C., 527 U.S. 581 (1999), the Supreme Court of the United States reinforced the right of individuals to live in the community. Therefore, a nursing home resident has an absolute right to leave that institution at any time. DCHA should craft an entirely new policy that permits nursing home residents to return to their homes without much administrative burden, while also not counting them as family members while they are in an institution. Such a policy would be consistent with the idea that individuals should not be institutionalized unnecessarily and should receive care in the least restrictive setting.

6501.11 - This rule is internally inconsistent. It says that a child can be counted as a family member if the child resides with the family 50 percent or more of the time. It then says that if both families the child resides with receive housing assistance through DCHA, DCHA will determine which family can claim the child based on court orders, IRS documents, school records, etc. However, if physical custody is shared 50/50, then the child should be counted (and have a room at) both assisted households. In addition to being a commonsense policy, this policy would foster stronger familial bonds and stability for children.

6501.12 - DCHA should remove the word discretion from this section. In the event of the death of the HOH, a minor remaining family member should be permitted to remain in the unit subject to the usual screening requirements of any proposed caretaker.

6501.17(d) - For seasonal and cyclical employment, DCHA should not attempt to annualize that income over 12 months, but instead should do what HUD regulations suggest: "If it is not feasible to anticipate a level of income over a 12-month period (*e.g., seasonal or cyclic income*), or the PHA believes that past income is the best available indicator of expected future income, the PHA may annualize the income anticipated for a shorter period, subject to a redetermination at the end of the shorter period." 24 CFR 5.609(d) (Emphasis added). Annualizing income over shorter periods makes sense for seasonal or cyclical employment for two reasons. First, tenants are not going to have any income in the months they are not working, and therefore will not be able to make rent payments. By annualizing seasonal income over 12 months, DCHA would be setting tenants up to fail. Second, by having the tenant recertify at the time their seasonal employment starts and stops, it will more likely ensure that their rent payments during that time are based on their actual, not projected, amount of income.

Additionally, if DCHA is going to attempt to project and annualize seasonal income, the proposed rules do not spell out what a tenant is to do if those projections end up being wrong once they start working their seasonal job. The proposed rules should allow tenants to request an adjustment based on what they actually make during seasonal employment if it is different from what DCHA predicted at the beginning of the year.

6001.17(g) states that if there is a known future change in income (including a future income increase) at the time of annual recertification, it will take that change into account at the time of recertification unless the family demonstrates it will experience hardship to implement the change in income before it is effective. First, this proposed rule does not explain how hardship is defined, how a family can demonstrate a hardship, or how DCHA will evaluate such a request. Second, anytime DCHA factors a future income increase into a families annual income, it will necessarily result in a hardship, because a family's rent will be based in part on income they have not received yet. DCHA should not factor in future changes to recertifications, and should instead conduct reexaminations of income at the time of the change.

6501.18 - This proposed rule does not explain what a family can do if DCHA projects bonuses and commissions based on prior years, but, for whatever reason, the projections end up being inaccurate. These families should be able to submit reexaminations throughout the year to demonstrate that expected bonuses or commissions did not come to fruition and have their rent lowered.

6501.37(b) - HUD policy requires PHAs to exclude *at least* 50 percent of an increase in income for the second 12-month EID period. This means that DCHA could, and should, choose to exclude more than 50 percent of income during this time. We suggest that DCHA continue to

phase out 100 percent of income during the second year. This makes particular sense in high cost-of-living jurisdictions like DC, where families' other expenses - like daycare, food, transportation - are exorbitant. DCHA should make policy choices that allow low-income families to keep as much of their income as possible to allow them to plan for emergencies, save money, or afford basic necessities.

6501.38 - The first sentence of this rule should make clear that the lifetime limitation is *per family member in the household*, and that one family member benefiting from the EID does not prevent other family members from doing so in the future.

6501.51 - HOTMA raises the imputed asset threshold from $5,000 to $50,000, incentivizing families to build wealth without imputing income on those assets. DCHA should raise the threshold to $50,000 to comply with HOTMA.

6501.58 - DCHA should set its passbook savings rate rate at the Savings National Rate each year and not rely on the safe harbor. This will ensure that the rate DCHA is using is as accurate as possible, and make it less likely to assume that families are receiving income, like interest on a savings account, that they in fact are not receiving.

6501-78 -6501.81 - The new regulations promulgated by HUD pursuant to HOTMA specifically exclude income from retirement accounts from income calculations at 24 CFR 5609(b)(26). DCHA's policies should comply with these new regulations.

6501.88 - DCHA states that it will retroactively calculate rent when a person receives a lump sum for a delayed periodic payment. However, nothing in federal regulations allows DCHA to retroactively raise a tenants rent - in fact the PHA must give 30 days notice of any rent increase.

Further, 24 CFR § 5.609 (c)(14) explicitly excludes "Deferred periodic amounts from supplemental security income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts." DCHA cannot require families to pay retroactively for a delayed-start lump sum payment.

6501.93- The words: "and any payments to individuals or families based on need that are made under programs funded separately or jointly by federal, state, or local governments" should be removed from this regulation. 24 CFR 5.609(b)(6) specifies that only TANF income counts towards annual income, not "any payments…based on need." This is an important distinction because, for example, the way DCHA has worded this rule, SNAP benefits could be counted as income, even though that money can only legally be used to pay for food.

6501.101 - DCHA should not require that families make efforts to collect court awarded child support or alimony in order for unpaid amounts to not be counted as income. There are many

reasons a family may choose not to, or not be able to, go through the court process to try and collect, including inability to hire a lawyer and fear of the opposing party.

6503 CALCULATING RENT

6503.7 - In situations where DCHA charges tenants for "excess utilities," DCHA should have a procedure for crediting tenants who would be entitled to a utility allowance if they were paying their own rent. This is especially true for tenants whose TTP is $0.

Changes to Income Based Rent

DCHA's plan acknowledges that "PHAs have been given very broad flexibility to establish their own, unique rent calculation systems as long as the rent produced is not higher than that calculated using the TTP and mandatory deductions." Yet, DCHA has decided to not use this discretion to keep more money in low-income tenants' pockets. This furthers the perception that DCHA is using this new plan to enact only punitive measures (e.g. $50 minimum rent), and not to help the families that have been harmed by DCHA's mismanagement over the decades. DCHA should consider adopting policies that would lower families' rental obligations and include them in any final plan. These policies could include maximizing the number of discretionary deductions that DCHA applies to rent calculations.

6503.9-6503.23 - Given that DCHA's minimum rent is now $0 per month, DCHA should consider eliminating these detailed regulations relating to hardship exemptions. Alternatively, DCHA should make clear that these regulations do not currently apply.

If DCHA is keeping its detailed procedures for hardship exemptions, it must include an explicit requirement that DCHA affirmatively inform residents about the hardship exemption to minimum rent. DCHA should be required to include information about the hardship exemption, as well as attach a hardship exemption request form, to all rent determinations that impose the minimum rent. DCHA staff must be trained to inform residents about the existence of hardship exemptions and should be required to give written notice of the hardship exemption policy at the time of every annual recertification.

6503.35 - This regulation is missing a phrase. It should say "if the excessive consumption…is beyond the family's control…insulation, the family will not be required to pay for the family's excessive utility consumption. The individual relief to the resident ceases when the situation is remedied."

CHAPTER 66

6601 GENERAL VERIFICATION REQUIREMENTS

6601.2 - 24 CFR § 5.230 has been updated to allow participants to sign only one consent form after January 1, 2024. DCHA's policy should reflect that "After all applicants or participants over the age of 18 in a family have signed and submitted a consent form once on or after January 1, 2024, family members do not need to sign and submit subsequent consent forms at the next interim or regularly scheduled income examination."

Further, HUD has updated 24 CFR § 5.232(c) to allow applicants or participants to revoke consent with respect to PHA access to financial records from financial institutions. DCHA should update its policies to allow families this ability.

6601.16 - DCHA should not require families that agree with the information generated in EIV reports to provide additional income verification. EIV is the top of the HUD verification hierarchy, so it is unnecessary to ask families to provide additional verification if they agree with EIV information, and it reflects their current income. Families should only be required to provide additional verification if their circumstances have changed in the past 3 to 6 months or they dispute the EIV information. This regulation should be updated to reflect that families will not be required to report or verify income if they agree with the EIV report.

6601.27 - HUD requires a minimum of 2 current and consecutive pay stubs for determining annual income. DCHA's policy is to "require the family to provide up to 6 "most current, consecutive paystubs," and then says that DCHA has discretion to ask for more. The policy should be that DCHA asks for 2 paystubs and then has discretion to ask for more if necessary because of sporadic income, etc. Requiring 6 paystubs is burdensome to both participants and DCHA staff. It is particularly unnecessary because income is also being verified through the EIV system.

6601.31 - This regulation should clarify that oral verification is acceptable when the source does not or cannot return the forms. While it is a less preferred form of verification, third-party oral verification is on HUD’s verification hierarchy and should be acceptable to DCHA.

6601.36, 6601.37, 6601.38 - New HUD regulation 24 CFR § 5.618 (b)(2) allows self-certification of net assets if estimated to be at or below $50,000. DCHA is still requiring documentation assets over $15,000. This threshold should be raised to $50,000.

6602 VERIFYING FAMILY INFORMATION

6602.17 appears to be referring to foster adults and/or foster children but may be talking about some other group of individuals instead or in addition. The regulation should be edited to clarify what situations require verification from a state or local government agency.

6602.25 should specify "Federal housing assistance is not available…" Since DCHA administers several local assistance programs that are available to immigrants, this clarification is necessary.

6602.30 - This regulation should specify what is required for whom, not just say that requirements vary.

6603 VERIFYING INCOME AND ASSETS

6603.3 - This should be changed to require only 2 current, consecutive paystubs. HUD only requires 2 paystubs. This is an unreasonable burden on both families and DCHA staff. The requirement should be changed to 2 paystubs unless there is reason to believe that the person's income is variable and not accurately reflected by 2 paystubs.

6603.21 - Families making zero income should be treated no differently than families that have income. Reexaminations are administratively burdensome for PHAs and participants. Requiring one every 6 months is impracticable and inefficient. Moreover, it adds to the bureaucratic burden that low-income families already face when dealing with various government agencies. There is no reason to believe an additional obligation of conducting an interim reexamination every 6 months or requiring them to report income increases in between biennial/triennial recertification would be beneficial or make them more likely to increase their income – in fact, it may have the opposite effect given the amount of time completing recertifications takes. DCHA should instead require families making zero income to report any employment, or receipt of benefits within 30 days of receipt and conduct a reexamination at that time.

CHAPTER 67

6701.5(m) - There is no DCHA Tenant Bill of Rights. This is probably referring to the D.C. Tenant Bill of Rights published by the D.C. Office of the Tenant Advocate.

6701.19 - DCHA should pay interest to tenants on security deposits. While 14 DCMR § 308.8 does not require federally-subsidized housing properties to pay interest on security deposits, almost all federally-subsidized landlords in D.C. do pay interest on security deposits. Further, 24 CFR 966.4(b)(5) requires that interest earned on security deposits either be refunded to tenants or used for tenant services or activities. For these reasons, DCHA should change 6701.19(c) to say that DCHA will pay interest on security deposits as described in 14 DCMR § 308.

6701.23 - 24 CFR 966.4(b)(4) says that late charges "shall not be due and collectible until two weeks after the PHA gives written notice of the charges. Such notice constitutes a notice of

adverse action, and must meet the requirements governing a notice of adverse action (see § 966.4(e)(8)).” This regulation or **6701.24** should specify that tenants have at least two weeks to pay late charges.

6701.25 - The “shall” in this regulation should be changed to a “may.” Neither federal nor local regulations require DCHA to send a notice of intent to file a claim when a tenant is only a few days behind on rent payments. Indeed, D.C. Code § 42–3505.01(a-1) prohibits evictions when less than $600. Given the variety of circumstances of public housing residents and the large number of tenants whose monthly rent is less than $600, requiring that an intent to file a claim be sent whenever someone does not pay rent by the 10th of the month does not make sense.

6071.28 - DCHA should adopt and state in these regulations that if a Lessee is responsible for directly paying the utility bill and overdue payment places them at risk of having their utilities disconnected, DCHA will pay the overdue utility bill and/or have the utility service switched into DCHA’s name to avoid having the utilities disconnected. As HUD notes in their Guidelines, “[t]his is a helpful tool for PHAs to protect the integrity of the unit (e.g. to prevent the pipes in the unit from freezing) [and] to protect the health and safety of residents.” (Public Housing Occupancy Guidelines, Utilities, p. 5).

6071.28(d) - Nonpayment of excess utility charges should not be grounds for eviction. This is essentially eviction for non-payment of a debt. DCHA should use other means to collect debt, not making people homeless.

6701.33 - Federal regulations state that PHAs cannot charge tenants for maintenance and repair beyond normal wear and tear until at least two weeks after the PHA gives written notice of the charges. The regulations also do not prevent PHAs from setting a longer time. (24 CFR § 966.4(b)(4)) For example, the Housing Authority of Baltimore City’s ACOP states that such charges are not due and collectible until **thirty calendar days** after written notice. (Housing Authority of Baltimore City, Public Housing Admissions and Continued Occupancy Policies, 2023, p. 11-6). Any additional costs in a month can be difficult for a household with a low income to absorb. Providing thirty calendar days before maintenance and repair charges become due would give residents more time to budget for the cost and allow residents who are paid every two weeks to receive two paychecks and be more likely to pay the charges on time

6701.35(b) - Nonpayment of maintenance and damage charges should not be grounds for eviction. This is essentially eviction for non-payment of a debt. DCHA should use other means to collect debt, not making people homeless. Additionally, in these regulations, DCHA should specify that pursuant to federal regulations, it will not take action against a tenant for nonpayment of maintenance and damage charges until the time for the tenant to request a grievance hearing has expired and if a tenant requests a grievance hearing, DCHA will not take

action for nonpayment of the charges until the conclusion of the grievance process. (24 CFR § 966.4(e)(8)(ii)(B))

6701.36 - DCHA should also specify that it shall comply with the requirements of DC Housing Code Section 510 relating to air conditioning and any other applicable local or federal cooling standards regarding safe internal temperatures in rental units.

6702 INSPECTIONS

6702.4 - As stated in the comment above regarding regulation 6701.31, in any subsection that references maintenance and damage beyond normal wear and tear, DCHA should reference how it defines the term "normal wear and tear."

6702.7 - The regulations should make it clear that quality control inspections are separate from and in addition to the required UPCS inspections.

6702.8 - Current regulations do not allow for DCHA staff to enter a unit to do a housekeeping inspection, to check on the unit condition outside of regular inspections, or to check for a suspected lease violation. These are unreasonable invasions into people's privacy and interfere with a family's quiet enjoyment of their home. Therefore, subsections (a), (b), and (c) should not be added.

6702.10(c) - Federal regulations require PHAs to give reasonable advance notice prior to entry of a tenant's unit for any non-emergency reason, including making repairs and without distinction as to whether the repairs were requested by the tenant. (24 CFR § 966.4(j)(1)). Similarly, DC law requires housing providers to give written notice to a tenant at least 48 hours before entry to a unit for any non-emergency reason, including to make "agreed repairs" or supply "agreed services and maintenance." (D.C. Code § 42–3505.51) The planning and privacy concerns that require notice are still present if a tenant requests the repair and DCHA should remove subsection (c) presuming permission to enter without further notice for "lessee-requested repairs."

6702.15 - While HUD guidance only requires that PHAs repair conditions which are hazardous to the life, health, or safety of a unit's occupants or offer affected tenants standard alternative accommodations "within a reasonable time," DCHA can and should define that as within 24 hours. For example, the Housing Authority of Baltimore City provides that the abatement of such emergency life and safety conditions must be completed "within 24 hours from the time the work order is issued." (Housing Authority of Baltimore County, Public Housing Admissions and Continued Occupancy Policies, p. 12-4).

Furthermore, DCHA should also adopt a regulation defining a reasonable timeline by which DCHA must complete non-emergency repairs in a workmanlike manner after an inspection. For

example, both the Housing Authority of Baltimore City and the Philadelphia Housing Authority require themselves to complete non-emergency repairs needed to bring a unit into UPCS compliance within 30 calendar days from the inspection or notification date. (Housing Authority of Baltimore County, Public Housing Admissions and Continued Occupancy Policies, p. 12-5; Philadelphia Housing Authority, Public Housing Program Admissions and Continued Occupancy Policy, p. 11-8).

DCHA should also include in these regulations that as part of its obligation to maintain dwelling units and buildings in decent, safe, and sanitary condition, DCHA shall:

a. "[I]ncorporate ongoing lead-based paint maintenance and reevaluation activities into regular building operations in accordance with 24 CFR § 35.1355." (24 CFR § 35.1120(c)); and
b. Incorporate ongoing inspection for and maintenance to remediate indoor mold hazards in accordance with D.C. Code § 8-241.04. **6702.16 -** Previous DCHA inspections and the recent HUD inspection have found that **many** public housing units in DC are not in decent, safe, and sanitary condition as required by 24 CFR § 966.4(e). (HUD Report, Finding PH 31). Given how widespread serious conditions problems are across DCHA housing, it is possible that offered alternative accommodations will also contain health and safety hazards of reasonable concern to tenants. Tenants should not be punished with lack of abatement for rejecting an alternative accommodation offer with good cause. Therefore, we recommend clarifying that provision to state "or if the resident rejects the alternative accommodations without good cause."

CHAPTER 68

Throughout this Chapter, various regulations reference "annual reexaminations." This should be corrected to "biennial/triennial reexamination."

6801 ANNUAL REEXAMINATIONS FOR FAMILIES PAYING INCOME BASED RENTS

6801.1 says that DCHA must conduct reexaminations at least annually. DCHA's MTW plan says that reexaminations will happen biennially or triennially. DCHA staff has confirmed that DCHA intends to continue to conduct biennial and triennial recertifications. Therefore, this regulation should be changed to say; "For those families who choose to pay income-based rent, DCHA will conduct reexaminations every two years except for elderly or disabled families. DCHA will complete recertification every three years for elderly or disabled families.

6801.12 should be deleted because DCHA has already gotten authority from HUD under MTW to complete recertifications less often.

6801.13 - Families transferring to a new unit should not need a new reexamination. Current regulations do not require a reexamination when a family transfers units. Most transfers happen because of an emergency or because of a redevelopment. Unless families are moving because of a change in family composition, there is no reason to require them to gather documents and go through recertification while also moving.

6801.14 - DCHA does not currently have a requirement that families participate in in-person reexamination interviews. Current regulation, 14 DCMR 6118.1(a), gives families 30 days to return a recertification packet with documentation. Further, newly-proposed 6802.12 says that families paying flat rents are generally not required to attend an interview for an annual update. The agency should not impose this new requirement on families. It makes particularly little sense post-public health emergency when both agency staff and program participants have learned to perform a variety of functions without in-person contact. Further, DCHA does not have a completed headquarters and has yet to establish a system for walk-in appointments or for getting a timestamp or receipt when dropping off documents. Given this reality in combination with the busy and complicated lives of public housing residents, it is unreasonable to impose this new requirement. Finally, implementing the hardship exemption will further burden DCHA's already overburdened ADA/504 office. If an in-person interview is not necessary for people paying flat rents, it should not be necessary for those paying income-based rents. For all of these reasons, the requirement for an in-person interview should be eliminated.

6801.14(a) - If DCHA is going to have in-person interviews, it should specify that notifications of the date of the interview will be sent at least 30 days in advance. Given the postal system, the need to take off from work and/or arrange childcare combined with the need to collect all necessary documents, 30 days is a reasonable time period.

6801.16 - DCHA should not require participants to bring an Authorization for the Release of Information to each reexamination meeting. 24 CFR § 5.230 has been updated to allow participants to sign only one consent form after January 1, 2024. This document name should be eliminated from this regulation.

Further, DCHA should add a regulation that reflects this change, saying: "After all applicants or participants over the age of 18 in a family have signed and submitted a consent form once on or after January 1, 2024, family members do not need to sign and submit subsequent consent forms at the next interim or regularly scheduled income examination."

6801.19, 6801.20 - Both of these regulations should be eliminated. HUD neither requires nor recommends annual criminal background checks for public housing residents. HUD's June 10, 2022 Memorandum on the Implementations on the Office of General Counsel's Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions includes this guidance: "Housing Providers should evict for criminal activity only as a last resort (which includes conducting an individualized assessment to determine if eviction is necessary.) 24 CFR 5.903 has significant limits on disclosing criminal conviction records even within a PHA. Given that the HUD report also found that "DCHA is not safeguarding personally identifiable information" and that PH 15 says that DCHA is improperly maintaining criminal records in tenant files, it is even more important that DCHA limit its requests for criminal background information to those required by HUD regulations or a reasonable suspicion that someone has engaged in criminal activity affecting a public housing property. Checking the lifetime sex offender registration as described in 6801.21 and 6801.22 is sufficient.

6802 REEXAMINATIONS FOR FAMILIES PAYING FLAT RENT

6802.2 and **6803.7** say that reexaminations of income will be conducted every 3 years, but **6802.5** says that reexaminations of income and family composition will happen every 2 years. Also, **6802.2** says that DCHA must conduct a reexamination of family composition every year, and **6802.9** says that annual updates of family composition will happen every 2 years. DCHA should clarify how often it will be conducting reexaminations of family income and family composition for families who are paying flat rents. DCHA should ensure that all of the regulations in 6802 consistently reflect that policy choice.

We also suggest that DCHA make the frequency of reexaminations for families paying flat rent the same as the frequency for those paying income-based rent for ease of administration and to make things easier and more predictable for participant families who may switch between flat rents and income-based rents over time.

6802.13 - Families should be given 30 calendar days, not 10 business days, to submit documentation to DCHA. Current regulation, 14 DCMR 6118.1(a), gives families 30 days to return a recertification packet with documentation. Given that mail sometimes takes as long as 5 business days to arrive, limiting families to 10 business days gives them less than a week to gather their documents and send them back to DCHA. For families mailing the required documentation, the documentation could arrive late even if they put it in the mail the day after they receive the notice. A large number of documents are required for recertification, often requiring trips to the bank or asking payroll departments for paystubs. Families with children

and/or jobs need time to complete all of these tasks. The current process is working. Families should not be given less time than they have now to submit recertification documents.

6802.15, 6802.16 - Both of these regulations should be eliminated. HUD neither requires nor recommends annual criminal background checks for public housing residents. HUD's June 10, 2022 Memorandum on the Implementations on the Office of General Counsel's Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions includes this guidance: "Housing Providers should evict for criminal activity only as a last resort (which includes conducting an individualized assessment to determine if eviction is necessary.) 24 CFR 5.903 has significant limits on disclosing criminal conviction records even within a PHA. Given that the HUD report also found that "DCHA is not safeguarding personally identifiable information" and that PH 15 says that DCHA is improperly maintaining criminal records in tenant files, it is even more important that DCHA limit its requests for criminal background information to those required by HUD regulations or a reasonable suspicion that someone has engaged in criminal activity affecting a public housing property. Checking the lifetime sex offender registration is sufficient.

6803 INTERIM REEXAMINATIONS

6803.5 is missing words. Does DCHA mean to say "that occur [between] annual reexaminations" or "that occur [more than x number of days after] annual reexaminations" or something else? DCHA should clarify.

6803.13 - This regulation should be deleted. It conflicts with **6803.15** and **6803.16**, which provide concrete guidance on when DCHA can conduct interim recertification. On the contrary, this phrasing gives DCHA unlimited discretion to demand that tenants recertify any time for any reason. This is an unreasonable standard and is a significant departure from DCHA's current and years-old policy of limiting the number of recertifications that are required to save on administrative burden for both the agency and the tenants.

6803.15 (2) - Families making zero income should be treated no differently than families that have income. Reexaminations are administratively burdensome for PHAs and participants. Requiring one every 6 months is impracticable and inefficient. Moreover, it adds to the bureaucratic burden that low-income families already face when dealing with various government agencies. There is no reason to believe an additional obligation of conducting interim reexamination every 6 months or requiring them to report income increases in between biennial/triennial recertification would be beneficial or make them more likely to increase their income – in fact, it may have the opposite effect given the amount of time completing recertifications takes.

6803.16 - In its 2015 MTW plan, DCHA sought and received permission from HUD to only require public housing tenants to report changes in earned income between biennial recertifications if the increase is more than $10,000. This initiative continues to be included in the DCHA MTW plan. 6803.16(a) appears to contradict this, and 6803.16(c) appears to be consistent with the MTW authority. 6803.16(a) should be amended to say: "Families are required to report increases in earned income that are greater than $10,000, including new employment, within 30 calendar days of the date the change takes effect;"

CHAPTER 70 - PETS

7001 ASSISTANCE ANIMALS

7001.13 - This regulation is redundant and confusingly worded. 7001.14 and 7001.17 also state that DCHA may request the removal of an assistance animal that is a direct threat to the health and/or safety of others and/or the property. This regulation is worded in such a way that it could be incorrectly understood to mean that a person with a disability is not allowed to use or live with any assistance animal if a particular animal is asked to be removed. As the responsibilities of individuals with assistance animals is more clearly explained in two other regulations in the same section, this one should be deleted.

7002 PET POLICIES FOR ALL DEVELOPMENTS

7002.1(d) violates federal law. 42 U.S.C. § 1437z–3 specifically says, "A resident of a dwelling unit in public housing (as such term is defined in subsection (c)) may own 1 or more common household pets or have 1 or more common household pets present in the dwelling unit of such resident, subject to the reasonable requirements of the public housing agency." The prohibition on new pets in non-elderly/disabled properties after January 2024 must be eliminated because it is inconsistent with federal law. DCHA may limit families to one pet after that time, but it cannot prohibit families from having one pet.

7002.2(d) should be eliminated. There is no objective, non-discriminatory way for DCHA to determine whether a a pet owner is able to comply with house rules in advance. This regulation opens up the possibility of age, gender, and disability discrimination as well as the possibility that property managers will use this discretion to retaliate against tenants for exercising their rights.

7002.5 lists requirements that DCHA may adopt but not what requirements DCHA is adopting. These regulations should specify what reasonable requirements DCHA is placing on pet ownership and additions to those requirements should be subject to notice and comment.

7002.8 - Subsection (a) makes sense as a definition of "common household pet." Subsection (b), however, prohibits many common household pets such as hamsters and guinea pigs, which are rodents, and turtles, which are reptiles. Indeed, one PetSmart store in DC carries 25 varieties of lizards and insects. These are common pets that are generally less expensive to buy and maintain than dogs and cats. Therefore, subsection (b) should be eliminated or at least limited to only numbers 5 and 6 on the list. Alternatively, the existing regulation, says: "Only domesticated animals that are commonly kept as household pets, such as a dogs, cats, birds, rodents, fish, or turtles, are permitted. The term "common household pet" shall not include reptiles, other than turtles." 14 DCMR 6126.3

7002.8(c)(1) - It is not reasonable to allow dogs and not allow dogs over 25 pounds. Low-income residents of public housing are most likely to get their dogs from shelters. Currently, only 13 of the 132 dogs available for adoption at the Humane Rescue Alliance are under 25 pounds. Dogs like beagles, basset hounds, poodles, and cocker spaniels are all over 25 pounds as adults. There is no reason that DCHA should be limiting dogs this sharply. The result will likely be more people applying for exceptions to this rule as reasonable accommodations and more paperwork for DCHA staff instead of people being able to have medium-sized dogs that are readily available at local shelters. Further, the existing regulations only limit dogs to 40 pounds, and there is not evidence that these 25-40 pound dogs have caused problems.

7002.9(c)(4) - See the comment above.

7002.11(e) - This restriction is overly broad. Exercising pets includes walking them, and pet owners will need to walk their pets through various parts of the property in order to take them on a walk. There is already a requirement that pets must be on leashes or carried. This additional rule is unnecessary and is ripe for abuse by staff.

7002.18(d) - The proposed policy states that residents must designate two responsible parties to care for their pet in the event of owner incapacity. This requirement places an unreasonable burden on residents, and potentially penalizes socially isolated individuals. At a maximum, DCHA should require pet owners to designate <u>one</u> responsible party, and residents should have a process for requesting a waiver of this requirement.

7002.19 - The proposed policy states that "[a]ny delays or interruptions suffered by management in the inspection, maintenance, and upkeep of the premises due to the presence of a pet may be cause for lease termination." This gives DCHA broad discretion to terminate tenancy. This provision should be removed or, at a minimum, narrowed from "any delays" to "repeated delays that result in serious threats to health and safety, and that the tenant fails to correct."

7002.20 - The proposed policy states that pets not owned by a tenant are not allowed on the premises. DCHA should include an explicit exception for service and assistance animals of tenant guests.

7002.21(c) - The proposed policy states that, if it is determined that a resident/pet owner has violated rules regarding dog bites and animal cruelty, the resident will receive a notice stating that failure to correct the violation, request a meeting, or appear at a requested meeting "may result in initiation of procedures to remove the pet, or to terminate the pet owner's tenancy." Termination of tenancy should not be an available remedy before DCHA has attempted initiation of procedures to remove the pet.

7003 PET DEPOSITS AND FEES

7003.3 - Pet deposits should not be more than the total tenant payment. In addition, the original ACOP proposal listed the pet deposit as the higher of the total tenant payment or $50, and now DCHA is proposing $100. The pet deposit should be the lower of $100 or the total tenant payment. Further, DCHA should maintain its current, less financially burdensome policy of allowing pet owners to pay a refundable pet fee in monthly installments. 14 DCMR 6126.3(b)(6).

7003.4 - This regulation requires tenants in elderly/disabled developments to pay larger pet deposits than tenants at general occupancy developments. This is discriminatory. The deposits should be the same. In both cases, the deposits should be the lesser of $100 or the total tenant payment. At the very least, if it is a maximum of $100 at general occupancy properties, then it should be the same at elderly/disabled properties. Further, DCHA should maintain its current, less financially burdensome policy of allowing pet owners to pay a refundable pet fee in monthly installments. 14 DCMR 6126.3(b)(6).

7003.6 - While federal law allows public housing authorities to charge both a pet deposit and a **nominal** fee for having pets, $100 for a deposit per pet and $100 per pet is no longer nominal. Tenants with 2 pets would need to pay $400 all at once in order to keep their pets. DCHA should either eliminate this fee or reduce it significantly.

CHAPTER 73 - COMMUNITY SERVICE

7300, et seq. - Throughout this section the regulations refer to a 12 month lease, lease term or end of the lease. Leases in the District of Columbia automatically renew and can only "end" for reasons set forth in the DC Code. Any regulations referring to a lease term need to be rewritten.

In this section there are also several references to "state" programs. As you know, despite our best advocacy efforts, DC is not a state.

7301.5 - Similar to how it has exempted primary caretakers for individuals who are blind or disabled, in its regulations, DCHA should exempt primary caregivers of children under 3 years old from the community service requirement. Public school is not widely available to children in D.C. until they are 3 years old, and it can be difficult to secure quality child care for young children, especially if you do not have money to pay for it. At public meetings, DCHA staff mentioned that no one had raised this issue at tenant meetings. It is extremely likely that no one with a child under 3 was able to attend these meetings because child care was not available.

7302.4 - Family members should be allowed to self certify their participation in community service.

7302.7 - The forms should not have a place for signature because family members should be allowed to self certify. The inclusion of phone numbers is reasonable so that DCHA can validate a sample of self-certifications.

7302.8 - 7308.13 - These regulations are not relevant under D.C. law. Termination and non-renewal of leases are not permitted and a tenancy can only be terminated through an eviction action in DC Superior Court. Further, this section refers to the hypothetical ease provisions, which are not currently in existence and until such time as a new lease is created (with input from the community) this section is unenforceable.

7405 OCCUPANCY OF ACCESSIBLE UNIT

CHAPTER 74: Reasonable Accommodation Policies and Procedures

7405 Occupancy of Accessible Unit

7405.6 - A person on the accessible units waiting list should not be automatically removed from the list because they rejected two offers of accessible units. There are many reasons an accessible unit may be rejected, such as a person with a disability determining that the unit will not meet their disability-related needs. People with disabilities are best situated to determine whether a unit will or will not meet their needs. At minimum, DCHA should revise the term to state that an individual will not be removed if they have good cause to show that the accessible units offered do not meet their disability–related needs.

7405.7 - A household on the waiting list should not be removed because they rejected two offers of accessible units. There are many reasons an accessible unit may be rejected, such as a person with a disability determining that the unit will not meet their disability-related needs. People with disabilities are best situated to determine whether a unit will or will not meet their needs. This

policy could be a FHA and DCOHR violation by applying different terms and conditions to people with disabilities that have requested accessible units when compared to those without disabilities on the waiting list. At minimum, DCHA should revise the term to state that an individual will not be removed if they have good cause to show that the accessible units offered do not meet their disability–related needs.

CHAPTER 77 Transfer Policy

7701 EMERGENCY TRANSFERS

7701.5 - Victims of violent crimes that do not meet the definition of domestic violence or dating violence who will be in danger if they remain in place should be added to the list of emergency circumstances warranting an immediate transfer. **7701.5(b)** should refer directly to 8107.9 instead of all of 14 DCMR §§ 8100 to find the required documentation for an incident of violence.

7701.9 - This proposed regulation says that emergency transfers necessary to protect a victim of domestic violence, dating violence, sexual assault, or stalking are mandatory for the tenant. Situations involving family or intimate partner violence are complicated, and the victim of such violence should be able to make their own judgment about whether or not transferring is the best thing for their safety. This calculation may change over time. DCHA should respect the wishes of survivors of violence and not make these transfers mandatory. It is reasonable to make emergency transfers that arise due to maintenance conditions mandatory.

7701.10 - DCHA's proposed policy requires residents to bear the cost upfront with reimbursement after the expenses are incurred. This policy should be amended to allow for moving expenses to be paid by DCHA upfront. Many residents of public housing do not have cash on hand to absorb these costs.

7702 DCHA REQUIRED TRANSFERS

7702.2 - Since a mandatory transfer is an adverse action, the notice should include information about appeal rights as well.

7702.6 - DCHA should clarify what is meant by "DCHA shall transfer a family living in an accessible unit that does not require the accessible features." It is unclear who will make that determination and how. DCHA should amend this policy to allow families to self-report such a change and provide the right to file a grievance if DCHA disagrees with the family.

7702.11 - DCHA's proposed policy should enshrine the residents' right to return like Resolution 16-06 adopted by DCHA's board in March 2016, and ensure that that right is enforceable by

including it in ground leases, management agreements, and leases. The proposed policy states that a resident "may be allowed to return" which falls far short of DCHA's stated policy in similar conversions: one of one replacement, build first and right to return without eligibility redeterminations. All of these rights must be enshrined in DCHA"s regulations.

DCHA should also make it clear that "Relocation Act" refers to the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA).

7703 TRANSFERS REQUESTED BY TENANTS

7703.1 - DCHA's proposed policy seeks to eliminate residents' ability to request transfers for convenience without any justification. This policy is unnecessarily cruel. While DCHA understandably prioritizes certain transfer requests, it should continue to allow transfer requests for any reason. There is no good justification for why such a request should not be allowed.

7703.11 - DCHA's proposed policy does not properly define what is meant by "have not engaged in criminal activity", "owe no back rent", or "have no housekeeping lease violations." These are all questions of law and fact and without definition, could be subject to different interpretation by different staff. As such, they should be litigated in a court of law. However, at a minimum, DCHA should make clear that if any of these allegations are made against a resident, they have a right to file a grievance where the burden of proof would be on DCHA.

Furthermore, DCHA's proposed policy should allow for transfers if it would aid a resident in improving housekeeping standards. Sometimes a resident needs to be temporarily relocated for several days so that the apartment can be decluttered.

7703.12 - DCHA should clarify that a tenant will only be billed for maintenance above and beyond normal wear and tear. Also, DCHA should spell out what "other charges" may be due for the "old unit."

7704 TRANSFER PROCESSING

DCHA should create a system whereby a resident can find their position on the transfer list through an online portal.

7704.1(b) seems to create a separate process for emergencies. DCHA should clarify who within the agency is responsible for emergency transfers and how tenants can access an emergency transfer vs. another kind of transfer.

CHAPTER 78 LEASE TERMINATIONS

7800.1 - This section should be amended to read: "Either party of the dwelling lease agreement may terminate the lease in accordance with the terms of the lease and applicable local and federal law."

7800.2 - This section should be amended to read "[t]he District of Columbia Housing Authority (DCHA) has the authority to terminate the lease based on the Lessee's failure to comply with HUD regulations, for serious or repeated violations of the terms of the lease, and for other good cause *as defined under DC law."*

7800.3 - This section is in conflict with local law and unreasonably expansive. District law provides a three-year statute of limitations in contract actions. The regulations should require that DCHA bring actions based on breach of lease within these same time limitations, both to maintain consistency with DC law and to ensure that tenants are able to adequately defend against these claims and have a reasonable measure of housing security.

7801 TERMINATION BY TENANT

7801.2 - This section should be amended to extend the time for remaining family members to notify DCHA of the death or departure of the Head of Household and the time for remaining family members to complete an application to become Head of Household. The time frames provided are not realistic given the practical and logistical challenges that face families following such a death or departure, or the processes involved in determining guardianship of minors following such a death or departure. Section (a) is impracticable and should be removed, as DCHA is unlikely to have enough information to determine whether a resident left "pursuant to" a Notice to Vacate or whether the timing is coincidental.

Section (b) should be amended. As written, there is no clear obligation for DCHA to even notify a new Lessee of existing settlement obligations or rental arrearages. There should be clear requirements for DCHA to notify new Lessees of existing rental balances. Other settlement agreements should not be enforced against new Lessees at all, but to the extent they can be, there should be clear requirements as to notice of those obligations prior to execution of the lease.

Subsection (c) does not take into account the realities of guardianship proceedings - DCHA should consider evidence of a caregiving relationship sufficient for provisional approval as Head of Household, unless another adult produces evidence that that relationship is contested or they are seeking or have been granted guardianship.

7802: LEASE TERMINATION BY PUBLIC HOUSING AUTHORITY

7802.1 - This section should state that DCHA "may" terminate a lease for a serious or repeated violation of a material term of the lease, rather than "shall". Federal law does not make such termination mandatory, and this policy is unnecessarily punitive and would not allow for DCHA to use discretion to determine whether an alleged lease violation rose to a level that justified termination of the lease or whether mitigating factors weighed in favor of not terminating. Additionally, this is in conflict with local law in that it does not make clear that a tenant generally cannot be evicted for one serious violation of a lease term and must be given the opportunity to cure (outside of one-strike eviction cases).

7802.2 - This provision is in conflict with local law and basic legal principles. District law imposes a statute of limitations of 3 years on claims for breach of contract, including lease violations. This is already significantly longer than District law affords other housing providers, who are required to serve a Notice within 6 months of an alleged violation of an obligation of tenancy. DCHA's regulations should be written to require DCHA to comply with local law, which prevents housing providers from holding legal claims rather than timely raising them, a practice which both prevents tenants from mounting a fulsome defense and provides significant opportunity for abuse by allowing bad actors to use old claims as pretext when filing what might otherwise be illegal discriminatory or retaliatory actions.

7802.3 - This provision should be amended to remove individuals using the premises with "implied consent" of the Lessee from the responsibility of the Lessee, as this determination will necessarily be highly subjective and is likely to result in terminations even where the Lessee did not in fact permit an individual to occupy the leased premises. Additionally, the language in the final sentence of this provision is confusing, and it is unclear what "above lease violations" are being referenced and identified as serious violations of the lease. Because residents may face termination as a result of allegations of serious lease violations, it is important that the regulations are clear on this point.

7802.4 - This section should state that DCHA "may" terminate a lease for a serious or repeated violation of a material term of the lease, rather than "shall". Federal law does not make such termination mandatory, and this policy is unnecessarily punitive and would not allow for DCHA to use discretion to determine whether an alleged lease violation rose to a level that justified termination of the lease or whether mitigating factors weighed in favor of not terminating. This provision is in conflict with local law, which requires housing providers to give tenants an opportunity to cure any alleged lease violation, except as preempted by federal law as related to one-strike evictions. As written, this provision appears to suggest that DCHA will terminate a lease for one incidence of an alleged violation.

This section should be amended to limit possible basis for termination to failure to supply information to documentation that is both required by applicable regulations or program rules

and necessary to the administration of the program. As written, this appears to provide DCHA with a nearly limitless requirement to terminate based on a tenant's failure to provide information, regardless of whether DCHA has an independent obligation to use other means to obtain that information or the availability of other means to achieve program needs, such as self-certification. Additionally, as above, this does not appear to allow for DCHA to consider circumstances or mitigating factors in determining whether termination is an appropriate remedy for failure to provide information.

7802.8 - This section should be amended to ensure compliance with local law, which requires that DCHA provide a notice and an opportunity to cure for any alleged lease violation, with the limited exception of cases brought under federal one-strike law. This includes notice and any opportunity to cure any allegation of unauthorized occupants. For this reason, the regulations should state that DCHA "may" terminate a lease on this basis, rather than "shall" and should include language indicating that DCHA will only terminate on this basis if a tenant has been provided adequate notice and opportunity to cure and has not done so. Additionally, these changes would enable DCHA to consider the circumstances and mitigating factors when deciding whether termination is the appropriate remedy.

7802.10 - This provision is inconsistent with local law. Because District law does not require tenants to sign new leases, but permits tenants to remain on a month-to-month basis after the expiration of a lease, it is particularly inappropriate for DCHA to terminate leases on this basis without any exercise of discretion. Because the federal regulations do not require DCHA to terminate on this basis, to be most consistent with local law, DCHA's policy should not adopt this as grounds for termination.

7803 FURTHER REASONS FOR LEASE TERMINATION

7803.1 - In accordance with federal regulations at 24 CFR 960.261, this provision should be written to make clear that DCHA may terminate families that have been over-income for 24 consecutive months. As written, it suggests DCHA could terminate a family at any time for being over-income, regardless of the duration of that income.

7803.3-6 - We recommend replacing "shall" with "may" in each of these sections. DCHA has discretion in determining whether to terminate a lease for these categories of criminal activity, and the regulations should be written to allow DCHA to exercise that discretion. Additionally, writing "may" allows DCHA to consider mitigating factors and assess cases individually based on the seriousness of any alleged crime, the circumstances of the alleged crime, and whether the alleged crime warrants eviction, or if there is something short of such a serious consequence that it can use instead. This is consistent with HUD guidance for all housing providers which states: "Housing Providers should evict for criminal activity only as a last resort (which includes conducting an individualized assessment to determine if eviction is necessary.)." HUD's June 10,

2022 Memorandum on the Implementations on the Office of General Counsel's Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions.

Second, the broad categories of "violent criminal activity or possession of a firearm or ammunition in violation of District law" are not grounds for termination without the ability to cure under federal law, and should be struck from this section .

7803.8-9 - These provisions should also state that DCHA "may" terminate the lease, rather than "shall." Federal regulations only require DCHA to establish a policy that allows for termination on this basis. DCHA should adopt a policy that maintains discretion to decline to terminate. This provision should also make clear that tenants will be given notice and the opportunity to cure for any alleged violation of this provision as alcohol abuse is not criminal activity subject to one-strike law. Finally and critically, given the nature of alcohol abuse disorders, it is particularly important that DCHA be able to exercise discretion to take related disabilities and treatment options into account when determining whether any alleged violations could be resolved without termination.

7803.10 - We urge DCHA to remove this provision entirely. The practice of issuing barring notices infringes on residents' right to use and quiet enjoyment of their properties, disproportionately affects individuals of color, and can lead to unnecessary involvement in the criminal justice system. However, should DCHA maintain a barring policy, any termination based on such policy should be discretionary, rather than mandatory, to allow DCHA to consider the facts and circumstances surrounding any alleged violation and whether termination is the appropriate remedy. Additionally, it is unreasonable and unrealistic to expect residents to maintain constant awareness of each barred individual based on a posted list in the property management office. DCHA should bear the burden of providing affirmative notification to residents regarding any barring notices that have been issued, as well as the terms and basis of any such barring notice, prior to holding residents accountable for complying with the notice.

7803.11 - This provision should also state that DCHA "may" terminate the lease, rather than "shall." Federal regulations only require DCHA to establish a policy that allows for termination on this basis. DCHA should adopt a policy that maintains discretion to decline to terminate. Additionally, this provision should make clear that residents are entitled to notice of any alleged violation and an opportunity to cure.

7803.12 - This section should be amended to state that DCHA "may" terminate for each violation listed in this section. Making such termination mandatory is not required by federal regulation, and prevents DCHA from exercising discretion to consider the seriousness of any alleged violation, mitigating circumstances, or other, less punitive measures to resolve the

violation. Additionally, this section should make clear that residents will be provided with notice and an opportunity to cure any of these alleged violations in accordance with local law.

7803.13 - This section should be amended to state that DCHA "may" terminate under these circumstances, to allow DCHA to use discretion in determining whether termination is an appropriate remedy considering all facts and circumstances.

7803.14 - This section should be removed. Federal regulations do not provide for household members becoming subject to sex offender registration as a basis for termination, but suggest instead that DCHA should examine whether there is a basis for termination under other regulations related to criminal activity. Notice PIH 2012-28.

7803.15-24 - For each of these sections, we recommend amending them to read that DCHA "may" terminate the lease, rather than "shall." DCHA should adopt a policy that maintains discretion to decline to terminate. Additionally, this provision should make clear that residents are entitled to notice of any alleged violation and an opportunity to cure.

7803.25 - We oppose the inclusion of "[i]f a household member has engaged in or threatened violent or abusive behavior toward DCHA personnel" as grounds for lease termination. To the extent the behavior contemplated threatens physical violence, there are other grounds under which DCHA could exercise discretion as to whether to terminate the lease. Where these interactions do not rise to the level of a criminal act, this provision not only implicates speech protections, but also requires an extremely subjective assessment of what constitutes "abusive" behavior, which is likely to be informed by biases, conscious or unconscious, that will disadvantage already-marginalized communities.

7803.26-30 - For each of these sections, we recommend amending them to read that DCHA "may" terminate the lease, rather than "shall." DCHA should adopt a policy that maintains discretion to decline to terminate. Additionally, this provision should make clear that residents are entitled to notice of any alleged violation and an opportunity to cure.

7804 NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING

7804.1 – 7804.6 – DCHA should only conduct criminal background checks when required by HUD, not in any instances when it is discretionary. HUD neither requires nor recommends annual criminal background checks for public housing residents. HUD's June 10, 2022 Memorandum on the Implementations on the Office of General Counsel's Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions includes this guidance: "Housing Providers should evict for criminal activity only as a last resort (which includes conducting an

individualized assessment to determine if eviction is necessary.).” 24 CFR 5.903 has significant limits on disclosing criminal conviction records even within a PHA. Given that the HUD report also found that "DCHA is not safeguarding personally identifiable information" and that PH 15 says that DCHA is improperly maintaining criminal records in tenant files, it is even more important that DCHA limit its requests for criminal background information to those required by HUD regulations.

7804.7 – While it is true that PHAs are allowed to pursue eviction based on alleged criminal activity, even if there was no arrest or conviction, it is bad policy to do so. DCHA’s judgment about whether criminal activity occurred is not going to be better than law enforcement agencies or the Courts. Additionally, allowing DCHA to pursue eviction absent arrests and convictions in the past has led to DCHA issuing some questionable notices that led to protracted litigation because the nature of the alleged offenses was, to be frank, absurd. Therefore, DCHA policy should be to only pursue eviction for criminal activity in instances where there is an eviction.

7804.8 – While we understand that this regulation is pulled from 24 CFR 966.4(k)(e)(3), it skips over an important federal regulation: that DCHA is required to issue an eviction notice that complies with local law. 24 CFR 966.4(k)(3)(iii). The local regulations regarding notice that DCHA is obligated to follow in all eviction proceedings are contained in 14 DCMR 4301. 14 DCMR 4301.5 makes clear that these regulations apply to DCHA. DCHA’s regulations should specify that it is obligated to and will comply with all local laws, including eviction notice requirements, when attempting to evict any public housing resident.

7804.9 – There is no instance in which DC law allows for an eviction notice to give less than 30 days’ notice. The sentence of this regulation suggesting that there might be an exception should be deleted.

7804.10 – First, DCHA has discretion to determine whether or not it will issue a notice to vacate based on criminal activity. DCHA should use this discretion. Therefore, the “shall” in this regulation should be changed to a “may.” This is important because DCHA should consider the seriousness of any alleged crime, the circumstances of the alleged crime, and whether the alleged crime warrants eviction, or if there is something short of such a serious consequence that it can use instead. This is consistent with HUD guidance for all housing providers which states: "Housing Providers should evict for criminal activity only as a last resort (which includes conducting an individualized assessment to determine if eviction is necessary.).” HUD's June 10, 2022 Memorandum on the Implementations on the Office of General Counsel's Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions.

Second, the broad categories of “violent criminal activity or possession of a firearm or ammunition in violation of District law” are not grounds for termination without the ability to sue under federal law, and should be struck from this section .

7804.11 – DCHA must follow local law when attempting to terminate the assistance of a deceased public housing resident. Not issuing a notice in these circumstances is a departure from current DCHA policy, and risks creating liability for DCHA in the event that they dispose of a person's Property without going through the proper probate process.

7804.13 – This regulation is inconsistent with local law. In D.C., federal Marshals conduct evictions, and must do so in accordance with DC Code 42-3505.01a. In this regulation, there are detailed storage requirements after eviction that all landlords must abide by, including DCHA.

7804.15 – Nothing in the federal regulations requires DCHA to limit the period of time that a family member can cure the alleged violation to three months. DCHA should not impose this strict limit in regulations, and instead should work with a family to decide what would work for them on a case-by-case basis.

7804.17 – While federal law allows DCHA to exempt these categories from grievance procedures, DCHA has discretion not to and should use that discretion. DCHA should not only provide applicants with the opportunity for a grievance hearing in instances when it is required to by law and DCHA certainly should not be reducing the types of decisions that entitle applicants to a hearing, which is exactly what DCHA is doing here. Instead DCHA should give applicants the opportunity to grieve any adverse decision DCHA makes. DCHA should strive to give everyone impacted by DCHA's decisions as much due process as possible, not simply meet the bare minimum requirements set forth in federal law.

7901 INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS

7901.7(a) – Fifteen days is a drastic cut from the 1 year currently available for *both* applicants and participants under 14 DCMR 6301. It is not a reasonable or realistic amount of time to afford applicants to request an informal hearing. This is particularly true given frequent mail delays and structural barriers faced by families seeking public housing, including lack of access to childcare, the need to work long or unpredictable hours, limitations related to disabilities, and unstable housing that can mean mail takes even longer to reach them. Fifteen days also does not allow enough time for families who may not be comfortable or familiar with these administrative processes to consult with a legal assistance provider to determine whether they have grounds to challenge a denial of admission. People are motivated to get into housing as soon as possible and do not need this draconian time limit to motivate them to act quickly.

7901.7(d) – DCHA should amend this regulation to conform to DCHA's current policy, which is to have a contracted hearing officer (*not* a DCHA employee) preside over all informal hearings.

7901.7(f) – DCHA should strike this entire section, and retain its current rule regarding the binding effect of a hearing officer's decision contained in 14 DCMR 6313. It appears that DCHA

is basing the proposed regulations in all of section 7901 on 24 CFR 982.554(a)-(d). Nothing in those federal regulations gives DCHA the right to disregard a hearing officer's decision. If DCHA chooses to keep this regulation, it is in effect saying that if it loses at the informal hearing it can unilaterally decide to not follow the decision. This undercuts the entire informal hearing process, and undercuts trust in DCHA at a time DCHA should be actively trying to build bridges with participants. If DCHA believes the hearing officer's decision is wrong, it can appeal to the executive director (or the DC Court of Appeals), just like the participant can, and argue its points. This would ensure the applicant has a meaningful opportunity to respond to DCHA's arguments. It is also the process that DCHA currently uses that works. There is no reason to change it now.

7901.8 – DCHA should be maximizing applicant and participants choice when deciding whether it will hold an informal hearing remotely or in-person. To that end, DCHA should not be unilaterally allowed to require that an informal hearing occur remotely. Instead, the family requesting the hearing should have to consent to a remote hearing. This will ensure that no family is made to participate remotely when they would otherwise benefit from, or simply have an easier time participating in, an in-person hearing. Similarly, DCHA should not be able to deny a family's request for a remote hearing. This will ensure that families that would have a harder time appearing in person as opposed to virtually can still have the informal hearing they are entitled to.

7901.8(h) – DCHA should inform families of the technological requirements to attend a virtual informal hearing more than 5 days before the scheduled hearing, and also inform of their right to opt for an in-person hearing. Five days is simply not enough time to ensure that the family gets the notice and can then reach someone at DCHA in time to make a request for an in-person hearing or other assistance if necessary.

7901.8(i) – DCHA should be obligated to turn over any documents it intends to rely on at the hearing, just as the applicant is required by these regulations to submit any documents they will use.

7901.9 – First, DCHA should add mitigating circumstances presented to the list of matters to be evaluated in rendering a final decision on denial of admission. This is consistent with federal guidance indicating that "[t]he purpose of the hearing is to permit the applicant to hear the details of the reasons for rejection, present evidence to the contrary if available, and claim mitigating circumstances if possible." Public Housing Occupancy Guidebook, p. 58.

Second, DCHA should remove "or in DCHA policy" from 7901.9(b)(2). DCHA's regulations are its rules and it should follow them. It is unclear what DCHA means by "policy" and this is too vague a standard by which to adjudicate a person's admission or denial into the program.

Third, DCHA's notice must inform the applicant of their right to appeal the decision and the process for doing so.

7903 GRIEVANCE PROCEDURES FOR PUBLIC HOUSING

7903.3-4 – We assume that DCHA is providing for 30 days of comments when grievance procedures change because that is the minimum allowed notice and comment period required by federal law. However, DCHA should give its residents more process and time, especially regarding things like changes to the grievance procedure which is critical to tenant rights. This is particularly true during this period of time when the agency should be aiming to build back trust with the people the agency serves. We recommend, at minimum, a 90 day period to comment on any changes to the lease, including the grievance procedures contained in it.

7903.6(g) – DCHA should amend this definition and conform to its current rules and practices regarding hearing officers (14 DCMR 6304). Specifically, hearing officers should be impartial, disinterested members of the bar, in good standing. This means hearing officers should have legal training and also not be employees of DCHA.

7903.8 – While federal law allows DCHA to exempt these categories from grievance procedures, DCHA has discretion not to and should use that discretion. DCHA should not only provide applicants with the opportunity for a grievance hearing in instances when it is required to by law and DCHA certainly should not be reducing the types of decisions that entitle applicants to a hearing, which is exactly what DCHA is doing here. Instead DCHA should give applicants the opportunity to grieve any adverse decision DCHA makes. DCHA should strive to give everyone impacted by DCHA's decisions as much due process as possible, not simply meet the bare minimum requirements set forth in federal law.

7903.10 - DCHA should continue to give public housing residents up to one year to grieve any action or inaction by the agency. Reducing this window to a mere 30 days is a drastic change, at a time when DCHA should be building trust with residents, not squandering it by passing regulations that limit and take away rights they currently have. Further, tenants may not even know that the action or inaction of the agency has taken place in 14 days. This also does not give residents time to seek legal advice and assistance.

7903.13 – DCHA should strike the definition of good cause contained in this regulation. Good cause has legal meaning, and this regulation creates an unnecessarily heightened standard for what constitutes good cause. Instead, DCHA should use a standard more similar to what is currently in place in the voucher program for good cause hearings. There, a hearing officer is

required to consider if a tenant had good cause to miss a deadline by 1) determining if they got proper notice, and 2) considering a non-exhaustive list of mitigating circumstances.

7903.16 – Residents should be given more than 14 days to request a hearing following receipt of the summary of the informal settlement. This is not a reasonable amount of time for a resident to be able to consider the settlement, seek advice of legal counsel if necessary, and request a hearing. We recommend a minimum of 30 days.

7903.18 – DCHA should use this opportunity to make its rules regarding rescheduling hearings better for residents, not worse. Instead of the proposed heightened rule around what constitutes good cause, DCHA should at a minimum adopt a regulation more akin to its current HCVP regulations. Specifically, DCHA should allow any party to request the first hearing date be moved, with or without the showing of good cause, and allow either party to request future hearing dates be continued as long as there will not be prejudice to the other side. 14 DCMR 8903.1(2).

7903.21 – First, DCHA should be maximizing applicant and participants choice when deciding whether it will hold an grievance hearing remotely or in-person. To that end, DCHA should not be unilaterally allowed to require that a hearing occur remotely. Instead, the family requesting the hearing should have to consent to a remote hearing. This will ensure that no family is made to participate remotely when they would otherwise benefit from, or simply have an easier time participating in, an in-person hearing. Similarly, DCHA should not be able to deny a family's request for a remote hearing. This will ensure that families that would have a harder time appearing in person as opposed to virtually can still have the informal hearing they are entitled to.

Second, DCHA should provide the hearing packet more than three business days prior to the scheduled remote hearing. Three business days does not provide adequate time for residents, who may or may not have the assistance of legal counsel, to review and prepare defenses to the evidence DCHA intends to present. Additionally, DCHA should not change its current regulations, which allow complainants to: "[T]o examine, before the hearing, documents, records, and regulations of DCHA that are relevant to the hearing. Any document not so made available after a request for the document has been made by the complainant may not be used as evidence by DCHA at the hearing." 14 DCMR 6307(c). This is required by and consistent with Federal law. 24 CFR 966.56(b)(1).

7903.26 – DCHA should inform families of the technological requirements to attend a virtual informal hearing more than 5 days before the scheduled hearing, and also inform of their right to opt for an in-person hearing. Five days is simply not enough time to ensure that the family gets

the notice and can then reach someone at DCHA in time to make a request for an in-person hearing or other assistance if necessary.

7903.27 – DCHA should, recognizing that a vast majority of its residents live at or below the poverty line, make all copies of documents free of charge. A person should not be denied the opportunity to adequately defend themselves because they cannot afford copies. At minimum, however, DCHA should keep its current policy, which allows a resident to get 50 pages free of charge. There also need not be a time limit on when a tenant can examine these records.

7903.28 – DCHA should continue to allow hearing officers to "[g]rant an exception if the family is able to document an emergency situation that prevented them from attending or requesting a postponement of the hearing or if requested as a reasonable accommodation for an individual with a disability." 14 DCMR 6309.1(e). There is simply no good reason to remove this right from the regulations.

7903.29 – Residents should be given a longer grace period than 20 minutes. Many of DCHA's residents rely on public transportation, including unreliable buses and trains. We recommend a minimum of one hour. Additionally, if after an hour the resident shows up, and all parties are ready and still available for a hearing, DCHA should hold the hearing despite it being late. Finally, this grace period should be extended even further if the resident calls or makes contact with DCHA and informs the agency that they are running late.

7903.30 – DCHA should permit residents to request to reschedule a hearing they did not attend for good cause for longer than 24 hours following the scheduled hearing date. Given that this regulation already requires that the tenant establish good cause, a high standard, and that many emergencies do not fully resolve so as to permit those experiencing them to resume their normal business within 24 hours, it is unreasonable to impose such a strict limit on the period of time for which a resident can request that a hearing be rescheduled for good cause. Additionally, DCHA should strike the definition of good cause contained in this regulation. Good cause has legal meaning, and this regulation creates an unnecessarily heightened standard for what constitutes good cause. Instead, DCHA should use a standard more similar to what is currently in place in the voucher program for good cause hearings. There, a hearing officer is required to consider if a tenant had good cause by: 1) determining if they got proper notice, and 2) considering a non-exhaustive list of mitigating circumstances.

7903.32 – DCHA should make clear in these new rules that the resident has the right to present written objections and briefs to counter DCHA's proposed decision. We have often experienced DCHA staff object to our introduction of legal argument in the form of briefs at hearings, despite it being a common sense right and not prohibited by any rules.

7903.35(a)(4) – DCHA should remove the phrase "or in DCHA policy." DCHA's regulations are its rules and it should follow them. It is unclear what DCHA means by "DCHA policy" and this is too vague a standard by which to adjudicate a person's termination from a program.

8001 PREVENTING, DETECTING, AND INVESTIGATING PROGRAM ABUSE

8001.6 - This regulation should also include explicit protections for tenants reporting abuse by DCHA staff. Tenants should be protected whether the allegations are substantiated or not in order to encourage tenants to come forward when they believe that there might be misconduct or fraud occurring.

8001.8(b) - The following should be added to this regulation: "whether any amount of money is owed to a program participant.

Sections to add:
This section does not have robust procedures for detecting or preventing DCHA-caused errors. Finding PH 24 of the HUD Review was that "DCHA does not properly calculate rent" and that only 3 of the 25 files reviewed were correct. In order to remedy this situation, as recommended by HUD, this section should also include the following provisions:

8001. 12 "DCHA staff should develop and implement a procedure for conducting regular quality reviews of rent determination and verification procedures. DCHA should also develop and implement a procedure for reimbursing tenants for overpayments caused by DCHA errors."

8001.13 - "At no time shall DCHA require a tenant to pay back an underpayment caused by a DCHA error."

8001.14 - "DCHA shall regularly train staff on rent calculation."

8002 CORRECTIVE MEASURES AND PENALTIES

8002.7 - This section should say that DCHA "<u>may</u> terminate the families lease…" not that DCHA <u>shall</u> terminate. This would allow DCHA to implement the hardship provisions discussed in Chapter 81.

8002.8 - 24 CFR 960.257(b)(6)(ii) allows PHAs to decrease rent retroactively when a family has failed to report a change that would lower their rent. DCHA should establish a written policy for when it will reimburse a family for overpayment instead of declaring that it will never do so.

This policy should allow DCHA to decrease rent retroactively when a family demonstrates that it had good cause to delay reporting a change that would lower their rent. These failures to report often occur when someone has recently lost a job, has had a baby, or has unexpected medical expenses. These are precisely the times when families cannot afford higher rent and need extra help and consideration from DCHA.

This policy should also include remedies for DCHA-caused errors. We suggest:
"In case of a DCHA-caused error, DCHA will take any corrective action necessary to credit or repay a family if the family has been overcharged for their rent as a result of an error (including a de minimis error) in the income determination. Families will not be required to repay DCHA in instances where DCHA has miscalculated income resulting in a family being undercharged for rent or family share."

8101 SETTING UTILITY ALLOWANCES

This section is confusing and appears to create the possibility that tenants currently living in DCHA properties where all utilities are covered will now be faced with charges if they exceed "reasonable consumption of utilities by an energy- conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment." Such standards are vague and a significant change to current practice. Currently, under 6202.01 tenants are only charged additional amounts if they have excess usage because of items such as deep freezers, dryers or extra refrigerators. DCHA should not leverage additional utility charges to public housing residents.

8103 FAMILY DEBTS TO DCHA

The following should be added to this section: "Before requiring any family to sign a repayment agreement, DCHA must give the family written notice of its appeal rights. At the time of signing, the DCHA staff member must verbally ask the head of household if they received said notice and if they understand that they are waiving their right to appeal this debt." If this information is not given to tenants, then the regulations should make clear that tenants can appeal the debt after signing a repayment agreement. This language is suggested as a result of DCHA past practices that encouraged tenants to waive certain rights without notifying tenants that DCHA decisions are subject to appeal.

8103.6 should say "DCHA may utilize" instead of "DCHA shall utilize" the listed collection techniques so that DCHA is not required to invest resources into collecting a debt from someone that the agency knows is collection proof and can make decisions about how best to direct its resources in each particular situation.

8103.7 - DCHA should not require a downpayment. While this may be seen as a good faith gesture by a tenant, many DCHA families are not in a position to make a lump sum payment of this nature. Further, if DCHA insists on some sort of payment, regulations must explain the process and criteria for granting a hardship exemption.

8103.8 - **8103.8(a)** is unclear and seems to be missing some words. **8103.8(a)(1)** says, "The difference between forty percent of the family's MAI" and ends there.

8103.8(a)(2) is also unclear. Would the families be required to pay double their TTP each month, with half going toward the payment plan and half going toward their current rent? That is, by definition, unaffordable, and we do not believe that is what DCHA meant to write in this section. DCHA should clarify what was meant in this section. Collapsing **(a)(1)** and **(a)(2)** such that the monthly payment is simply the difference between 40% of the family's MAI and the family's TTP at the time the agreement is executed would make the most sense and would comply with PIH Notice 2018-18. If that is what was meant, we are supportive and suggest that DCHA change the language of this section accordingly. If DCHA meant something different, it should clarify the language to indicate what is actually meant in this section.

8103.8(b) should include a process for requesting a hardship exemption and the process DCHA will use to make a decision about a request to lower a monthly payment amount. Just saying "in its sole discretion" leaves room for DCHA staff to treat different tenants differently and does not create a predictable system for residents.

8103.10 DCHA should work with families to identify payment terms that are favorable and realistic, rather than setting a specific date for all agreements.

8103.11 - Both provisions of this section should say that DCHA <u>may</u> terminate the tenancy not that DCHA <u>shall</u> terminate the tenancy. This gives DCHA discretion to not terminate tenancies when there is a hardship, a health-related emergency, or other extenuating circumstances that prevent a tenant from paying on time. The current language would also require DCHA to terminate tenancy even if the tenant has caught up on their payments. That outcome would not be good for DCHA or the tenant.

8103.12 - This section should be replaced with the existing regulation at 14 DCMR 5602.4:

"The circumstances in which DCHA may decline to enter into a Repayment Agreement include, but are not limited to, any of the following:

(a) If the participant Family or owner already has a Repayment Agreement in place;

(b) If DCHA determines that the Family or owner:

(1) committed program fraud;

(2) intentionally withheld information; or

(3) intentionally provided false information; or

(c) If the Family already has a Repayment Agreement in place and incurs an additional debt to DCHA, any old debts to DCHA shall be paid in full before DCHA enters into a new Repayment Agreement."

The existing regulations are detailed and clear and also give DCHA appropriate discretion when necessary.

8104 PUBLIC HOUSING ASSESSMENT SYSTEM (PHAS)

8104.2 should also include that DCHA will post its final score in a conspicuous and accessible location at each public housing property. Public housing residents do not regularly travel to DCHA's main office, so only posting there would not be an effective way to inform residents about DCHA's PHAS score and status.

8106 REPORTING REQUIREMENTS FOR CHILDREN WITH ELEVATED BLOOD LEAD LEVEL

8106.1 The regulations should specify that DCHA shall adhere to the responsibilities required by HUD's Lead Safe Housing Rule (LSHR) as codified in subparts B through R of 24 CFR § 35 when a child under six years old living in public housing is identified as having an elevated blood lead level (EBLL). In adherence to these statutory responsibilities, in addition to **8106.2** and **8106.3**, DCHA should enumerate in its regulations that it shall ensure that:

a. A certified lead-based paint risk assessor completes:
    i. An environmental investigation, as defined in 24 CFR § 35.110, of the child's home and any common areas that service the home within 15 calendar days of verification of the child's EBLL and

ii. Any necessary risk assessments in other covered units if the child's home is in a multiunit property; and

b. Any lead-based paint hazards identified by an environmental investigation or risk assessment are controlled within 30 calendar days by a certified lead-based paint abatement or lead renovation firm and confirmed by a clearance examination on the unit and common areas when the work is complete.

Additionally, in its regulations DCHA should state that elevated blood lead level (EBLL) shall be defined as a concentration of lead in a sample of whole blood equal to or greater than 3.5 micrograms of lead per deciliter (µg/dL) of blood, or a more stringent blood lead reference value as may be established by the Centers for Disease Control and Prevention (CDC).

8107 VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, AND CONFIDENTIALITY

8107.8 - DCHA should give survivors more than fourteen days to provide documentation. Survivors requesting assistance have likely experienced recent trauma. Even under the best of circumstances fourteen days is not much time, but for survivors in particular – who are likely interacting with multiple judicial, medical, and social support systems to keep themselves and their families safe – it is impractical. This window should be increased to at least thirty days.

8107.9 In this section, DCHA mirrors most of the language in 24 CFR § 5.2007 regarding what documentation a family may submit to verify that an incident of domestic violence occurred. However, we recommend that DCHA also include the catch-all provision provided for in the federal regulations. Specifically, 4 CFR § 5.2007(b)(iv) allows DCHA to consider "a statement or other evidence provided by the applicant or tenant." By not including this catch-all provision, DCHA unnecessarily restricts the types of proof available to survivors.

8107.11 Even though it only gives survivors 14 days to provide documentation, DCHA's proposed plan gives the agency 10 days to simply acknowledge receipt. This is unacceptable. Domestic violence situations are emergencies, and the agency needs to be able to handle requests that involve allegations of domestic violence much more quickly to ensure that families are not in danger due to DCHA's failure to render quick and timely decisions. Current regulations require DCHA to issue a response within 14 days, and that policy should stand.

8107.12 DCHA should not change its current policy of **not** requiring third party documentation in all instances of conflicting documentation. DCHA often can and should be able to make a determination based on the initial conflicting reports, and ensuring that this is an option for survivors is important. Survivors will not always have access to third party verification and requiring it in all instances will ensure that some survivors go unprotected. This is simply unacceptable. Further, the word <u>shall</u> in 8107.12(b) should be changed to <u>may</u>. Survivors do not

always have access to third party documentation. If their statements are credible, they should not be denied protections, and DCHA should have the option of providing those protections if it is satisfied by what has been provided.