Brenda Donald
Executive Director
District of Columbia Housing Authority
1170 12th Street NW
Washington, DC 20002
MTW@dchousing.org

Via email only

Re: Comments on the proposed Administrative Plan and the Admissions and Continued Occupancy Plan

Dear Director Donald:

We are writing to you to provide comments on the DC Housing Authority's ("DCHA") proposed Administrative Plan and the proposed Admissions and Continued Occupancy Plan. We have concerns with DCHA's process for collecting and incorporating feedback on these plans and with the substance of the proposed changes.

I. The Process

We have many concerns about the process DCHA employed to get feedback on these proposed plans. The plans are over 1,500 pages and in a format never previously used by DCHA, making it difficult to compare them with current regulations. On top of that, this complete overhaul was published with only a 45-day comment period, which is simply not enough time for anyone – residents and advocates alike – to meaningfully review a complete rewrite of DCHA rules and regulations. Additionally, it appears that these plans were written by an outside contractor, so it is not surprising that they make choices that are out of step with local DC policy and history. These "plans" appear to be draft policy recommendations, not regulations as required by local law. We look forward to seeing the actual drafted regulations that will be published in the DCMR so that we and residents can fully evaluate any proposed changes, and submit comments through that process as well.

Perhaps most importantly, DCHA claims that it has done extensive resident outreach around these plans during the 45-day window, but we have many doubts about that process. For example, DCHA billed a Facebook live "hearing" as a way to get resident feedback, but the event was poorly advertised, poorly attended and did not allow attendees to speak. Instead, all attendees could do was listen to DCHA's presentation and type questions in the chat. Even if it had been advertised and run in a more inclusive manner, an online event is not accessible to all voucher holders, public housing residents, and interested community members.

DCHA also indicated that it conducted meetings with resident councils and held meetings at public housing properties. We did not attend the meetings, but have heard from tenants who did attend the meetings that they were run in a similar manner to the Facebook event (e.g. a presentation by DCHA and then questions from the audience). Therefore, we have reason to believe that DCHA did not meaningfully inform residents about the full scope of changes it is

proposing. Additionally, these meetings at public housing properties could not have included voucher holders, an important stakeholder group that appears to have been largely left out of the outreach process.

Finally, the comment period for these proposed changes ends on March 31, 2023. DCHA plans to submit the plans to the Board for approval at the Board's April 12, 2023 meeting. We do not understand how DCHA plans to meaningfully consider our lengthy, considerable comments, as well as all the comments from the public, in 12 days and make changes to the plans before submitting them to the Board. This short window of time furthers the perception that DCHA is just checking a box with its outreach events and comment period, without any intention of considering the public's comments. These actions breed further distrust in DCHA, validating the narrative that the agency is not genuinely interested in the opinions of residents and advocates.

II. The Proposed Plans

Given the extent of the proposed changes and the short review period, these comments highlight some, but not all, of our concerns with the agency's plans. The attached document includes specific concerns and recommendations about many of the proposed sections of the two plans. Our overarching concerns are two-fold. First, in many instances where DCHA has discretion to choose between options (e.g., minimum rents in public housing, waiting list maintenance, initial voucher terms, recertification requirements for zero income families in the voucher program, the pet policy), DCHA consistently chooses the most draconian option. This would be troubling in any environment, but against the backdrop of DCHA's many failures in recent years and the scathing HUD report, it is hard to see these choices as anything other than DCHA using the political moment – and the desperate need for DCHA reform – to rush through this process without considering how the new proposals will harm residents.

Second, at the same time these regulations are putting more burdens on residents, there is nothing to suggest that DCHA can administer the bureaucracy these new rules would require. For example, the new minimum rent will require DCHA to implement a functioning hardship exemption process, the new waiting list proposals rely on DCHA answering phones and properly documenting applicant interactions, the new voucher recertification rules will require DCHA to process more recertifications each year, and the shorter initial voucher period will require DCHA staff to process requests for extensions. Yet, our clients still cannot reliably contact their specialists at DCHA to conduct basic, necessary business; still cannot walk into DCHA's offices without an appointment; and the agency is still taking an inordinate amount of time to lease families up in units. In short, DCHA is proposing to hold tenants to a higher bar without any suggestion that it is holding itself accountable for its many failures or making the necessary strides towards improving its own operations.

We should note that beginning in 2011 and lasting through at least 2014, advocates met with DCHA on a regular basis (sometimes weekly) to complete a major re-write of the Administrative Plan and resulting regulations. Many of the changes in this plan completely disregard that work and stand in stark contrast to the diligent and thoughtful process that resulted in the current regulations. We would be happy to share emails, draft plans and other documentation of the

previous process as we believe DCHA should take into account the historical work done by advocates and DCHA staff.

While the attached document goes into more detail about our many specific concerns, given its length we wanted to highlight some of our areas of greatest concern:

- **Minimum rent (Public Housing)**: DCHA should continue to use its discretion to set minimum rent at $0. Requiring families to pay money that they don't have makes little to no sense and is setting already strapped families up to fail and face eviction. Minimum rent policies above $0 are based in racist stereotypes and assume that families are either lying about their income or are simply choosing not to access available income. Otherwise, where does DCHA expect families to get income they simply don't have? Finally, DCHA has shown an inability to process very basic, necessary items, like recertifications, so it is unclear how the agency will be able to implement an effective and fair hardship exemption policy. To that end, if DCHA disregards our comments and implements a minimum rent above $0, there should be clear requirements about how DCHA must inform residents about the existence of hardship exemptions and a business practice that can process the requests in a timely manner.
- **Defining "eviction" to mean a judgment, not actual eviction (HCVP)**: DCHA should not define "eviction" to mean the entry of a judgment for eviction for purposes of termination for serious and repeated lease violations. Instead, DCHA should define eviction to mean actual, physical eviction from a unit. This is an important distinction, and good policy for two reasons. First, terminations from the HCVP are mandatory under this termination provision. DCHA should be using its discretion to reduce the number of mandatory terminations, not increase them. Second, defining eviction as a judgment for eviction undermines DC law which allows tenants to withhold rent for conditions issues, and redeem their tenancies before actual eviction.
- **Waiting list changes (HCVP and Public Housing)**: 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, this is the least DCHA can do for them.
- **Rent reasonableness (HCVP)**: DCHA should add in considerations that will always result in the adjustment of what DCHA deems a reasonable rent for a unit. Additionally, DCHA should require every landlord (no matter the size of the building) to provide information on rents in unassisted units in their buildings and pay no more than the rent controlled rent for a unit when a unit is covered by rent control.
- **Length of initial voucher term (HCVP):** DCHA should not shorten the length of the initial voucher term from 180 to 120 days and make it harder to get a voucher extension. Finding rental housing in DC is hard for all tenants, but can be particularly challenging for voucher holders who face illegal source of income discrimination, and denials based on credit and rental history despite laws meant to protect them. Hunting for and applying to apartments takes a lot of time, and application fees are expensive meaning that folks

often need to save up. Further, landlords struggle with DCHA's portal, delaying their submission of a Request for Tenancy Approval and running out the voucher timeline. In short, the process of finding new housing is stressful, and participants do not need the added stress of a deadline to motivate them to search for a safe and affordable place to live.

- **Compliance with HUD and local DC tenant screening laws (HCVP and Public Housing)**: DCHA must review its plans carefully and ensure compliance with federal tenant screening requirements, as well as 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, as well as the Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022, which deals with how when a District landlord can consider factors like credit and prior eviction cases.
- **Recertification requirements for zero income families (HCVP)**: 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.

******

We hope DCHA will reconsider its path forward. Now is not the time to compound that mismanagement by making permanent policies that are hostile to low-income families in need of housing. DCHA should adopt an approach that seeks to be inclusive and build trust. The proposed policies, and the process used to collect feedback on them, do the opposite.

If you would like to discuss these comments or if you have any questions, please reach out to Amanda Korber at akorber@legalaiddc.org.

Sincerely,

Rebecca Lindhurst
Bread for the City

Kathy Zeisel
Makenna Osborn
Children's Law Center

Daniel del Pielago
Empower DC

Amanda Korber
Sam Koshgarian
Legal Aid of the District of Columbia

Sunny Desai
Elizabeth Butterworth
Legal Counsel for the Elderly

Catherine Cone
Washington Lawyers' Committee for Civil Rights and Urban Affairs

Brittany K. Ruffin
Washington Legal Clinic for the Homeless

Kate Scott
Equal Rights Center

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, Vince 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.

Comments on the Proposed Admissions and Continued Occupancy Plan (Public Housing)

Chapter 2: Fair Housing and Equal Opportunity

Part 1: Nondiscrimination

The ACOP's Fair Housing and Equal Opportunity chapter raises concerns similar to those noted with respect to DCHA's Administrative Plan. Accordingly, the comments applicable to this section of the ACOP Plan incorporate by reference the comments in response to sections 2-I.A. and 2-I.B (regarding the definition of "familial status") of the Administrative Plan, outlined above.

2-I.B. NONDISCRIMINATION

The agency appears to be treating its HCVP participants differently than public housing residents. For example, 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.

Part 2: Policies Related to Persons with Disabilities

2-II.B. Definition of Reasonable Accommodation

As the provider of public housing, DCHA has an obligation to not only comply with its fair housing obligations to provide reasonable accommodations, it must also provide for reasonable modifications. Although DCHA provides an example of a reasonable modification in this section, the definitions section only references a reasonable accommodation. Section 504 of the Rehabilitation Act applies here and means that modifications are also free to the tenant. 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.

2-II.C. Request for an Accommodation

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.

2-II.D. Verification of Disability

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 the HCVP to avoid running afoul of the agency's fair housing obligations.

2-II.E. Approval/Denial of a Requested Accommodation

First, 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.

Second, DCHA's current reasonable accommodation policy permits it to ask a "family to sign a consent form so that the PHA may verify the need for the requested accommodation" in certain instances where the agency feels it needs more information to determine the disability-related 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).

2-II.F. Program Accessibility for Persons with Hearing or Vision Impairments

The agency's current policy for providing equal access to persons with hearing or vision impairments falls short under the FHA and 24 CFR 8.6(b) requiring the agency to "adopt and implement procedures to ensure that interested persons (including persons with impaired vision or hearing) can obtain information concerning the existence and location of accessible services, activities, and facilities." DCHA policy should accordingly make ASL interpretation available to anyone who primarily communicates through ASL whenever the agency is communicating with program participants about public housing, pursuant to its obligations under the FHA, Section 504 of the Rehabilitation Act, and the DCHRA.

Part 3: Improving Access to Services for Persons with LEP

2-III.A. Overview

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, 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.

2-III.B. Oral Interpretation; 2-III.C. Written Translation

Because DCHA is governed both by Title VI and the LAA, it should revise both its oral interpretation and written translation sections to ensure it is complying with the obligations that apply to it pursuant to the LAA. D.C. Code §§ 2-1932;

2-III.D. Implementation Plan

Contrary to DCHA's position, the agency as a "covered entity," D.C. Code § 2-1931(a)(2), must "establish a language access plan," D.C. Code § 2-1934(a)(1), and make this plan accessible to HCV participants.

Chapter 3: Eligibility

Part 1: Definitions of Family and Household Members

3-I.C. Family Breakup and Remaining Member of Tenant Family

Remaining Member

DCHA's proposed language correctly follows federal regulations by confirming the inclusion of a "remaining member" in HUD's definition of "family." DCHA's proposed language must be explicit that any remaining family member may keep the assistance, contrary to the contradiction with federal regulations in the current DCHA regulations.

3-I.J. Guests

Proposed DCHA language maintains the same guest stay limits as the current regulations: each guest shall not stay overnight for more than ten (10) consecutive days without the prior written permission of DCHA and each guest shall not stay overnight for more than thirty (30) non-consecutive days within a twelve (12) month period without the prior written permission of

DCHA. The problematic addition in the DCHA language is the requirement that a resident family must 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.

3-I.L. Absent Family Members

Definitions of Temporarily and Permanently Absent

DCHA's proposed policy language uses sixty (60) days as a benchmark for determination of whether a family member is temporarily or permanently absent. If an expected absence of fewer than sixty (60) days, it would be a temporarily absent determination and the family member would continue to be considered part of the family. If expected to be absent more than sixty (60) days, it would be a permanently absent determination and the family member would no longer be considered a family member unless meeting an exception. The proposed policy is unnecessarily restrictive, especially when compared with the 120-day threshold for absent family members in the HCVP. DCHA should apply at least that same threshold for public housing residents.

Absent Students

Absent students are an exception and maintain their status as a family member. Specific language is added to indicate that DCHA can make a determination that a student is an absent member without the family agreeing to that status change if "information indicates that the student has established a separate household." However, 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 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.

3-I.M. Live-In Aide

The proposed DCHA language details the process for live-in aide approval and specifies that requests for a live-in aide can be written or oral. It also specifies that DCHA can verify the need

for a live-in aide, *if necessary*. It also permits, but does not require, DCHA to have a family make a new request for a live-in aide and submit verification at recertification. The DCHA proposed policy increases the obligations of the family by imposing additional conditions. Newly proposed regulations also allow 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, contrary to the spirit of HUD's AFFH guidance, and essentially encourages subjective screening practices.

There is an odd discrepancy between the proposed DCHA live-in aide policy for public housing and the proposed live-in aide policy for HCVP. HCVP participants *must* submit requests in writing, *must* submit written verification of the need, and must submit a new request at recertification. There is no logical justification for such a drastic difference in program process for an identical need and request. Furthermore, the variation in process will unnecessarily and undoubtedly lead to agency, resident, and staff confusion. DCHA should standardize a process for requests and/or verification across both housing programs. The discretionary standard proposed here should be used for HCVP participants, as well.

Part 2: Basic Eligibility Criteria

3-II.A. Income Eligibility and Targeting

Using Income Limits for Targeting

HUD requires PHAs to ensure that forty percent (40%) of its public housing admissions in each PHA fiscal year are families whose incomes are at or below the extremely low-income limit. 24 CFR 960.202(b). Extremely low-income families have income that does not exceed thirty percent (30%) of the area median income (AMI). Pursuant to 24 CFR 960.202(b), if admissions of extremely low-income families to the PHA's housing choice voucher program during a PHA fiscal year exceed the seventy-five percent (75%) minimum targeting requirement for that program, the excess amount shall be credited against the PHA's public housing basic targeting requirement for the same fiscal year.

DCHA's proposed regulations confirm these specific HUD requirements; 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.

3-II.B. Citizenship or Eligible Immigration Status

As in other sections of this document, regulations within this subsection are described very generally, without using the more specific language indicated in 24 CFR 5. For example, proposed regulations broadly indicate that the PHA must notify families of the requirement to

submit evidence of citizenship at the time of application for public housing. While that is true, the proposed regulations fail to 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.

Timeframe for Determination of Citizenship Status

As aforementioned, this section also fails to detail the actual DCHA/PHA obligations or applicant rights and obligations under federal law. Proposed language does indicate that time extensions of up to thirty (30) days can be requested. However, that is all the information provided regarding time extensions.

The actual process detailed in federal law, 24 CFR 5.508 includes details that: *30 day extensions can be requested if the family certifies that prompt and diligent efforts will be undertaken to obtain the evidence; the PHA must inform the family, in writing, whether its request for a time extension of has been granted or denied; if granted, the notice must state the specific period of the extension; If the extension request is denied, the notice must explain the reasons for the denial; if all required documents have been provided by the family, assistance may not be denied or delayed solely because verification or requested hearings have not been completed; if required documents have not been submitted by all family members, only prorated assistance may be provided until the required documents have been submitted by all family members.* 24 CFR 5.508(h).

The difference in the provision of information from DCHA's proposed ACOP and federal law is drastic. Again, if DCHA and its applicants cannot easily refer to the ACOP to clearly understand

and/or lawfully administer DCHA's programs, the proposed language is ineffective, and the proposed "plan" is a failed effort.

Part 3: Denial of Admission

3-III.A. Overview

Updated HUD policy and guidance has highlighted expectations for PHAs by being explicit about what HUD requires and what HUD permits. Overall recent HUD policy has trended towards making sure that PHA practices are not contributing to housing discrimination or furthering policies that unfairly lead to additional exclusions for marginalized populations. While proposed revisions are clear that HUD requires compliance with federal discrimination laws and prohibits use of age, disability, race, color, religion, sex, or national origin in denial determinations, the proposed language wrongly removes reference and inclusion of the additional prohibitions of using any of the protected classes under federal or local DC law. DC's Human Rights Act requires compliance with an expanded list of protected statuses that cannot be used in consideration due to the discriminatory nature of doing so. Proposed language must reflect that.

HUD guidance has been direct in prohibiting the use of arrest records as a basis for denial of admission. Also, despite HUD rules requiring denials based on criminal activity being extremely narrow, DCHA generally uses its discretion to be more restrictive than required. Current DCHA policy does not appear to follow HUD rules. A large concern is that DCHA has repeatedly failed to clearly state its screening policy and practice around the consideration of criminal activity. DCHA must develop transparent policies and practices to ensure that it is in compliance with HUD rules and guidance.

3-III.B. Required Denial of Admission

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. Despite the three-year window, DCHA has decided to implement a five-year window when it is able to use its discretion to consider mitigating factors that do not have to lead to prohibition. 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, DCHA should not choose to create additional barriers for DC residents.

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.

3-III.C. Other Permitted Reasons for Denial of Admission

Criminal Activity

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).

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 period of time 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. There is no explanation or justification for choosing a longer term than HUD even imposes. DCHA's policy decision to use its discretion to impose more burdensome requirements that perpetuate unfair and discriminatory effects and create additional barriers to housing security is simply punitive. Additionally, exercising its 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 or of DCHA employees/agents. DCHA employees and agents also should not be empowered to weaponize their positions to wield such monumental consequences for applicants.

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 "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.

Additionally, DCHA's proposed policy to deny admission for any engagement in violent or drug related criminal activity within five years, but to utilize evidence of violent or drug related criminal activity of household members within three years is contradictory. DCHA should opt to lower its "look back" period to three years.

Previous Behavior

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 to deny housing. Its proposed policy states that it *will deny* families under this section. DCHA should reconsider its choice and utilize its discretion to actually benefit DC residents by considering the unique circumstances of each family *first* instead of uniformly choosing to *start* with a likelihood for denial. 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 "will deny" qualifier instead of "may deny" as HUD allows, casts doubt on that intention.

Additionally, 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 extremely problematic due to 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. DCHA employees also should not be empowered to weaponize their positions to wield such monumental consequences for applicants.

3-III.D. Screening

Screening for Eligibility

The HUD Report detailed that DCHA does not currently conduct criminal record screening or maintain record records in accordance with HUD regulations. DCHA 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).

Screening for Suitability as a Tenant

DCHA's proposed language is extremely broad and substantially different from current regulations. It seems to serve as a "catch-all" section. While current regulations in 14 DCMR 6109.6 highlight the mitigating circumstances that should be considered by DCHA when screening for suitability, DCHA's proposed language omits any reference. DCHA's proposed language also fails to include the provision from current regulations 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. 14 DCMR 6109.8.

Resources Used to Check Applicant Suitability

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 *will* be performed for applicants. This proposed policy is overly intrusive, paternalistic, and violates HUD and DC laws. Additionally, many DC residents need public housing precisely because their incomes are low, which made meeting past financial obligations difficult. And, 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 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 should revise this policy to create lower barrier housing access. However, DCHA *must* revise this proposed policy so that DCHA can avoid violations of federal and DC laws.

3-III.E. Criteria for Deciding to Deny Admission

Consideration of Circumstances

DCHA only offers very general information in this section and references an earlier section (3-III.B.). DCHA should be more specific in detailing the policies it intends to use in the implementation of its programs.

3-III.F. Prohibition Against Denial of Assistance to Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

Perpetrator Documentation

The proposed policy states that if the perpetrator of abuse is a member of the applicant family, "the applicant must provide additional documentation consisting of one of the following: A signed statement (1) requesting that the perpetrator be removed from the applications and (2)certifying that the perpetrator will not be permitted to visit or stay as a guest in the assisted unit." This is a troubling and paternalistic requirement that does not contend with the realities of domestic violence. Domestic violence often occurs in a cycle, and the average survivor will leave multiple times before leaving for good. Moreover, family dynamics are complicated and oftentimes our clients have children with the perpetrator of the abuse. To make them attest that they will not let the parent of their child visit them in the assisted unit is simply not feasible (and indeed may be contrary to court custody orders).

Chapter 4: Applications, Waiting List, and Tenant Selection

Part 1: The Application Process

4-I.B. Applying for Assistance

DCHA should also create a process for applying electronically using a web form. DCHA should also allow for applications to be returned in person.

4-I.C. Accessibility of the Application Process

Disabled Population

DCHA should specifically describe steps that it will take to ensure that the application process is fully accessible.

Limited English Proficiency

DCHA should specifically describe the steps that it will take to ensure access to the application process to people with limited English proficiency. Given HUD Finding PH 10, it is particularly important that DCHA create policies and procedures for including people with limited English proficiency in the application process.

4-I.D. Placement on the Waiting List

Ineligible for Placement on the Waiting List

The policy under this heading does not say anything about what happens to families who are ineligible for placement on the waiting list. A policy regarding how eligibility will be determined and how people who are not eligible will be notified should be added to this section.

Eligible for Placement on the Waiting List

This section starts with a sentence fragment. "Applicants will be placed on either a site based." DCHA should clarify whether there will be a "first available waiting list" or only site-based waiting lists or perhaps some other kind of waiting list.

Part 2: Managing the Waiting List

4-II.B. Organization of the Waiting List

DCHA should specify how many site-based waiting lists an applicant can be on. If there is no first available waiting list, then applicants should be allowed to pick as many sites as they wish.

HUD Finding PH 14a says that the public housing waiting list does not show the time of applications. DCHA should specify its plan for organizing its current waiting list such that it complies with this plan.

4-II.C. Opening and Closing the Waiting List

Closing the Waiting List

DCHA should not close the waiting list when the estimated waiting period for applicants reaches 12 months for the most current applicants. HUD's Public Housing Occupancy Guidebook recommends 12 to 24 months, DCHA should keep its waiting list open at least to applicants who would wait 24 months and possibly longer. There are currently more families on the public housing waiting list than there are total units of public housing operated by DCHA. Even if a large percentage of people currently on the list no longer wish to live in public housing, demand has grown since 2013 when the waiting list was closed. If the waiting list only accepts people who could be housed within 12 months, thousands of people who have been waiting for the waiting list to reopen will be closed out again.

Reopening the waiting list

This section says the notice will "describe its prioritization system or whether it uses a lottery." DCHA should specify its prioritization system or whether it will use a lottery in its ACOP and ensure that there is opportunity for public comment on its proposed system.

4-II.D. Family Outreach

DCHA does not describe the outreach efforts it will undertake. DCHA also does not describe how it will conduct outreach to meet the goals described by HUD in this section. The ACOP should contain this information.

4-II.E. Reporting Changes in Family Circumstances

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. It is more reasonable for DCHA to require people to update their information annually until they are likely to reach the top of the waiting list within the next 12 months. 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 would be huge. Instead, the policy should read:

"While the family is on the waiting list, the family must inform the DCHA, at least annually, of changes in family size or composition, preference status, or contact information, including current residence, mailing address, and phone number. DCHA will inform families when they are likely to reach the top of the waiting list within the next 12 months to allow families the opportunity to confirm that DCHA has updated information."

4-II.F. Updating the Waiting List

Purging the waiting list

This proposed policy is contradictory and unclear. It first says that DCHA will only reach out to families by mail and that a family who fails to respond within 15 days "will be removed from the waiting list without further notice." It then says: "When a family is removed from the waiting list during the update process for failure to respond, the DCHA will contact an unresponsive applicant through all means available, which may include via mail and email. The DCHA will 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."

First, DCHA should not remove people on the waiting list for lack of contact at all. 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." (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.

If DCHA is going 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. This should include partnering with other government agencies such as the Department of Human Services to get updated contact information. People who apply for the public housing waiting list are likely to be housing unstable. This means that their addresses and phone numbers have changed many times over the 10 or more years that they have been on 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. 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. Sending one or even two letters to people who have been on the waiting list for years and then removing them if they don't respond within 15 days is unreasonable given these factors.

The proposed policy also says that no informal hearing is required when removing people from the waiting list but then 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 request 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, than DCHA should at least make the informal hearing process available to those who are removed from the list for failure to respond.

Part 3: Tenant Selection

4-III.B. Selection Method

Deconcentration of Poverty and Income-Mixing

DCHA's plan does not comply with 24 CFR 903.2. DCHA should have already determined which if any developments fall outside the EIR. For those developments or developments that fall outside the EIR in the future, DCHA should implement one or more of the strategies listed in 24 CFR 903(c)(v).

Order of Selection

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.

DCHA should also describe how "[f}actors such as deconcentration or income mixing, and income targeting will be considered" either in this section or the section above.

DCHA should also describe how selection will work for UFAS units and elderly only properties. The current processes are described at 14 DCMR 6112 and 6115.

4-III.C. Notification of Selection

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.

4-III.D. The Application Interview

As discussed above, DCHA should continue to implement its process of putting people who do not respond on an inactive list, and, if not, there should be a hearing process for reinstating people who missed interview for good cause.

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

4-III.E. Final Eligibility Determination

DCHA should continue to provide applicants who are deemed ineligible with the right to have an informal conference as described in 14 DCMR 6107.3-5 and the right to have their application reviewed by an independent third party as described in 14 DCMR 6107.7(a).

DCHA should 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

Chapter 5: Occupancy Standards and Unit Offers

Part 1: Occupancy Standards

Section 5-IB.

Determining Unit Size

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."

Chapter 6: Income and Rent Determination

In general, DCHA should review its policies around income and subsidy determinations to ensure that they conform to the HUD regulations that were finalized in 2023.

Part 1: Annual Income

Section 6-I.B.

Individuals Confined for Medical Reasons

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.

Joint Custody of Children

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.

Section 6-I.C.

Seasonal Employment

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 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 different from what DCHA predicted at the beginning of the year.

Hardship

DCHA's proposal states that if there is a future, known 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.

6-I.D.

Wages and Related Compensation, bonuses or commissions

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, that ends 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.

Earned Income Tax Credit

The proposed rule should make clear that when families receive prorated EITC throughout the year, it is also excluded from income determinations.

6-I.E. Earned Income Disregard

Second 12-Month Exclusion

HUD policy requires PHAs to exclude *at least* 50 percent of an increase in come 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.

Lifetime Limitation

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.

6-I.G

Imputing Income from Assets

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.

Retirement Accounts

As an initial matter, this section, as well as others, appears to cite the Housing Choice Voucher Guidebook as its justification for public housing policies. Additionally, DCHA should not count as assets in IRAs and other retirement accounts that cannot be withdrawn without penalty. DCHA should be encouraging participants to save for retirement and plan for the future. This policy undermines that important goal. It is con

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.

6-I.H. Lump Sum Payments for the Delayed Start of Periodic Payment

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.

6-I.J. Welfare Assistance Payments

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.

6-I.K Alimony and Child Support

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 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. Again, DCHA appears to be citing the Housing Choice Voucher Guidebook as justification for this public housing policy.

Part 3. Calculating Rent

6-III.A.

Minimum Rent

DCHA has the discretion to set minimum rent at $0, and we suggest that the agency continue to use its discretion to do just that. Setting the minimum rent at anything above $0 leads to an obvious question: where are residents supposed to get this money if they have no income? We encourage DCHA to provide an actual answer to that question and to answer it publicly. We have heard stories from other jurisdictions of families being encouraged to engage in illegal behavior, such as being told by PHA personnel to sell their food stamps, in order to make minimum rent. While we are not suggesting that DCHA personnel would make such suggestions, these examples highlight that families with no income have no way of coming up with money they simply don't have. In short, setting the minimum rent at anything above $0 is a policy choice steeped in racist and classist stereotypes and presumes that families are either lying about not having income or that they are choosing not to receive income when they otherwise could.

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.

6-III.B. Financial Hardships Affecting Minimum Rent

As an initial matter, this section does not speak to DCHA's obligations to 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. Finally, because this minimum rent policy would be such a drastic change in DCHA policy, DCHA must share written information about the policy with every public housing family before implementing any minimum rent policy.

Importantly, the reasons a family can request a hardship exemption demonstrate exactly why minimum rents above $0 per month make no sense. Of course a family that would have a calculated income-based portion of less than $50 and has lost eligibility for, or is waiting for an eligibility determination of a benefit will be unable to pay a minimum rent of $50. Of course a family who is being charged minimum rent - a rent amount assessed even when they have no income - will face eviction for failure to pay rent *because they do not have any money to pay rent.* All of this is to say, DCHA should continue with its current policy and set minimum rent at $0. If it is not going to do so, DCHA must use its discretion to create a catch all category in its hardship exemption policy, and allow families to request a hardship based on any circumstances that prevent them from being able to make minimum rent payments.

6-III.E. Flat Rents and Family Choice in Rents

DCHA should be required to tell each family what the flat rent would be versus what the income-based rent would be at the time they are asked to choose between the two, without exception. This is the only way families can make an informed choice.

Chapter 7: Verification

In general, DCHA should review its policies around verification to ensure that they conform to the HUD regulations that were finalized in 2023.

Part 1: General Verification Requirements

7-I.C. Upfront Income Verification

EIV Income and IVT Reports

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.

7-I.D Third Party Written and Oral Verification

Written Third Party Verification

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. 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.

When Third-Party Verification is Not Required - Value of Assets and Asset Income

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 over $15,000. This threshold should be raised to $50,000.

Part 2: Verifying Family Information

7-II.H. Verification of Preference Status

DCHA should continue to have a procedure for verifying preferences in case there are any preferences in the future.

Part 3: Verifying Income and Assets

7-III.A. Earned Income

The DCHA proposed rule families to provide 4 to 6 current, consecutive paystubs when 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.

Part 4: Verifying Mandatory Deductions

Chapter 8: Leasing and Inspections

Part 1: Leasing

8-I.D. Modifications to lease form

HUD requires that families be notified at least 60 days in advance of the effective date of a lease revision after the change has been approved by the Board. DCHA policy only gives families 30 days to accept a revised lease. This should be increased to 60 days to match HUD requirements.

Also DCHA does not specify a process or policy for soliciting comments from residents in advance of presenting proposed lease changes to the Board. This must be added to the ACOP.

8-I.F. Payments Under the Lease

Rent Payments

This policy should specify that DCHA will notify the family 30 days in advance of a rent increase and that a rent decrease may be retroactive.

Late Fees and Nonpayment

DC Law prohibits charging late fees that are more than 5% of a tenant's rent. DCHA's late fee policy should be changed to reflect this. It could say something like: "A late fee of 5% of the monthly total tenant payment or $25, whichever is less." The policy should also describe when and how a notice of the late fees will be issued and what it will say about grievance rights.

Current regulations only require a $15 fee when a check is returned for insufficient funds. 14 DCMR 6207. DCHA should not raise this fee to $25.

Maintenance and Damage Charges

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.

8-I.G. Minimum Heating Standards

14 DCMR 1501 requires that "Heating equipment shall maintain a temperature of not less than 68° F in all habitable rooms and bathrooms between October 1 and May 1." The first part of this policy should be updated to reflect that 68 degree requirement not the 65 degrees that is now in the document. 14 DCMR 1501.4 requires that a heating facility controlled by the tenant be capable of maintaining a minimum temperature of 70 degrees. The second part of this policy should be updated to reflect this 70 degree requirement instead of the 65 degree requirement that is listed now.

Part 2: Inspections

8-II.B. Types of Inspections

Annual Inspections

Existing regs require DCHA to inspect all occupied units annually. Why is DCHA changing this to only 25% of units?

DCHA should have a policy on conducting regular mold inspections. This would limit the number of residents exposed to mold and fulfill the requirements of Corrective Action PH 30 from the HUD Report.

Special inspections

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. These kinds of entrances should not be added.

8-II.C. Notice and Scheduling of Inspection

Non-emergency entries

DCHA proposes to not give tenants notice for resident-requested repairs. Both federal regulations and DC regulations require landlords to give at least 48 hours notice prior to entry for any non-emergency reason. Therefore, DCHA should give tenants 48 hours notice for resident-requested repairs.

8-II.D. Inspection Results

Emergency Repairs

DCHA should have a policy on abating rent when it can neither repair a serious defect in a reasonable time frame nor offer alternative housing as required by 24 CFR 966.4(h)(4). Previous DCHA inspections and the recent HUD inspection have found that many public housing units are not being maintained in decent, safe, and sanitary condition as required by 24 CFR 966.4(e). Both federal and DC law require that rent be abated when a unit is in poor condition. Given how widespread the problem is in DC's public housing units, DCHA must have a written policy on administering these abatements.

Housekeeping

Current regulations do not allow for housekeeping inspections, and DCHA should not add them. These are an invasion of privacy and interfere with a family’s quiet enjoyment of their home.

Chapter 9: Reexaminations

Part 1: Annual Reexaminations for Families Paying Income-Based Rent

9-I.B Streamlined Annual Recertification

In the past DCHA has used its MTW authority to conduct biennial or triennial recertifications for public housing residents instead of annual recertifications. The HUD report indicates that this practice is allowed. (See, e.g. Finding PH 19a) DCHA should maintain the practice of conducting biennial or triennial reexaminations for public housing tenants. If DCHA does change to annual recertification, it must make a staffing plan to manage the increase in recertifications and conduct an education and outreach campaign to ensure that residents are aware of this change in long-time policy. This is especially true given that HUD Finding PH 23 says that DCHA had 1,596 late re-examination at the time of the visit, even using DCHA's MTW-approved alternative schedule.

9-I.C. Scheduling Annual Reexaminations

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.

9-I.D. Conducting Annual Reexaminations

Criminal Background Checks

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.

Part 2: Reexamination for Families Paying Flat Rents

9-II.B. Full Reexamination of Family Income and Composition

HUD allows for income recertification every 3 years for people who choose flat rents. DCHA has chosen to do the recertifications every 2 years.

9-II.C. Reexamination of Family Composition ("Annual Update")

Conducting Annual Updates

Given that first class mail often takes more than 5 business days to arrive, 10 business days is not enough time for families to provide documentation to DCHA. Families should be given 21 business days from the date of the letter to submit annual update documents. DCHA should also endeavor to provide information via additional means such as email or text message when possible.

Criminal Background Checks

The comment in 9-I.D. applies to flat rents as well.

Part 3: Interim Reexaminations

9-III.B. Changes in Family and Household Composition

HUD allows for an enormous flexibility in what PHAs require of their tenants in terms of reporting changes. § 960.257(b)(2)"The PHA must adopt policies prescribing when and under what conditions the family must report a change in family income or composition." DCHA has chosen to require all public housing households to report changes within 30 days for both the addition and departure of a family member, even those not requiring approval. DCHA is requiring that tenants notify DCHA about the departure of a live-in aide, foster child, or foster adult within 10 calendar days. Tenants should be given at least 30 days to notify DCHA about the departure of a live-in aide, foster child ,or foster adult.

9-III.C. Changes Affecting Income or Expenses

PHA-initiated Interim Reexaminations

DCHA is proposing to conduct interim recertifications every 6 months for families with zero income. This is not DCHA's current practice, and it is not required by HUD. Indeed, HUD's new regulations discourage PHAs from completing interim recertifications when there are small changes in income. 24 CFR 960.257(b). Given that DCHA is not required to conduct a recertification as long as income has not increased by more than 10%, DCHA should not be conducting an interim reeexamination every 6 months for families with zero income.

Part 4: Recalculating Tenant Rent

Chapter 10: Pets

Part 1: Assistance Animals

10-I.A. Overview

While we appreciate that the ACOP highlights Notice FHEO 2020-01, the sections on service and assistance animals largely draw on the language and structure of the Notice, and as a result are dense, legalistic, and addressed to the PHA, rather than to both PHA and residents. DCHA should draft a shorter, plain-language summary of the Notice for the ACOP, and either reference Notice FHEO 2020-01 or include the Notice as an appendix.

Part 2: Pet Policies for all Developments

10-II.A. Overview

The HUD report's statement that the DCHA pet policy has not been updated since the policy was rescinded in 2014 is incorrect. The current DCHA pet policy was published as a final rulemaking in February 2017 (published as 64 DCR1741). 14 DCMR 6126.

DCHA should amend the current policy to permit pets in both elderly and disabled and general occupancy buildings, as required of non-MTW PHAs under 24 CFR 960.707 (public housing residents "may own one or more common household pets or have one or more common household pets present in the dwelling unit of such resident, subject to the reasonable requirements of PHA.").

DCHA should otherwise at minimum maintain its current pet policy. The proposed policy changes place additional restrictions on pet ownership and create new, and at times unreasonably broad, grounds for termination of tenancy.

10-II.B. Management Approval of Pets

Registration of Pets

The proposed policy creates a new annual registration requirement that pet owners provide DCHA with documentation that the pet "has no communicable disease(s) and is pest-free." This is not part of the current policy, and creates an unreasonable logistical and financial burden for tenants.

Furthermore, DCHA should allow pets in general occupancy developments. At a minimum, DCHA must clarify how the pet policy will change effective January 2024, as the following section of the ACOP is unclear and contradictory:

"Effective ***January 2024*****,** DCHA does will allow non-service or assistance animals, Resident who have maintained pets prior to ***January 2024*** will be allowed to keep their pet as long as the animal has been registered by a license veterinarian or state/local authority. The registration must be renewed annually, and the resident must pay a pet deposit. Additionally, the pet must meet the requirements in the updated House Rules"

Refusal to Register Pets

The proposed policy gives DCHA broad discretion to refuse to register a pet if "DCHA reasonably determines that the pet owner is unable to keep the pet in compliance with the house rules and other lease obligations." DCHA should remove this discretion or, at a minimum, provide specific, non-discriminatory criteria on which DCHA is allowed to base this determination.

10-II.C. Standards for Pets

The proposed policy excludes rodents and reptiles from the category of permitted "common household pets." DCHA should, at a minimum, maintain its current definition "common household pet" at 14 DCMR 6126.3(a), which is more expansive than the proposed policy.

Pet Restrictions

The proposed policy lists maximum pet weight as 25 pounds. DCHA should maintain its current 40 pound maximum pet weight. 14 DCMR 6126.3(a)(5). If DCHA does reduce the maximum permitted animal weight, DCHA should explicitly allow pets that were approved prior to January 2024.

Number of Pets

The proposed policy restricts residents to 1 pet per household, with an aquarium not to exceed 10 gallons counting as one pet. DCHA should maintain its current policies of permitting a maximum of 2 pets per household and permitting aquariums not to exceed 20 gallons to count as 1 pet. 14 DCMR 6126.3(a)(2-3)

10-II.D. Pet Rules

Responsible Parties

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 one responsible party, and residents should have a process for requesting a waiver of this requirement.

Inspections and Repairs

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."

Pets Temporarily on the Premises

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.

Pet Rule Violations

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 requesting 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.

Termination of Tenancy

Termination of tenancy should not be an available remedy for violation of the pet rules before DCHA has attempted initiation of procedures to remove the pet.

Part 3: Pet Deposits and Fees in General Occupancy Developments

10-III.A. Overview

The pet deposit policy should be consistent across elderly and disabled and family properties.

10-III.B. Pet Deposits

Payment of Deposit

The proposed policy states that a pet deposit of the higher of the family's total tenant payment or $50.00 must be paid in full before the pet is brought onto the premises. At most, DCHA should set the pet deposit as the lower of the total tenant payment or $200. 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).

Part 4: Pet Deposits and Fees in General Occupancy Developments

10-IV.B. Pet Deposits

Payment of Deposit

The pet deposit fee for general occupancy developments should be consistent with the pet deposit fee for elderly and disabled developments. Tenants should not be required to pay a pet deposit greater than their monthly total tenant payment.

10-IV.C. Non-Refundable Nominal Pet Fee

The proposed policy states that DCHA requires pet owners to pay a non-refundable nominal pet fee, but does not state the pet fee amount. The proposed pet fee is both vague and duplicative of the pet deposit. DCHA should remove requirements related to the pet fee and establish one, consistent rule for pet deposits across elderly and disabled and general occupancy housing.

Chapter 11: Community Service

Part 1: Community Service Requirement

Part 2: Implementation of Community Service

Although all Public Housing agencies must comply with Community Service/Self-Sufficiency Requirements (CSSR), DCHA should be sensitive to the fact that these requirements have not been enacted in a longtime and everything possible should be done to acclimate all residents of this requirement without punitive repercussions such as eviction.

We are concerned about DCHA's capacity to accurately and quickly provide residents with all the necessary information to successfully satisfy this re-enacted obligation. While HUD makes this policy an obligation, PHA's do have discretion around how they present the policy and how they assist residents in meeting the obligation. HUD encourages PHAs to develop documents to explain the obligation as well as tracking hours and certification of said hours. We encourage DCHA to provide as much information as possible so residents understand and effectively fulfill the obligation.

Additionally, while we appreciate the exemptions already included in the ACOP, we ask that DCHA also specifically exempt primary caregivers of children under 3 years old from the community service requirement. We believe all primary caregivers of children under 3 should be

exempt but at the very least, DCHA should exempt those caregivers who do not have a child care voucher.

We encourage DCHA to detail in the ACOP, all of the allowable activities to satisfy the CSSR obligation and those that do not. In general we encourage DCHA to assist residents in making connections with organizations that can help residents fulfill their CSSR obligations. Empower DC, gladly volunteers as a community organization that can help public housing residents meet their CSSR obligations.

Given the fact that this obligation has not been enforced by DCHA for a considerable amount of time, we encourage DCHA to use the 2024 year as a pilot for this newly reinstituted program to see what issues arise for DCHA residents and DCHA staff. Adjustments can be made, and the program can begin in earnest in 2025.

At a minimum, DCHA must do the following:

- Provide a resident facing document with the details of this now again mandatory policy
- Provide this policy at initial admission, lease renewal, when a member of the household becomes eligible to participate or when requested by a tenant as required by HUD
- Develop (but not require) standard forms so residents can report their hours each year in a compliant and efficient manner.
- Allow for self-certification of hours for this policy in order to avoid depending on property managers/staff to do so.
- Develop a policy on who will be exempt from CSSR and what documentation they will need to prove it. DCHA must make this ready as soon as possible so residents who qualify can go through the process of becoming exempt in a quick and easy manner.

Chapter 12: Transfer Policy

Part 1: Emergency Transfers

12-I.B. Emergency Transfers

DCHA has placed an emphasis on verifying threats to life and incidents of domestic violence without explaining what type of information would be needed to verify such events. This is problematic because often the victims of these circumstances do not have the means to verify these events but still need an emergency transfer. DCHA's proposed policy adds administrative burdens on families that need immediate assistance.

DCHA should alter this proposed policy and take out the verification requirement.

12-I.C. Emergency Transfer Procedures

DCHA proposes a 24-hour grace period prior to granting an emergency transfer. DCHA should not propose such a strict rule. There are many conditions, such as lack of heat during freezing temperatures, where a resident cannot wait 24 hours for a repair to be made. DCHA should build in exceptions to this rule.

12-I.D. Costs of Transfer

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.

Part 2: PHA Required Transfers

12-II.B. Types of DCHA Required Transfers

Transfers to Make an Accessible Unit Available

DCHA should clarify what is meant by "DCHA will 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.

Demolition, Disposition, Revitalizations, or Rehabilitation, Including Rental Assistance Demonstration (RAD) Conversions Transfers

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).

12-II.D. Cost of Transfer

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 relocation expenses to be paid by DCHA upfront. Many residents of public housing do not have cash on hand to absorb these costs.

Part 3: Transfers Requested by Tenants

12-III.B. Types of Resident Requested Transfers

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.

12-III.C. Eligibility for Transfer

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. 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.

12-III.D. Security Deposits

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."

12-III.F. Handling of Requests

DCHA's proposed policy relies on functioning channels of communication. However, as detailed elsewhere, it is often impossible to get in touch with anyone at DCHA. Therefore, we recommend that DCHA allow residents to walk-in to make these requests in-person.

Part 4: Transfer Processing

12-IV.B. Transfer List

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

DCHA should clarify how and under what circumstances the executive director would approve a transfer, and whether that is something a resident can request.

DCHA's proposed policy states that emergency transfers will get the highest priority, but also states demolition and renovation will "gain the highest priority as necessary." DCHA should clarify whether that means in some instances demotion and renovation will be given higher priority than emergency transfers.

Chapter 13: Lease Terminations

Part 2: Termination by PHA – Mandatory

13-II.E Failure to Accept the PHA's Offer of a Lease Revision

The federal regulation cited to support this policy does not indicate that a PHA *must* terminate assistance for failure to accept a lease revision, but that a PHA *may* terminate assistance for failure to accept a lease revision. Given that local 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.

Part 3: Termination by PHA – Other Authorized Reasons

13-III.A. Overview

Throughout this chapter, we recommend using language that DCHA "may" terminate assistance, rather than the current language of "will" terminate assistance, for any provision where termination of assistance is not mandatory under federal law. The current use of "will" is both confusing and internally inconsistent where the same provisions indicate that DCHA will exercise discretion in determining whether to terminate assistance.

13-III.B. Mandatory Lease Provisions

For each section under this heading, given that the policies indicate that DCHA will exercise discretion, the policies should say that DCHA "may" terminate the lease, rather than "will" terminate the lease. Additionally, for the first four sections, related to various criminal activity, we oppose the stated consideration of arrest records. Arrest records are notoriously unreliable and there is significant data indicating that the use of arrest records will disproportionately impact individuals and communities of color.

13-III.C. Other Authorized Reasons for Termination

Other Good Cause

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 and DCHA should delete this addition. 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.

13.III-D. Alternatives to Termination of Tenancy

Exclusion of Culpable Household Member

There is no support in the federal regulations for PHAs requiring that families agree that culpable family members will not visit or stay as guests in the assisted unit, only that they will not reside in the assisted unit. Imposing such a policy is both unnecessarily restrictive and inhumane, given that the culpable individuals will necessarily be family members of the individuals who continue to receive assistance.

It also appears that this provision applies to any violation, not only those which pose a threat to the safety of the community or other residents, and thus in many cases there is no defensible justification for a policy this restrictive. Despite the broad range of situations in which such a policy may be applicable, there is no room in this policy as written for DCHA to exercise discretion in a determination of whether a culpable family member should be prohibited from staying in or visiting the unit.

Finally, it is unreasonable to require proof of a current address for a family member who has been required to vacate as a condition of continued assistance, given that as a practical matter many individuals in this situation will be rendered homeless by the PHA policy and will not have a stable address to provide.

13-III.E. Criteria for Deciding to Terminate Tenancy

Consideration of Circumstances

We oppose the use of arrest records at any stage of termination proceedings – as previously noted, arrest records are not reliable indications of any criminal activity, and a policy that allows them to trigger investigations or be considered as part of the evidence in an investigation will disproportionately affect individuals and communities of color. By its own terms, this policy

clearly acknowledges the limitations of arrest records, as it indicates that they may not form the sole basis of a termination. Given that the policy also provides a full list of the other evidence DCHA may consider to make such a determination, and given the specific evidentiary shortcomings and racial justice implications of including arrest records, DCHA should choose not to permit such records as part of the consideration.

Reasonable Accommodation

As written, this policy appears to impermissibly limit the basis on which participants may request a reasonable accommodation. Requiring that "the behavior of a family member with a disability is the reason for a proposed termination of assistance" is narrower than both federal and local anti-discrimination law, which already governs the consideration of requests reasonable accommodation. The language in the proposed Chapter 2.II.H. better reflects the actual requirements of anti-discrimination law and should be mirrored here rather than providing more restrictive language.

Chapter 14: Grievances and Appeals

Part 1: Informal Hearings for Public Housing Applicants

14-I.B. Informal Hearing Process

Scheduling an Informal Hearing

As noted elsewhere, 15 days 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 child care, 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. We suggest that this be extended to at least 30 days.

Informal Hearing Decision

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.*

Part 2: Information Hearings with Regard to Noncitizens

14-II.A Hearing and Appeal Provisions for Noncitizens

DCHA should amend this proposed policy to provide longer than 10 days for families to provide DCHA with a copy of their appeal and proof of mailing. As discussed elsewhere, time frames this short are unrealistic for any family to take action in an administrative process, but are particularly inappropriate given the structural barriers faced by applicants for public housing, as well as the very specific barriers noncitizens may face in navigating administrative or legal processes. It is notable that in this same policy, DCHA gives itself 15 business days to notify the family in writing of the results of the USCIS secondary verification, which time begins after DCHA has received those results. If DCHA, as an agency with expertise in navigating this process, needs 15 days to take an action, an applicant family should not reasonably be expected to act in a shorter period of time.

Part 3: Grievance Procedures for Public Housing Residents

14-III.D. Informal Settlement of Grievance

DCHA should permit residents to submit requests for an informal settlement of grievances for longer than 30 days after the grievable event. In many cases, a resident may not even be aware of the occurrence of a grievable event within this time frame, let alone have the ability to process the event, become familiar with or seek advice regarding their rights to challenge the event, and submit the request as required. We recommend that residents be permitted to submit such request at any point within a year following the grievable event.

14-III.E Procedures to Obtain a Hearing

Requests for Hearing and Failure to Request

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.

14-III.G Remote Hearings

Discovery of Documents Before the Remote Hearing

DCHA should provide the hearing packet more than three business days prior to the scheduled remote hearing. There is no reason why this discovery period should be shorter than that provided for public housing applicants who request informal hearings, and 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. This is also internally inconsistent with the "Conducting Remote Hearings" section of the ACOP, which

requires that DCHA provide all materials to be presented at least five business days prior to any remote hearing.

14-III.H Procedures Governing the Hearing

Failure to Appear

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 given 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.

14-III.1 Decision of the Hearing Officer

Procedures for Further Hearing

This policy should be written to give DCHA discretion to provide a further hearing where a family has missed an appointment or deadline set by the hearing officer, rather than indicating that another hearing *will not* be granted. Additional discretion will ensure that DCHA is not constrained in its ability to provide flexibility to families in appropriate circumstances where the hearing could be resolved in a manner that benefits both parties.

Final Decision

This policy should be amended to indicate that a resident *may* present the matter to DCHA's Executive Director within 10 business days. As currently written, the policy seems to suggest that seeking such review is mandatory in order to preserve a resident's rights to appeal the decision in a judicial proceeding.

Chapter 15: Program Integrity

Part 1: Preventing, Detecting, and Investigating Errors and Program Abuse

15-I.B. Detecting Errors and Program Abuse

This section does not have procedures for detecting or preventing DCHA-caused errors. All proposed policies in this section should be revised to include such procedures.

15-I.C. Consideration of remedies

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."

Part 2: Corrective Measures and Penalties

15-II.B PHA reimbursement to family

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.

Chapter 16: Program Administration

Part 3: Family Debts to the PHA

16-III.B. Repayment Policy

Repayment Agreement

First, DCHA should not require families to make down payments in order to enter repayment agreements. Public Housing residents often have little or no savings, and asking them to make a threshold payment in order to be able to enter into a repayment agreement is unreasonable. If a family is willing and able to pay an amount in addition to their income-based rent each month, that is and should be enough for DCHA, whose mission is to safely and stably house low-income District residents.

Second, DCHA should follow the recommendation in PIH Notice 2018 that a family's monthly share of the rent plus the monthly debt repayment amount should not exceed 40 percent of the family's adjusted income. DCHA should also establish procedures for modifying the repayment amount if the participant's income changes. DCHA's policy should read that it will adjust payment amount in the event that a family's income decreases, not that it may. Further, DCHA should retain its current policies on hardship exemptions as described in 14 DCMR 5603.6 and 5603.7.

Finally, the following should be added to the PHA Policy: "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."

Part 7: VAWA: Notification, Documentations, and Confidentiality

16-VII.D. Documentation

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.

Additionally, we are concerned that DCHA only gives survivors 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.

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 must 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, not just an acknowledgment, within 14 days, and that policy should stand.

Conflicting Documentation

DCHA should not require third party documentation in all instances of conflicting documentation. DCHA often can and should be able to make a determination based on the 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.

Comments on the Proposed Administrative Plan (HCVP)

Chapter 2: Fair Housing and Equal Opportunity

Part 1: Nondiscrimination

2-I.A. OVERVIEW

Overall, DCHA inconsistently lists the federal fair housing and other federal and local laws that apply to its administration of the HCVP. DCHA must correct these inconsistencies and additionally elaborate on how the agency is responding to prior identified impediments to fair housing that frustrate the District's ability to comply with its duty to affirmatively further fair housing because it is a recipient of federal funds that trigger the statutory obligation. 42 U.S.C. §§ 3608(d) and 3608(e)(5); 24 CFR § 91.225 (a)(1). In addition, DCHA mistakenly refers to protecting the rights of tenants, applicants, and staff pursuant to "the District of Columbia Housing Authority Human Rights Act of 1977" rather than pursuant to the District of Columbia Human Rights Act (DC Human Rights Act). Further, the agency's "PHA policy" provision confusingly follows the list of applicable laws and then specifically notes that DCHA will follow the DC Human Rights Act without regard to the other applicable federal laws it previously noted apply to its administration of the Housing Choice Voucher Program. Instead, the agency should refer back to the language of 14 DCMR § 4906.1, noted earlier in this section: "DCHA shall comply fully with all federal, state, and local nondiscrimination laws in accordance with the rules and regulations governing Fair Housing and Equal Opportunity in housing and employment." Alternatively, if DCHA wants to be more comprehensive, in its "PHA policy," it can note that: "DCHA shall not on account of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, genetic information, disability, matriculation, political affiliation, source of income, status as a victim of an intrafamily offense, sealed eviction record, place of residence or business, or homeless status deny any Family or individual the opportunity to apply for or receive assistance under HUD's Section 8 Housing Voucher Program within the requirements of [applicable federal laws,] the HUD regulations[,] and the D.C. Human Rights Act." 14 DCMR § 4906.2; D.C. Code 2-1402.21 (adding "sealed eviction record" and "homeless status" as protected characteristics).

2-I.B. Nondiscrimination

Familial status

The agency must conform its definition of "familial status" to the definition under the FHA because its current definition leaves out minor children and is inconsistent with federal law, which courts use to interpret the DC Human Rights Act. *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."). 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).

Providing information to Families and Owners

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 source of income discrimination protections.

Discrimination Complaints

Currently DCHA's policy does not provide program participants with a full menu of options to seek redress for instances of discrimination by an owner. In these situations, DCHA should provide the participant with information on how to file a complaint with the D.C. Office of Human Rights and give the participant a list of D.C. legal services providers who may provide them legal services. Additionally, DCHA should always ask for consent from the participant before sending a violation notice to an owner based on the participant's report of discrimination. In some cases, sending such a notice might put a family at risk of retaliation.

Part 2: Policies Related to Persons with Disabilities

2-II.D. Verification of Disability

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 apply the FHA and DC Human Rights Act definitions of "disability" across all aspects of the HCVP to avoid running afoul of the agency's fair housing obligations.

2-II.E. Approval/Denial of a Requested Accommodation

DCHA's proposed reasonable accommodation policy permits it to ask a "family to sign a consent form so that the PHA may verify the need for the requested accommodation" in certain instances where the agency feels it needs more information to determine the disability-related 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).

2-II.F. Program Accessibility for Persons with Hearing or Vision Impairments

The agency's proposed policy for providing equal access to persons with hearing or vision impairments falls short under the FHA and 24 CFR 8.6(b) requiring the agency to "adopt and implement procedures to ensure that interested persons (including persons with impaired vision or hearing) can obtain information concerning the existence and location of accessible services, activities, and facilities." DCHA policy should make ASL interpretation available to anyone who primarily communicates through ASL whenever the agency is communicating with program participants about the HCVP, pursuant to its obligations under the FHA, Section 504 of the Rehabilitation Act, and the DCHRA. This would include providing access to ASL interpreters during HCVP briefings or events aimed at providing HCVP mobility services.

Part 3: Improving Access to Services for Persons with LEP

2-III.A. Overview

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, as a recipient of federal funds. The agency should accordingly revise its description of the applicable laws to include the LAA. To that end, DCHA must also incorporate the LAA's affirmative obligations, which go beyond the requirements of Title VI.

2-III.B. Oral Interpretation; 2-III.C. Written Translation

Because DCHA is governed both by Title VI and the LAA, it should revise both its oral interpretation and written translation sections to ensure it is complying with its obligations pursuant to the LAA. D.C. Code § 2-1932; § 2-1933.

2-III.D. Implementation Plan

As a "covered entity" under the LAA, D.C. Code § 2-1931(a)(2), DCHA must "establish a language access plan," D.C. Code § 2-1934(a)(1), and make this plan accessible to HCVP participants. It should revise its current language to reflect the same.

Chapter 3: Eligibility

Part 1: Definitions of Family and Household Members

3-I.J. 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.

Additionally, 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.

3-I.L. Absent Family Members

Absent Students

Family members are in the best position to determine who is a part of the family. Current regulations allow a student to attend school away from home for more than 120 days without being considered an absent member of the family and household. 14 DCMR § 5318. The status change to temporary or permanent absence is at the family's discretion. However, the newly proposed regulations remove the sole discretion of the family to determine the status of a student as temporarily or permanently absent. Specific language is added to indicate that DCHA can make a determination that a student is an absent member without the family agreeing to that status change if "information indicates that the student has established a separate household." However, 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.

3-I.M. Live-in Aide

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. Newly proposed regulations allow 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.

There is an odd discrepancy between the proposed DCHA live-in aide policy for public housing and the proposed live-in aide policy for HCVP. HCVP participants *must* submit requests in writing, *must* submit written verification of the need, and must submit a new request at recertification. There is no logical justification for such a drastic difference in program process for an identical need and request. Furthermore, the variation in process will unnecessarily and undoubtedly lead to agency, resident, and staff confusion. DCHA should standardize a process for requests and/or verification across both housing programs. The discretionary standard proposed for public housing residents should be used for HCVP participants, as well.

Part 2: Basic Eligibility Criteria

3-II.A. Income Eligibility and Targeting

HUD requires PHAs to ensure that seventy-five percent (75%) of its admissions in each PHA fiscal year are families whose incomes are at or below the extremely low-income limit. Extremely low-income families have income that does not exceed thirty percent (30%) of the area median income (AMI). The proposed regulations continue to confirm this specific HUD requirement; however, there is no specific policy detail as to how DCHA will appropriately track and implement this requirement. The existing regulations in 14 DCMR § 7602.3 that detail a plan for admission income monitoring and implementation should remain in any newly proposed regulations. DCHA must have a policy in place to monitor its compliance with HUD's seventy-five percent (75%) extremely low-income admissions and be able to correct quickly if necessary. Currently, 14 DCMR § 7602.3 indicates:

"(a) If at any time the extremely low-income families make up less than seventy- five percent (75%) of the admissions from the waiting list for the fiscal year to date, DCHA shall thereafter

give priority to extremely low-income families in each of the established preference categories until extremely low-income admissions again make up seventy-five percent (75%) of admissions for that fiscal year and (b) If there are not enough extremely low-income families on the waiting list, DCHA shall conduct outreach on a non-discriminatory basis to attract extremely low-income families to reach the statutory requirement." (14 DCMR 7602.3).

This language should continue to be included in any revised regulations.

Relatedly, it is concerning to see additional language included that refers to HUD's ability to approve exceptions to the seventy-five percent (75%) requirement if the PHA demonstrates that it has made all required efforts to meet the threshold but has been unable to attract an adequate number of qualified extremely low-income families. The proposed language is very general and fails to include the four factors that are considered by HUD in making such a consequential determination to waive the extremely low family admission requirement. The "required efforts" must be fleshed out and made clear within the regulations to ensure that DCHA staff is clear on its obligations under 24 CFR 982.201(b)(2)(ii)(A)-(D):

> (ii) A PHA may admit a lower percent of extremely low income families during a PHA fiscal year (than otherwise required under paragraph (b)(2)(i) of this section) if HUD approves the use of such lower percent by the PHA, in accordance with the PHA plan, based on HUD's determination that the following circumstances necessitate use of such lower percent by the PHA:
>
> (A) The PHA has opened its waiting list for a reasonable time for admission of extremely low-income families residing in the same metropolitan statistical area (MSA) or non-metropolitan county, both inside and outside the PHA jurisdiction;
>
> (B) The PHA has provided full public notice of such opening to such families, and has conducted outreach and marketing to such families, including outreach and marketing to extremely low-income families on the Section 8 and public housing waiting lists of other PHAs with jurisdiction in the same MSA or non-metropolitan county;
>
> (C) Notwithstanding such actions by the PHA (in accordance with paragraphs (b)(2)(ii)(A) and (B) of this section), there are not enough extremely low-income families on the PHA's waiting list to fill available slots in the program during any fiscal year for which use of a lower percent is approved by HUD; and
>
> (D) Admission of the additional very low-income families other than extremely low-income families to the PHA's tenant-based voucher program will substantially address worst case housing needs as determined by HUD.

The HUD potential for exception exists, but the abbreviated reference in the proposed regulations suggests a disregard for DC's housing affordability crisis. Data related to DC's dearth of affordable housing indicates that 0-30% AMI housing is the housing most needed in DC. DCFPI reports that almost thirty-thousand new units would be required to meet the housing needs of DC's extremely low-income residents. Almost eighty percent (80%) of DC's severely rent-burdened residents are within the 0-30% AMI range. Furthermore, DCHA's own public

housing demographics indicate that approximately ninety-five percent (95%) of its tenants are extremely low-income families and living with incomes that do not exceed 30% AMI. The need for affordable housing in DC is great and, undoubtedly, extremely low-income families are the ones struggling the most to obtain and maintain housing in DC. There is no foreseeable or reasonable circumstance in which DCHA should qualify for (or seek) an exception from HUD to bypass HUD's income targeting requirement that seventy-five percent of its admissions are extremely low-income families. Any failure to meet the threshold in DC is a lack of effort and intent by DCHA, not a lack of need.

3-II.B. Citizenship or Eligible Immigration Status

Fundamentally, any revised regulations referencing citizenship or immigration status should be clear that the revised regulations specifically apply to the federal HCVP program. Currently, DC legislation, the *Local Rent Supplement Program Eligibility Temporary Amendment Act of 2022,* defines the eligibility for the locally funded vouchers. For locally funded vouchers, it prohibits DCHA from using citizenship, immigration status, or criminal legal system involvement as screening factors for eligibility. Additionally, it allows for self-certification during the eligibility process.

As in other sections of this document, regulations within this subsection are described very generally, without using the more specific language indicated in 24 CFR § 5. For example, proposed regulations broadly indicate that the PHA must notify families of the requirement to submit evidence of citizenship at the time of application for the federal HCVP. While that is true, the proposed regulations fail to 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 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/participants 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 Administrative Plan that leaves out crucial guidance for how DCHA implements its programs will undoubtedly lead to applicant and staff confusion. If the Administrative Plan is not inclusive of all DCHA obligations and responsibilities under federal law and staff are not appropriately trained, DCHA's 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 Administrative Plan. If those tasked with administering the program on a daily basis cannot easily refer to the Administrative Plan for every specific provision that applies to their duties and

lawful administration of HCVP, 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.

Timeframe for Determination of Citizenship Status

As aforementioned, this section also fails to detail the actual DCHA/PHA obligations or applicant rights and obligations under federal law. Proposed language does indicate that time extensions of up to thirty (30) days can be requested. However, that is all the information provided regarding time extensions.

The actual process detailed in federal law, 24 CFR § 5.508 includes details that: *30 day extensions can be requested if the family certifies that prompt and diligent efforts will be undertaken to obtain the evidence; the PHA must inform the family, in writing, whether its request for a time extension of has been granted or denied; if granted, the notice must state the specific period of the extension; If the extension request is denied, the notice must explain the reasons for the denial; if all required documents have been provided by the family, assistance may not be denied or delayed solely because verification or requested hearings have not been completed; if required documents have not been submitted by all family members, only prorated assistance may be provided until the required documents have been submitted by all family members.* 24 CFR § 5.508(h).

The difference in the provision of information from DCHA's proposed Administrative Plan and federal law is drastic. Again, if DCHA and its applicants cannot easily refer to the Administrative Plan to clearly understand and/or lawfully administer DCHA's programs, the proposed language is ineffective, and the proposed "plan" is a failed effort.

3-II.C. Social Security Numbers

Generally, any revised regulations referencing citizenship or immigration status should be clear that the revised regulations specifically apply to the federal HCVP program. Currently, D.C. law, pursuant to the *Local Rent Supplement Program Eligibility Temporary Amendment Act of 2022,* defines the eligibility for the locally funded vouchers. For locally funded vouchers, it prohibits DCHA from using citizenship, immigration status, or criminal legal system involvement as screening factors for eligibility. Additionally, it allows for self-certification during the eligibility process.

Separately, DCHA has removed the details related to the specific documentation used to verify a Social Security number. The current DCHA regulations (14 DCMR § 5103.6) and federal law (24 CFR § 5.216) specifically list the HUD approved forms of Social Security number verification. There is no mention of the specific forms that HUD has approved and that DCHA must accept from applicants. Also, federal law is clear that PHAs cannot only require one form of Social Security verification. In its proposed language, DCHA is quick to detail when it can deny assistance to applicant families for not meeting Social Security Number documentation. However, it completely omits its own obligations regarding what it has to accept. This is, again,

another unacceptable example of the incomplete nature of the proposed Administrative Plan language.

Part 3: Denial of Admissions

3-III.A. Overview

Updated HUD policy and guidance has highlighted expectations for PHAs by being explicit about what HUD requires and what HUD permits. Overall recent HUD policy has trended towards making sure that PHA practices are not contributing to housing discrimination or furthering policies that unfairly lead to additional exclusions for marginalized populations. While proposed revisions are clear that HUD requires compliance with federal discrimination laws and prohibits use of age, disability, race, color, religion, sex, or national origin in denial determinations, the proposed language wrongly removes mention and inclusion of the additional prohibitions of using any of the protected classes under federal or local DC law. DC's Human Rights Act requires compliance with an expanded list of protected statuses that cannot be used in consideration due to the discriminatory nature of doing so. Proposed language must reflect that.

Current regulations under 14 DCMR § 4906 are explicit regarding Fair Housing Policy. DCHA shall not deny a family or individual the opportunity to apply for or receive assistance under HUD's Section 8 HVP on account of: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, genetic information, disability, matriculation, political affiliation, source of income, status as a victim of an intrafamily offense, or place of residence or business within the requirements of the HUD regulations and D.C. Human Rights Act. 14 DCMR § 4906.2.

Current regulations under 14 DCMR § 4906 are also clear about DCHA's obligation to comply fully with all federal, state, and local nondiscrimination laws in accordance with the rules and regulations governing Fair Housing and Equal Opportunity in housing and employment. 14 DCMR § 4906.1. Additionally, due to the importance of complying with all civil rights laws, current regulations require DCHA to provide information to participants regarding discrimination and their right to challenge it during briefing sessions. 14 DCMR § 4906.3. Participants must be made aware of their rights in order to exercise them.

Existing regulations under 14 DCMR § 4907 are also explicit that applicants shall not be denied admission on the basis of, or as a direct result of, the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

All of the aforementioned current regulations of 14 DCMR § 4906 and 14 DCMR § 4907, with which DCHA is expected to comply, should continue to be in effect in any newly proposed revisions. While DC's Human Rights Act has expanded the list of protected classes recently, 14 DCMR § 4906.1 remains the "catch all" that DCHA has an obligation to comply with all federal, state, and local non-discrimination laws. DCHA must continue to comply with all civil rights laws and be explicit in its regulations and proposed plans. The proposed language does include HUD's prohibited reasons for denial. Most of HUD's prohibited reasons also fall under the plain

language of the DC Human Rights Act protected classes (i.e., recipients of public assistance, family members being unwed parents). However, any proposed language for regulations under the Administrative Plan should give the actual language under all applicable laws. HUD's prohibition against denials based on whether someone is a "recipient of public assistance" is describing DC Human Rights Act's source of income protected status. HUD's prohibition against denials based on family members being unwed parents describes the DC Human Rights Act category of marital status. Any proposed regulations need to continue to use the exact language of all applicable laws, listing the specific language of, both, federal and local prohibitions.

Arrest Records and Criminal Activity

HUD guidance has recently been direct in prohibiting the use of arrest records as a basis for denial of admission. Also, despite HUD rules requiring denials based on criminal activity being extremely narrow, DCHA generally uses its discretion to be more restrictive than required. Current DCHA policy does not appear to follow HUD rules. DCHA has repeatedly failed to clearly state its screening policy and practice around the consideration of criminal activity. DCHA must develop transparent policies and practices that are in compliance with HUD rules and guidance so that it can ensure that it is not perpetuating discrimination and in violation of the Fair Housing Act.

3-III.B. Mandatory Denial of Assistance

Prohibition and Consideration of Drug Related Criminal Activity Evictions

Under 24 CFR § 982.553, 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. Despite the three-year window, DCHA has inexplicably decided to implement a five-year window when it is able to use its discretion to consider mitigating factors that do not have to lead to prohibition. There is no provided reason for the decision to apply a more restrictive standard than HUD requires; however, when given the option and chance to expand housing opportunities, DCHA has again chosen to create additional barriers for DC residents.

Prohibition Based on Current Use, Pattern, or Abuse of Illegal Drugs or Alcohol

Under 24 CFR § 982.553, 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.

3-III.C. Other Permitted Reasons for Denial

Criminal Activity

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 these permissive 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 period of time 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. There is no explanation or justification for choosing a longer term than HUD imposes. DCHA's policy decision to use its discretion to impose more burdensome requirements that perpetuate unfair and discriminatory effects and create additional barriers to housing security is simply punitive. Additionally, exercising its 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 of such a prohibition determination. DCHA program participants and applicants should not be subjected to prohibition due to potential frustrations with or of DCHA employees/agents. DCHA employees and agents also should not be empowered to weaponize their positions to wield such monumental consequences for applicants/participants.

Pursuant to 24 CFR § 982.553, HUD also allows PHA to reconsider an applicant that was previously denied admission due to the household member's engagement in criminal activity if the PHA has sufficient evidence that the members of the household are not currently engaged in, and have not engaged in, such criminal activity during a reasonable period, as determined by the PHA, before the admission decision. HUD instructs that the PHA would have "sufficient evidence" if the household member submits a certification that they are not currently engaged in and have not engaged in such criminal activity during the specified period and provides supporting information from a probation officer, a landlord, neighbors, social service agency workers and criminal records, etc., which the PHA can verify.

In DCHA's proposed policy language, however, there is no mention of this discretionary option of reconsideration. Therefore, one can presume that DCHA has made the decision to propose regulations that omit that benefit and option for applicants. This choice is unjustified, punitive, and unnecessarily dismissive of any potential personal growth and rehabilitation. DCHA should reevaluate its illogically harsh decision to disregard rehabilitation and condemn DC residents to be permanently defined by one moment/decision/activity at a specific time in their lives.

In its consideration of the four discretionary categories, DCHA proposes utilizing evidence of arrest records for drug-related or violent criminal activity within the past five years, although it claims 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 "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.

Previous Behavior in Assisted Housing

Under 24 CFR § 982.552 and 24 CFR § 982.553, HUD permits, *but does not require* PHAs to deny assistance for an applicant or terminate assistance for a participant because of the family's action or failure to act in connection with prior federal housing. HUD also indicates that a PHA may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the

disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure. Despite this, DCHA, again, exercises its discretion by enacting prohibitions in its proposed policy and states that it *will deny* assistance to families under this section. DCHA should reconsider its choice and utilize its discretion to actually benefit DC residents by considering the circumstances of each applicant instead of uniformly choosing to bar those most in need from crucial assistance. 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 "will deny" qualifier instead of "may deny" as HUD allows, casts doubt on that intention.

3-III.D. Screening

Screening for Eligibility

Generally, DCHA uses its discretion to add more opportunities to prohibit applicants from its program. It has opted into all of the discretionary categories, so it is unclear what DCHA's screening priority is. DCHA's choices make DCHA program admission and maintenance extremely high barrier, much higher than what HUD requires. Under 24 CFR § 5.903, HUD authorizes PHAs to use criminal records to screen applicants for admission but does not authorize PHAs to use criminal records to screen participants. DCHA's inclusion of that caveat in its proposed language is a positive inclusion.

The HUD Report detailed the improper storage of criminal records within tenant files. Criminal records should not be easily accessible or kept within a family's file. Criminal records contain personally identifiable information and should be destroyed after use.

Screening for Suitability as a Tenant

Despite other missed opportunities to exercise discretion in a manner that does not create more barriers for applicants, DCHA's proposed language around screening for suitability as a tenant is largely positive. Under 24 CFR § 5.905, HUD is clear that PHAs have no liability or responsibility to the owner for the family's behavior or suitability for tenancy. Still, HUD allows PHAs the authority to conduct suitability screening for the landlord owners, if the PHA desires. Here, in its proposed language, DCHA has opted not to conduct any suitability screening for a landlord owner. Despite HUD allowing PHAs to also offer additional information about a family to a landlord/owner, DCHA's proposed language indicates that it will not be offering any additional information to an owner. These are the best choices for DCHA since landlords collect application fees, conduct their own screening processes, and are responsible for complying with all DC laws regarding tenant screening.

3-III.E. Criteria for Deciding to Deny Assistance

Consideration of Circumstances

In determining whether to deny or terminate assistance because of action or failure to act by members of the family, HUD regulations in 24 CFR § 982.552(c)(2) indicate that a PHA may consider all relevant circumstances such as: the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

In its proposed language, however, DCHA removes the language permitting the consideration of the effects of denial or termination of assistance on other family members. It is a strange omission and desire to restrict its own ability to consider all factors relevant to the circumstances in an effort to ensure that families do not get any additional benefit of consideration. DCHA should reconsider that omission and consider that factor with the seriousness that HUD allows. Penalizing all family members for the action or failure to act of one is a harsh and consequential one, particularly in DC where housing access and affordability are so difficult to obtain.

Again, DCHA attempts to utilize arrest records in its proposed language—a violation of federal and DC law. DCHA claims that arrest records will not be used for the sole basis of denial, but that an arrest might trigger an investigation. DCHA then proceeds to detail proposed language that allows it, as part of an investigation, to obtain the police report associated with the arrest and consider: the reported circumstances of the arrest; any statements made by witnesses or the applicant; whether charges were filed; whether charges were abandoned, dismissed, not prosecuted, or resulted in acquittal; and any other evidence relevant to determining whether or not the applicant engaged in disqualifying activities. Obtaining a police report to consider the reported circumstances of an arrest is, in fact, using an arrest record for the consideration of a denial and is prohibited under federal and DC law. DCHA must revisit its proposed policy and craft proposed language that is lawful.

Removal of a Family Member's Name from the Application

Under 24 CFR § 982.552(c)(2)(ii), PHAs may impose, as a condition of continued assistance for other family members, a requirement that other family members who participated in or were culpable for the action or failure will not reside in the unit. The PHA may permit the other members of a participant family to continue receiving assistance. This is a good allowance that prevents an entire household from unnecessarily losing its opportunity to be considered for DCHA's program.

DCHA's interpretation and expansion of this rule is partially problematic, however. DCHA utilizes its discretion in its proposed language to indicate that it *will* offer this option to households with someone on the lifetime sex offender registry and it *may* offer the option to households with other criminal convictions. The concerning part of DCHA's proposed implementation is that, if a family member is removed, it will require the head of household to certify that the family member will not be permitted to visit, stay as a guest, or reside in the

assisted unit. Barring a family member from visiting or being a guest is an extreme overreach of DCHA's authority. A removed family member is not residing in the unit or receiving any assistance. The household and family member would be subjected to rules that no other DCHA participant is subjected to. DCHA does not currently screen every household's visitor or guest for criminal records. To do so and require barring of a participant's family member as a visitor for no reason besides a criminal record is discriminatory and unlawful. DCHA must revisit and revise that aspect of their proposed language to remove any requirement that effectively bars visitors of participants.

Reasonable Accommodation

Federal law indicates that if the family includes a person with disabilities, the PHA decision concerning such action is subject to consideration of reasonable accommodation in accordance with the federal regulations detailing compliance with non-discrimination laws based on handicap for federally assisted programs and activities of HUD. 24 CFR § 8.

DCHA's proposed language adds vague language to its implementation confusing its intention to fully comply with federal regulations: "If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of assistance, the PHA will determine whether the behavior is related to the stated disability. If so, upon the family's request, the PHA will determine whether admitting the family as a reasonable accommodation is appropriate. The PHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of assistance." DCHA's proposed language should be more specific as to the process it proposes and the method in which they will reach those determinations.

3-III.F. Notice of Eligibility or Denial

DCHA's proposed language requires that, if the PHA determines that a family is not eligible for the program for any reason, the family will be notified of a decision to deny assistance in writing within ten business days of the determination. In theory, ten business days from determination makes sense. However, the concern with the language is that there is no accountability regarding the time frame upon which DCHA can be expected to make the determination that starts the ten-business day countdown for receiving notice. If applicants have no clear expectation of when the determination will be made and DCHA offers no public standard of time upon which it or applicants can rely, there is no accountability or proof whether DCHA is in compliance with the requirement that families are notified within ten business days of a determination decision.

Additionally, the family receiving the notice of denial for lifetime sex offender registry or criminal conviction has ten business days to reply in writing to dispute the decision. To the extent possible, DCHA should extend this timeline to 30 days because ten days is a very short turn around. Additionally, it is unclear how the "clock" will start unless DCHA sends its notices via certified mail. DC and DCHA mail are notoriously slow and starting the 10-day countdown from the date typed on the notice would not be a sufficient trigger. DCHA should internally

create an accurate timeline for how long it will take the agency to make eligibility determinations and include that expectation in the regulations so that applicants can have some expectation for determination decisions and can follow up appropriately. Additionally, DCHA should send determination notices via certified/postage tracking mail so that the timeline for applicant response starts upon actual delivery of the mailed notice.

3-III.G. Prohibition Against Denial of Assistance to Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking

Perpetrator Documentation

The proposed policy states that if the perpetrator of abuse is a member of the applicant family, "the applicant must provide additional documentation consisting of one of the following: A signed statement (1) requesting that the perpetrator be removed from the applications and (2) certifying that the perpetrator will not be permitted to visit or stay as a guest in the assisted unit." This is a troubling and paternalistic requirement that does not contend with the realities of domestic violence. Domestic violence often occurs in a cycle, and the average survivor will leave multiple times before leaving for good. Moreover, family dynamics are complicated and oftentimes our clients have children with the perpetrator of the abuse. To make them attest that they will not let the parent of their child visit them in the assisted unit is simply unrealistic (and indeed may be contrary to court custody orders).

Chapter 4: Applications, Waiting List, and Tenant Selection

Part 1: The Applications Process

4-I.B. Applying for Assistance

DCHA should allow for 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.

4-I.C. Accessibility of the Application Process

Please see our comments under Chapter 2.

4-I.D. Placement on the Waiting list

DCHA must clarify this policy to indicate whether a preliminary assessment of the family's eligibility will be made upon receiving a complete application. As written, the proposed policy seems to be that all applicant families will be placed on the waiting list, whether eligible or ineligible. In other words, the proposed policy contemplates that no preliminary assessment of the family's eligibility will be made upon receipt of a completed application.

DCHA must do a preliminary assessment upon receipt of a completed application. Otherwise, a family may be under the false impression that they are eligible and find out years later that they were never eligible. Furthermore, a preliminary assessment may be beneficial in resolving any eligibility issues at the outset.

Part 2: Managing the Waiting list

4-II.B. Organization of the Waiting list

DCHA must clarify what information will be maintained on the waiting list. The previous policy spelled out 8 categories of data that would be maintained for each application, whereas the proposed policy only mentions 5. DCHA should specify what information will be stored for each applicant, not just what is required by statute.

Furthermore, DCHA should affirm under the "PHA Policy" section that families applying for assistance will be offered the opportunity to be placed on any open public housing waiting list.

4-II.C. Opening and Closing the Waiting list

Reopening the Waiting List

DCHA should provide 30 days' notice prior to reopening the waiting list and do outreach to nursing homes, shelters, and community organizations. Giving a public notice in "suitable media outlets" does not cast a wide enough net to ensure that all those interested have equitable access to the application process.

4-II.D. Family Outreach

It is unclear whether DCHA's policy encompasses the entirety of this section or just the section titled "PHA Policy." DCHA should make it clear that the entire section is their policy.

Furthermore, the proposed policy suggests that targeted outreach efforts will only be undertaken if certain populations are being underserved. DCHA should adopt a more forward-thinking policy and conduct targeted outreach before the waiting list re-opens. We believe it is safe to assume that certain populations, such as unhoused individuals, will be underserved. If targeted

outreach is not implemented from the beginning, the waiting list will quickly fill up without the underserved having proper opportunity to participate.

4-II.E. Reporting Changes in Family Circumstances

DCHA should clarify what is meant by "the family must immediately inform the PHA of changes in contact information." The policy should be to inform DCHA of changes "as soon as possible" but not penalize participants if they fail to update the contact information. Finally, DCHA should not limit the method of submission to just the online portal or email. Many low-income clients do not have reliable access to the internet. As such, DCHA should permit families to submit updates via mail, telephone, and in-person.

4-II.F. Updating the Waiting List

DCHA's proposed policy on updating the waiting list is far too punitive. The current waiting list has been closed since 2013 and there are no current plans to re-open the voucher waiting list. As such, families have been waiting over a decade to receive a voucher. Many of these families have understandably given up hope of ever receiving a voucher. It is likely that they have attempted to contact DCHA in the past but were unable to reach anyone, much less get a meaningful update. Summarily removing these families would be grossly unjust.

Given this history, DCHA should adopt more lenient policies regarding updating the waiting list. DCHA should first exhaust all available options to contact a family on the waiting list, including combing through public databases. Second, DCHA should provide ample time for the family to respond. Finally, if the family does not respond, they should be marked inactive, with the option to return to their position on the waiting list if they reestablish contact at any point.

If a family is removed from the waiting list for any reason, they should receive a notice and be allowed to request an informal review regarding the PHA's decision.

Part 3: Tenant Selection

4-III.C. Selection Method

DCHA has proposed eliminating all local preferences including homeless families and families displaced by disasters or due to domestic violence. We strongly oppose this proposal. Without citing any specifics, DCHA reasons that these preferences are no longer necessary because there are more resources available for families in these situations. Even if true, the need is far too great even with increased resources. DCHA should restore these local preferences that were implemented after robust discussion and careful deliberation.

Income Targeting Requirement

DCHA's new proposal removes the requirement that DCHA conduct outreach on a non-discriminatory basis to attract families who are extremely low-income, if there are not enough extremely low-income families remaining on the waiting list. That policy should be added in the new proposal.

4-III.D. Notification of Selection

We re-raise the concerns above that this policy is far too punitive for families who have been waiting over a decade to receive a voucher. DCHA should adopt a more lenient policy that allows the family ample time to respond, collect documents and attend the application interview. DCHA should also make it clear that the applicant families will be notified of their right to request reasonable accommodation. Finally, DCHA should maintain its current policy that failure to respond will not lead to removal from the waiting list, but only change the family's status to inactive. Upon reestablishing contact, the family will return to active status at their previous position on the waiting list.

4-III.E. The Application Interview

DCHA should revise this proposed policy to account for the fact that many families have been waiting over a decade to receive a voucher. As such, the family composition of many applicants has likely changed. Some members of the family may no longer be interested in residing with the head of household, for example. For this reason, they should not be required to attend. The proposed policy allows for a waiver for reasonable accommodations, but DCHA should grant waivers less restrictively to account for a variety of situations.

DCHA's proposed policy also relies on effective channels of communication that do not currently exist. If a family is unable to attend a scheduled interview, the proposed policy requires the family to contact DCHA in advance to schedule a new appointment. This assumes that when a family calls DCHA, someone will pick-up or will return their call. In our experience, that rarely occurs. Furthermore, even emails to DCHA staff are often ignored. To account for this, we highly recommend that DCHA allow walk-in visitors at their locations where families can talk to DCHA staff and receive a receipt acknowledging the visit.

Finally, DCHA should make it clear that the applicant family has a right to file a grievance if their application is denied at this stage for any reason.

Chapter 5: Briefings and Voucher Issuance

Part 1: Briefings and Family Obligations

5-I.B. Briefing

Notification of Briefing

DCHA should notify applicants about briefings both electronically and via first-class mail, not just electronically. When a notice is returned undeliverable or the email address does not work, DCHA staff should call the applicant to ensure that the applicant knows about the briefing and that DCHA has proper contact information for the applicant. Denying an applicant and removing them from the waiting list after years of waiting for a voucher because one notice, sent in only one manner, does not reach them is an unreasonable and unjust policy.

In-Person Briefings - Attendance

DCHA has added a new policy that any applicant who fails to attend two scheduled briefings will be denied assistance. Under the existing regulations at 14 DCMR § 6106.13 (d)-(f), an applicant who misses two briefings is deemed inactive on the waiting list, and, if they contact DCHA they are restored to the waiting list at their original position. Further, if they contact DCHA within 30 days, they are to be scheduled for a new briefing right away as long as a voucher is still available. DCHA should keep the existing policy in place. The newly proposed policy is unreasonable. Someone scheduled for a briefing has been on the waiting list for years, has filled out a lengthy application, has come to an in-person eligibility interview, and has already provided DCHA with all of their verification documents and been deemed eligible for a voucher. After waiting for years and going through the entire eligibility process, someone could be denied assistance because two emails went to their spam folder. There is not even a good cause exception. People miss briefings because they are sick, a family member is sick, or they have been called into work at the last minute. This new policy is draconian, and the old policy should be retained.

Oral Briefing

In addition to the topics listed, DCHA's oral briefing should include information about DC fair housing laws, including source of income discrimination protections; information about DC's tenant screening laws for voucher holders; information about the availability (or not) of security deposit assistance; and information about the lease up process and the steps that both the tenant and the owner will need to take, including a timeline for those steps.

Briefing Packet

In addition to the documents listed, the briefing packet should also include information about DC fair housing laws, including source of income discrimination protections; information about DC's tenant screening laws for voucher holders; information about the availability (or not) of security deposit assistance; information about the lease up process and the steps that both the tenant and the owner will need to take as well as a written timeline for the lease up process; and a copy of DC OHR's guidance on source of income discrimination.

5-I.C. Family obligations

The administrative plan should specify that eviction notice being referred to is a writ of restitution. That is what is currently in the regulations. This policy is otherwise confusing

because there are several notices required under the Rental Housing Act that could be called eviction notices.

Part 2: Subsidy Standards and Voucher Issuance

5-II.E. Voucher Term and Extensions

Voucher Term

The initial voucher term should remain 180 days. Finding rental housing in D.C. is extremely difficult. Voucher holders face discrimination and are often denied based on their income and credit history despite laws meant to help. They also take time to raise money for application fees. Further, landlords often struggle with DCHA's portal, thereby delaying their submission of a Request for Tenancy Approval. People with vouchers are desperate for a new place to live. As legal services providers, we have worked with scores of voucher holders who are working extremely hard to find a new place to live and are met with obstacles and denials at every turn. The process of finding new housing is stressful, and they do not need the added stress of a deadline to motivate them to search for a safe and affordable place to live.

DCHA has justified this shorter initial voucher term by saying that it gives a built-in check in time and an opportunity to offer resources to families. However, nothing stops DCHA from checking in with families at any point in the process. Indeed, DCHA staff could and should offer resources to families at 60 days after voucher issuance if they still have not found a place to live. Further, DCHA does not provide housing search assistance to most voucher holders. DCHA does not have the resources to help people find housing. Most voucher holders report that the listings given them by DCHA are out of date and no longer available. Finally, DCHA has not committed to adding any additional staff or resources for housing search help, so it is unclear how DCHA will provide any additional support to voucher holders to help them find housing faster. We should note that the very reason that DCHA previously increased a 120 day search time to 180 days, was because staff was spending far too much time approving extensions. From a business practice, it makes far more sense to keep the extended search time, rather than building out a new process that DCHA will have to manage and participants will have to navigate.

Extensions of voucher term

Only allowing one 60-day extension and only in very limited circumstances is a significant shift in policy that will result in families who desperately need assistance and have waited for years being denied assistance. Because voucher term extensions are not subject to fair hearings (a policy which we strongly suggest DCHA reconsider in our comments below), this policy could lead to denials of assistance without due process for large numbers of approved applicants who have waited for vouchers for years.

First, the policy should allow for more than one 60-day extension. Currently, voucher holders often need extensions past the 180 days that are now the initial term of the voucher. If this new

policy were in effect, all of those people would immediately lose their vouchers and be removed from the waiting list. Further, all of the reasons listed for granting a single extension would be good cause to grant an additional extension if they reoccurred or were ongoing.

Second, DCHA should make it easier for families to get extensions. Any family who can demonstrate that they have been actively searching for housing or that they have good cause for not searching for housing, such as a medical emergency, should be automatically granted an initial extension. If DCHA decides to include a list of reasons that it will grant an extension, the list must also include documented experiences of voucher discrimination as a reason to grant an extension. The list should also include a catch-all "other good cause" category for circumstances that are not listed. Additionally, DCHA should give explicit notification that an extension can be requested as a reasonable accommodation and a separate RA form should be created for this purpose.

Third, DCHA must have a process for implementing the required suspension of a voucher term from the date a family submits a request for PHA approval of the tenancy until the date the PHA notifies the family in writing whether the request has been approved or denied under 24 CFR 982.303 (c). A new voucher with the new expiration date should be sent at the same time as the written denial of the request for tenancy.

Fourth, the process for requesting an extension should allow families to request an extension up to 3 weeks before and 3 weeks after the expiration of the initial voucher term. DCHA's current practice of only allowing families to request extensions after their vouchers have already expired causes unnecessary stress. Allowing families to submit a request 21 days in advance would allow families time to make other plans if their request is denied. Allowing families 3 weeks after the voucher term has expired would give them time to request an extension after DCHA has notified them of the expiration of their voucher.

Most families have been on the waiting list for years, and the voucher waiting list is still closed. An invitation to reapply to the waiting list is meaningless for D.C. families. Denying extensions without providing housing search support to families is a harsh policy that should not go into effect.

Suspensions of Voucher Term

DCHA must include a process for implementing this policy. Currently, many families are not sure when their voucher expires if they have submitted a request for DCHA approval of a tenancy that was ultimately denied. DCHA should send a new voucher with the new expiration date at the same time it sends the written denial of the request for tenancy.

Chapter 6: Income and Subsidy Determinations

In general, DCHA should review its policies around income and subsidy determinations to ensure that they conform to the HUD regulations that were finalized in 2023.

Part 1: Annual Income

6-I.C. Anticipating Annual Income

The DCHA policy should include the flexibility to "annualize income anticipated for a shorter period, subject to a redetermination at the end of the shorter period" as permitted by 24 CFR § 5.609(d).

6-I.D. Earned Income

Wages and Related Compensation, bonuses or commissions. 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, that ends 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.

6-I.E. Earned Income Disregard

Lifetime Limitation

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.

6-I.G. Assets

Income from Assets

Pursuant to 24 CFR § 5.609(b)(1) imputed returns for net family assets valued at or below $50,000 are explicitly excluded from income, so DCHA should raise its exclusion from $15,000 to $50,000.

Personal Property

HUD allows self-certification of net assets if estimated to be at or below $50,000 under 24 CFR § 5.618 (b)(2). Therefore, DCHA should only be appraising personal property held as an investment if it is estimated to be worth over $50,000.

6-I.H. Periodic Payments

Lump-Sum Payments for the Delayed Start of a Periodic Payment

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.

6-I.J. Welfare Assistance Payments

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.

6-I.K Alimony and Child Support

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 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.

Part 3: Calculating rent

6-III.C. Applying Payment Standards

Decreases

DCHA must create a policy for when a decrease in payment standards will go into effect and allow comment on the policy.

Chapter 7: Verification

In general, DCHA should review its policies around verification to ensure that they conform to the HUD's Housing Opportunity Through Modernization Act (HOTMA) regulations that were finalized in 2023.

All sections of this chapter should differentiate federal and local vouchers. DC Code § 6-227(c)(4) requires DCHA to "allow applicants or participants to self-certify any required eligibility, admission, or continued occupancy factors when an applicant cannot easily obtain verification documentation" and further clarifies that such self-certification is final and remains sufficient for continued occupancy.

Part 1: General Verification Requirements

7-I.A. Family Consent to Release of Information

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."

Penalties for Failing to Consent

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.

7-I.C. Up-Front Income Verification

EIV and IVT Reports

DCHA should not use IVT reports in interim reexamination to identify discrepancies. HOTMA eliminates the requirement for PHAs to use EIV to verify tenant employment and income information during an interim reexamination. This makes sense because IVT reports contain data that is between 3 and 6 months old at the time the reports are generated. Interim reexaminations happen because there has been a recent change. By definition, there will be a discrepancy between the IVT reports and the reported income because there is a recent change.

During initial certifications or biennial or triennial recertification, DCHA should not require participants to provide income information if the participant affirms that the EIV report accurately reflects their income and employment. EIV is at the top of the HUD verification hierarchy and asking for additional documents causes burden to both participants and DCHA staff. Requiring additional documents also needlessly exposes families to investigation or corrective action if the family forgets to report something that is reflected on the EIV report.

7-I.D. Third-Party Written and Oral Verification

This section should specify that DCHA will not require third-party written verification unless EIV data is not available or the family disputes the EIV data, a policy that HUD has promulgated pursuant to HOTMA.

Written Third-Party Verification

DCHA should only require families to provide two current and consecutive paystubs unless the more are needed due to sporadic income, a fluctuating schedule, etc. HUD only requires PHAs to request 2 paystubs. It is unreasonably burdensome for both participants and DCHA staff to require six paystubs. People who get paid biweekly will not even have received 6 paystubs in

the 60 days prior to the request date. We see far too many clients who start a new job and attempt to report their new income but are turned away because they don't have a sufficient number of paystubs. This delays the recertification and creates a burden on the tenant to get more paystubs and find additional time to deliver them.

Value of Assets and Asset Income

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

7-I.E. Self-Certification

This section should be updated to distinguish between local and federal vouchers and should include a process to use self-certification in all of the circumstances allowed under local law for locally-funded vouchers.

Part 2: Verifying Family Information

7-II.A. Verification of Legal Identity

This section should be updated to distinguish between local and federal vouchers and should include a process to use self-certification of identity for people using locally-funded vouchers as required by DC law.

7-II.B. Social Security Numbers

DCHA should remove and destroy documentation accepted as evidence of social security numbers as allowed by HUD. Social Security numbers are sensitive personal information and keeping them in additional places puts participants at additional risk for identity theft. This is especially true given HUD Finding HCV 11 that "DCHA does not safeguard personally identifiable information (PII) in accordance with HUD rules and regulations."

Additionally, DCHA should stop requesting SSN on forms where the number is not necessary, such as the new reasonable accommodation form. This puts residents at risk of identity theft unnecessarily and since these documents are often transmitted by email, there is additional risk to them.

7-II.D. Family Relationships

Marriage

The policy states both that certification by the head of the household is normally sufficient and that a marriage certificate generally is required and describes requirements for a couple to

demonstrate a common law marriage. The rule should be revised to be consistent and to say that the additional documentation will be required only if DCHA has reasonable doubts about the marital relationship.

Separation or Divorce

The policy states both that certification by the head of the household is normally sufficient verification and also that a certified copy a divorce decree or a is required. The rule should be revised to be consistent and to say that the additional documentation will be required only if DCHA has reasonable doubts about the divorce or separation.

7-II.G. Citizenship Or Eligible Immigration Status

DCHA should note that local law prohibits DCHA from using immigration status as a reason to deny applicants to and terminate participants from locally funded programs. Therefore, this section should make clear that it only applies to applicants and participants in the federal HCVP. Additionally, DCHA should, whenever possible, offer noncitizens locally funded vouchers instead of federally funded ones to ensure that they are not denied assistance due to their status.

7-II.H. Verification of Preference Status

DCHA should include a policy for verifying preference status in case DCHA decides to keep its existing preferences or add preferences in the future.

Part 3: Verifying Income and Assets

7-III.A. Earned Income

Wages

The DCHA proposed rule would require families to provide 4 to 6 current, consecutive paystubs when 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**.**

7-III.D. Alimony or Child Support

If families receive regular payments, there is no need to require receipts or payment stubs for an entire year. All other income verification requirements are only for 60 days. Families who receive regular payments, should only be required to provide proof of the last 2 payments or payments made in the past 60 days.

7-III.E. Assets and Income from Assets

Pursuant to 24 CFR § 5.609(b)(1) imputed returns for net family assets valued at or below $50,000 are explicitly excluded from income. Therefore, no verification of income from these assets or their disposal should be required.

7-III.F. Net Income from Rental Property

There are still notes about additions and deletions in this section, and it is unclear what is included in the final statement of the policy and what should have been deleted. DCHA should issue a final draft of this proposed section for comments.

7-III.K. Parental Income of Students Subject to Eligibility Restrictions

DCHA should specify that it will determine whether the student is independent from their parents or is a vulnerable youth before sending documentation directly to parents. DCHA should also allow oral third-party certification in this situation.

Part 4: Verifying Mandatory Deductions

7-IV.D. Child Care Expenses

Reasonableness of Expenses. DCHA should specify what data and process it will use to establish standards for the reasonableness of cost for child care.

Chapter 8: Housing Quality Standards and Rent Reasonableness Determinations

Part 1: Physical Standards

8-I-B: Additional Local Requirements

DCHA should explicitly state in this section that the physical standards of units occupied by HCV-assisted families must also adhere to applicable local laws and standards. Additionally, as DC is experiencing warmer, more humid, and more prolonged summers than ever before, posing serious health and safety risks to residents living in units without adequate cooling measures, DCHA should add a cooling requirement to DCHA's definition of a "healthy living environment."

Part 2: The Inspection Process

8-II.A. Overview

Inspection of PHA-Owned Units

DCHA should not use its MTW authority to inspect its own units. DCHA should work with an independent entity to perform inspections in a DCHA-owned unit. The HUD report found that DCHA is not in compliance with ACOP and HUD regulations regarding annual inspections. (Finding PH 26) The report also found that units in public housing are not free of health and safety hazards. (Findings PH 30, PH 31). Given these HUD-identified challenges with DCHA inspections of public housing units and the conflict of interest inherent in inspecting one's own property, DCHA should work with another entity to perform inspections of DCHA-owned units rented by voucher holders.

Remote Video Inspections

DCHA's policy should make clear that no tenant or owner is required to be the proxy for a remote video inspection. It should also specify that, if DCHA is conducting a remote video inspection pursuant to a reasonable accommodation, the household will be provided with all necessary materials before the inspection.

Further, the unit should not be listed as failing inspection if the remote video inspection does not work for technical, noise, or lighting reasons. The inspection should simply be rescheduled as an in-person inspection without being recorded as a failed inspection.

8-II.B. Initial HQS Inspections

Inspection Results and Reinspection

When DCHA notifies an owner that HQS violations were identified, it should also notify the owner that a refusal to correct the deficiencies may be considered source of income discrimination in violation of the D.C. Human Rights Act. This will help prevent landlords from purposely refusing to make repairs because they do not wish to rent to voucher holders.

8-II.F. Inspection Results and Reinspections for Units Under HAP Contract

Extensions

This section contains a policy for granting extensions to owners but not to families. The first sentence of this section should be changed to say "Extensions will be granted in cases where the PHA has determined that the owner **or family** has made..."

8-II.G. Enforcing Owner Compliance

HAP Abatement

This DCHA policy should specify that any notice to the owner about a HAP abatement should clearly specify that "the owner must not seek payment from the family for abated amounts and

may not use the abatement as cause for eviction." We too often see that the owner threatens eviction to a tenant for nonpayment of rent because DCHA has terminated the HAP contract over the owners' wrongdoing, leaving the tenant at risk of both eviction and also damage to their credit.

HAP Contract Termination

DCHA should extend the maximum length of time that the HAP may be abated before termination to 180 days to ensure that a family has time to find and move to another unit. Regardless of the amount of time DCHA gives the family to move after a HAP contract is abated, DCHA policy should require DCHA to provide housing search assistance and expedite the lease-up process, including inspections, for families who are transferring units because of HQS deficiencies. DCHA should also have a policy for helping families move to temporary housing when an owner refuses to fix a life threatening housing condition. DCHA should also expand the list of life threatening conditions to include conditions that seriously threaten the health of tenants.

Part 3: Rent Reasonableness

8-III.B. When Rent Reasonableness Determinations are Required

We are relieved to see that DCHA is implementing a rent reasonableness policy. As has been well documented by the media, tenants, the DC Council, and DCHA itself, DCHA's current policy of approving any rent that is at or below that payment standard has resulted in DCHA overpaying landlords (resulting in a net-decrease of available vouchers), inflated "market" rents in certain neighborhoods, an overall decrease in the supply of affordable units in the District, and a perverse incentive for landlords of rent controlled buildings (and all buildings) to rent to voucher holders over non-voucher holders so they can earn more money than they otherwise would. That being said, we have recommendations for how DCHA can improve its proposed policy.

Owner Initiated Rent Determinations

First, when an owner requests an increase in rent after the initial lease term, DCHA should be required to request (not "may request" as currently drafted) information about rents the landlord charges for other units on the premises **that are not rented to voucher holders**. This is necessary in light of the fact that landlords currently are charging voucher holders higher contract rents than non-voucher holders. Second, DCHA should use the same rent reasonableness factors it uses when making its initial rent reasonableness determination at lease-up, not just the rent for other units on the premises. There is no reason to do a more limited rent reasonableness review when a landlord requests an increase than when the tenant initially leases up.

PHA and HUD-Initiated Rent Reasonableness Determinations

DCHA must make clear that if it changes its rent reasonableness analysis for a unit because DCHA previously made an error or because the owner provided incorrect information to DCHA

about the unit or other units, that the tenant will not face any consequences, including but not limited to: not facing an increase in their portion of the rent, being held liable for the portion of the contract rent DCHA will no longer pay, or being evicted or displaced for DCHA's failure to pay the original, incorrect contract rent.

LIHTC and HOME-Assisted Units

DCHA should only deem rent for a LIHTC unit reasonable if it is no higher than the LIHTC rent the owner could charge to a non-voucher holder. Even though HUD gives DCHA discretion to pay more if it is deemed reasonable, DCHA does not have to use this discretion and should not use that discretion. There is simply no reason for DCHA to use its scarce resources to pay a landlord more than they could charge any other tenant, particularly in a jurisdiction with robust source of income discrimination laws.

8-III.D. PHA Rent Reasonableness Methodology

DCHA's proposed rule says that DCHA may require landlords to submit the rent charged for unassisted units at the premises if the premises has more than 4 units. Given how badly a job DCHA has done administering vouchers and evaluating rent levels over the last few years, this should be a mandatory requirement, not optional, and should apply to all multi-unit buildings (whether they are two-unit buildings or one-hundred-unit buildings).

Additionally, the rule should specify how many comparable units DCHA staff need to look for/find in the neighborhood and spell out some factors that generally **always will** require an upward or downward adjustment in rent level. For example, the square footage of the unit, the amenities (if any) in the building, whether there is a washer/dryer in the unit or in the building, the year the building was built, and whether the unit was recently renovated. It is important that DCHA accounts for these types of differences in a market like DC, where a luxury building built in 2022 could stand right next to a building built in 1965.

Finally, DCHA must have strict rules for rent controlled units. DCHA policy should be that it will not pay more than the rent-controlled rent for a rent-controlled unt. In fact, a majority of the DC Council just introduced a bill that would require DCHA to follow this suggested policy. That is because it makes sense - why would DCHA willingly pay a landlord more than the landlord could charge a non-voucher assisted tenant? Not only does this deplete DCHA's scarce resources, but as has recently been covered by the media, it depletes affordable housing stock for unassisted tenants. DCHA may point to the fact that HUD rules allow DCHA to exclude rent controlled units from the database it uses to determine rent reasonableness, but that does mean DCHA has to pay a rent controlled landlord more than the rent controlled rent for a unit. DCHA should ask every landlord at lease-up whether the unit is covered by rent control, and if so, what the rent-controlled rent is. Then, DCHA should approve no more than that rent for the unit.

Chapter 11: Reexaminations

Part 1: Annual Reexaminations

11-I.A. Overview

Methods of notifying DCHA of changes in family income and composition, and methods of submitting required documentation to DCHA, are described inconsistently throughout this chapter. DCHA should specify acceptable methods of submitting documents to DCHA and of notifying DCHA about changes to family income and composition, and list these options consistently throughout the policy. These methods should include email, mail, in person, including orally, or through DCHA's web portal. In addition, DCHA should be required to provide proof of receipt, including a time stamp, for each method of submitting documentation or notification.

11-I.D. Conducting Annual Reexaminations

We are pleased to see that DCHA is continuing to use its Moving to Work Authority to continue conducting biennial and triennial recertifications instead of yearly ones**.**

The proposed policy states families will be notified electronically or by mail regarding reexamination. DCHA should notify all families both by mail and electronically. In addition, the proposed policy states that families will receive a notice of termination "if they do not provide the required documentation within the required time period (plus any extensions)." DCHA should clarify the required time period and the procedure for requesting extensions. DCHA should provide multiple ways for families to request an extension (including electronically, mail, and in person), and provide procedural safeguards to ensure that tenants attempting to request an extension are not penalized by DCHA failure to timely respond to the request.

11-I.E. Determining Ongoing Eligibility of Certain Students

11-I.F. Effective Dates

The proposed policy stipulates that, if the family causes a delay in processing the biennial/triennial reexamination, increases in family share will be applied retroactively and the family will be responsible for overpaid subsidy. DCHA should also stipulate that if DCHA causes a delay that results in subsidy underpayment, DCHA will make retroactive subsidy payments. In addition, DCHA should specify procedures for families requesting exceptions to this rule when delay is due to extenuating family circumstances, or as a reasonable accommodation of a disability.

Part 2: Interim Reexaminations

This section should take into account the following Findings from the HUD Report:

"In the approved FY2015 revised MTW Plan, DCHA updated its interim recertification process. Families would no longer have to report increases in earned income, regardless of how large, between scheduled biennial recertifications; however, the Administrative Plan has not been updated to reflect this change"; and "In the approved FY2016 MTW Plan, DCHA implemented triennial recertifications for families that consist only of elderly and/or disabled members on fixed incomes; however, the Administrative Plan has not been updated to reflect this change."

11-II.A. Overview

In general, DCHA should lengthen timelines for alerting DCHA to changes in family composition. The proposed policy allows only 10 days both for notifying DCHA of the addition of a child by birth, adoption, or court-awarded custody, and for notifying DCHA of the departure of a family member. Ten days is an unreasonable and unnecessarily short window for reporting these changes, which are often related to major life events. In both cases, the window should be lengthened to at least 30 days.

11-II.B. Changes in Family and Household Composition

New Family Members Not Requiring PHA Approval

Proposed policy only allows families 10 days to inform DCHA of birth, adoption, or court-awarded custody of a child. DCHA should allow families at least 30 days to notify.

Departure of a Family or Household Member

Proposed policy allows 10 business days for informing DCHA when a household member ceases to reside in the unit. DCHA should maintain its current policy, which allows 30 business days.

11-II.C. CHANGES AFFECTING INCOME OR EXPENSES

PHA-Initiated Interim Reexaminations

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.

Family-Initiated Interim Reexaminations

Families making zero income should be treated no differently than families with income. Instead, DCHA is proposing that families with no income not only have to report income increases in between biennial/triennial recertifications, but also need to recertify every 6 months. DCHA should keep its current policy and apply it to all families, regardless of the amount of money they make.

11-II.D. PROCESSING THE INTERIM REEXAMINATION

Method of Reporting

The proposed policy states "If the family provides oral notice, the PHA will also require the family to submit the changes in writing." To ensure that this process is accessible to all families, DCHA should change this to "If the family provides oral notice, the PHA will memorialize the notice in writing and provide a copy to the family."

In addition, methods of submitting documents to DCHA are not consistent throughout the Administrative Plan. Whenever tenants are required to submit documents, DCHA should, as it does here, specify the tenants may submit by mail, email, in person, or through an online portal.

Effective Dates

The proposed policy states that, when changes result in an interim reexamination and increase in rent, "[I]f a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively." DCHA should specify the acceptable methods of notifying DCHA of a change. To ensure that tenants have proof of timely submission of information, DCHA should establish procedures to ensure that, whenever residents notify DCHA about a change relevant to an interim reexamination, DCHA provides a time stamped proof of receipt. In addition, DCHA should also specify procedures for families requesting exceptions to this rule when delay in providing information is due to extenuating family circumstances, or as a reasonable accommodation of a disability.

Part 3: Recalculating Family Share and Subsidy Amount

11-III.A. Overview

Throughout this section, DCHA's proposed policy references "annual reexaminations." This should be corrected to "next biennial/triennial reexamination."

Chapter 12: Termination of Assistance and Tenancy

Part 1: Grounds for Termination of Assistance

12-I.A Overview

Throughout this chapter, we recommend using language that DCHA "may" terminate assistance, rather than the current language of "will" terminate assistance, for any provision where termination of assistance is not mandatory under federal law. The current use of "will" is both confusing and internally inconsistent where the same provisions indicate that DCHA will exercise discretion in determining whether to terminate assistance.

2-I.B Family No Longer Requires Assistance

DCHA should not reduce the period for which a family can receive zero assistance from one year to 180 days. While federal regulations require that the *HAP Contract* terminate automatically 180 days after the last HAP payment to the owner, there is no similar requirement that a PHA terminate *assistance to a family* 180 days after the last HAP payment to the owner. This provision is not ambiguous, as throughout the federal regulations and the Administrative Plan, "HAP contract" refers to the contract between the PHA and the owner, while the terminology of "terminate assistance" is used for terminating a family's participation in the program. This is also made clear based on the fact that the regulation cited for this proposition, 24 CFR § 982.445, is under the subpart titled "Housing Assistance Payments Contract and Owner Responsibility", not the subpart titled "Family Obligations; Denial and Termination of Assistance." In fact, not only do federal regulations not require that a family be terminated after 180 days without assistance, but they do not permit termination on this basis, as it is not an enumerated basis for termination under that subpart. *See* 24 CFR § 982.552(c)

Additionally, this proposed policy is inconsistent in that it states that assistance will be terminated after 180 days, but goes on to note "[i]f a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the PHA of the change and request an interim reexamination before the expiration of the *one year period*." (Emphasis added)

12-I-D: Mandatory Termination of Assistance

Eviction

DCHA should use the plain language definition of eviction, meaning when an eviction writ is executed and a tenant is actually evicted from their unit, instead of interpreting "eviction" to mean a legal order for eviction. DCHA"s proposed rule creates a broader category of participants which DCHA "must" terminate. Even if DCHA has the discretion to define eviction to mean something other than the physical act of being evicted, DCHA's policy should strive to interpret federal law so as to make this as narrow a group as possible and allow for discretion in more

cases. Furthermore, this provision undermines and is inconsistent with DC law, which permits tenants to redeem their tenancies by paying all the rent owed at any time prior to the execution of a writ of eviction.

Additionally, neither of the federal regulations cited indicate that DCHA must consider nonpayment of rent to be a serious lease violation, and DCHA should not do so. Again, to consider failure to pay rent as a serious lease violation undermines DC law, which permits tenants to withhold rental payments when their landlords fail to maintain their properties in compliance with local housing codes. Under the proposed policy, a tenant could lawfully withhold rent due to their housing conditions, litigate their case in landlord tenant court, and receive a significant rent abatement based on those conditions, but even if the judgment entered was significantly reduced from the full rent amount and the tenant was able to pay it immediately, this policy indicates that DCHA would have no discretion but would have to terminate assistance.

Further, this policy does not make clear whether or how DCHA will determine if the eviction is in fact *for a serious or repeated violation of the lease*, or whether there was simply an allegation of a violation and the family was subsequently evicted. In many cases, tenants have judgments for eviction entered after defaults, or based not on any finding of a breach of lease but instead a finding of a breach of a settlement agreement, for example an agreement to vacate voluntarily. In either case, no court determination is made as to whether there has been any violation of the lease, and thus, there is no basis for a determination that a tenant was evicted *for a serious violation of the lease*, which is the only circumstance under which termination is in fact mandatory. DCHA's policy should make clear that there must be a separate determination not only that a tenant was evicted, but that that eviction was the result of a serious violation of the lease and not other circumstances.

Finally, this policy should not apply to tenants who move after a notice of eviction has been served. Landlords regularly serve such notices without basis, and tenants may move for any number of reasons unrelated to the allegations in the Notice. These situations should not be handled differently than any other scenario in which DCHA believes that a family has violated program obligations, and should not be included in a portion of the policy concerning mandatory terminations.

12-I.E Mandatory Policies and Other Authorized Terminations

Mandatory Policies

For each of the sections provided, including Use of Illegal Drugs and Alcohol Abuse and Drug-related and Violent Criminal Activity, as noted above, DCHA should change the language proposed from "will" terminate assistance to "may terminate assistance." This is more protective of residents and consistent with the discretion the policies each explicitly indicate DCHA will employ in these cases. Additionally, we oppose each policy to the extent they state that DCHA will consider arrest records in determining whether or not to terminate assistance. There is

significant evidence that arrest records are both unreliable and that considering them disproportionately affects individuals and communities of color. Their use is both unlikely to assist DCHA in efforts to identify participants engaging in activity that threatens their communities and extremely likely to result in racial disparities in the implementation of DCHA's policies.

Other Authorized Reasons for Termination of Assistance

As with earlier sections, this section should be amended to indicate that DCHA "may" terminate assistance rather than "will" terminate assistance.

Family Absence from the Unit

The federal regulation cited does not require that families be terminated from the program for absence from the unit for longer than 180 days. The regulation states that the family assistance payments, HAP contract, and assisted lease will terminate, but makes no mention of the family's participation in the program. It is relevant that the regulation cited to support this policy is under the subpart titled "Leasing a Unit" indicating that the provisions therein are concerned with individual HAP leases rather than overall program participation. While notifying a PHA of absence from the unit is included in family obligations under 24 CFR § 982.551(h)(7)(i), the policy should reflect that any such termination from the program is discretionary, and there is no apparent regulatory basis to treat it differently than any other alleged violation of a family obligation.

Part 2: Approach to Termination of Assistance

12-II.C Alternatives to Termination of Assistance

Change in HH Composition

There is no support in the federal regulations for PHAs requiring that families agree that culpable family members will not visit or stay as guests in the assisted unit, only that they will not reside in the assisted unit. Imposing such a policy is both unnecessarily restrictive and inhumane, given that the culpable individuals will necessarily be family members of the individuals who continue to receive assistance.

It also appears that this provision applies to any violation, not only those which pose a threat to the safety of the community or other residents, and thus in many cases there is no defensible justification for a policy this restrictive. Despite the broad range of situations in which such a policy may be applicable, there is no room in this policy as written for DCHA to exercise discretion in a determination of whether a culpable family member should be prohibited from staying in or visiting the unit.

Finally, it is unreasonable to require proof of a current address for a family member who has been required to vacate as a condition of continued assistance, given that as a practical matter many individuals in this situation will be rendered homeless by the PHA policy and will not have a stable address to provide.

12-II.D Criteria for Deciding to Terminate Assistance

Consideration of circumstances

We oppose the use of arrest records at any stage of termination proceedings – as previously noted, arrest records are not reliable indications of any criminal activity, and a policy that allows them to trigger investigations or be considered as part of the evidence in an investigation will disproportionately affect individuals and communities of color. By its own terms, this policy clearly acknowledges the limitations of arrest records, as it indicates that they may not form the sole basis of a termination. Given that the policy also provides a full list of the other evidence DCHA may consider to make such a determination, and given the specific evidentiary shortcomings and racial justice implications of including arrest records, DCHA should choose not to permit such records as part of the consideration.

Reasonable Accommodation

As written, this policy appears to impermissibly limit the basis on which participants may request a reasonable accommodation. Requiring that "the behavior of a family member with a disability is the reason for a proposed termination of assistance" is narrower than both federal and local anti-discrimination law, which already governs the consideration of requests for reasonable accommodation. The language in the proposed Chapter 2.II.H. better reflects the actual requirements of anti-discrimination law and should be mirrored here rather than providing more restrictive language.

Part 3: Termination of Tenancy by Owner

12-III.B Grounds for Owner Termination of Tenancy

Several provisions of this section are inconsistent with District law. Specifically, there are several listed grounds for termination of tenancy that are not grounds for eviction under DC law, including a provision indicating that tenants can be evicted for criminal activity without a judicial determination and without limiting language mirroring federal one-strike law, and that an owner could end the tenancy because a tenant refused to sign a new lease or due to their desire to rent the unit at a higher rent. Because DC law does not permit owners to terminate tenancies on these and other included bases, for DCHA to allow landlords in this position to terminate the tenancy for DCHA's purposes, thereby ending the HAP contract and included assistance payments puts participants in precarious situations with respect to their housing and undermines the protections the DC government has provided for its residents. DCHA's policy should be adjusted to ensure that it mirrors tenant protections in local law.

12.III.E Effect of Tenancy Termination on the Family's Assistance

As indicated in previous comments, DCHA should not consider nonpayment of rent to be a serious lease violation in light of local law permitting tenants to withhold rent and to redeem a

tenancy at any time prior to eviction, and DCHA should not use police records to determine whether a family has violated their lease because arrest records are unreliable and their use contributes to racial disparities.

Chapter 14: Program Integrity

Part 1: Preventing, Detecting, and Investigating Errors and Program Abuse

14-I.A. Preventing Errors and Program Abuse

DCHA should add to its policy: "The PHA will explain section 6 of the HAP contracts to all owners or their agents when giving them the HAP contract to sign." This will ensure that owners know that they cannot charge participants more than the contract rent and that they cannot charge participants more rent than they are charging for unassisted units. Given that these appear to be common practices in D.C., it is important for DCHA to take affirmative steps to prevent these kinds of program abuses by owners.

14-I.B. Detecting Errors and Program Abuse

Quality Control and Analysis of Data

DCHA should also employ methods to ensure that owners are not fraudulently overcharging, including by checking a sample of ads in large buildings and checking rent control filings by owners.

Part 2: Corrective Measures and Penalties

14-II.B. Family-Caused Errors and Program Abuse

Prohibited Actions

"Payment to the owner in excess of amounts authorized by the PHA for rent, security deposit, and additional services" should not be considered program abuse by the participant but by the owner. Families only make these payments because owners demand them, and landlords have enormous power over their tenants. Making these payments evidence of family program abuse will only further discourage families from reporting this abuse.

14-II.C. Owner-Caused Error or Program Abuse

Prohibited Actions

The PHA policy should also include:

- Knowingly charging a family higher rent than unassisted tenants for similar units.

- Purposely failing HQS inspections in order to stop renting to a voucher holder

- Knowingly hiding HQS violations such as by painting over cracks or mold.

- Knowingly reporting false information about a tenant to DCHA or other government agency.

- Charging families for utilities when the HAP contract specifies that utilities are included in the rent.

These are all common examples of program abuse by owners that DCHA should be affirmatively preventing.

Chapter 16: Program Administration

Part 3: Informal Reviews and Hearings

16-III.B Informal Reviews

As an initial matter, DCHA should not give applicants lesser due process just because it can. DCHA currently entitles applicants to an informal hearing, not an informal review, and it should continue doing so. We believe that DCHA does still intend to offer informal hearings to applicants based on the information included under the heading "Informal Review Decision," which specifies that applicants can request a hearing if their review is denied. We mention this here just to confirm that if that is in fact what DCHA means, we support that policy. If that is not what DCHA means, it should amend its plans to ensure that applicants have the right to a hearing with just as much process as participants. DCHA needs to be building trust with DC residents and potential program participants, not eroding trust by stripping away rights they currently have,

Decision Subject to Informal Review

DCHA should not only provide applicants with the opportunity for an informal review 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 request informal hearings to challenge any adverse decision DCHA makes. Specifically, DCHA should continue to allow applicants to challenge a decision by DCHA that they do not qualify for a preference. Additionally, DCHA should continue to allow applicants to challenge DCHA's decision to not approve an extension of a voucher term. This is particularly important in a rental market like DC where finding a suitable apartment is incredibly difficult. And, it is even more important now that DCHA is proposing to shorten the initial voucher term from to 120 days. DCHA should have to grant voucher extension requests if good cause is shown. If DCHA denies a voucher extension request, applicants should have the opportunity to present their evidence of good cause to a hearing officer. As stated above, 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.

Notice to Applicant

DCHA should lay out its policy for giving notice to families of any decision denying assistance in more detail. Specifically, DCHA should keep its current policy in place, at a minimum. Currently, DCHA is required to send notice by both certified and regular mail, and this notice must include: 1) The proposed action or decision of DCHA; 2) The date the proposed action or decisions will take place; 3) The basis for DCHA's decision; 4) The procedures for requesting an informal hearing if the family or applicant disputes the action or decision; 5) The time limit for requesting the informal hearing; and 5) The form by which families or applicants can request an informal hearing. These requirements should remain in place under DCHA's new plan, and if anything should be strengthened. For example, DCHA should be required to send notice to the family via email, in addition to first class and certified mail, if it has an email address on file for the family. In DC families wait for decades to receive a voucher off the waiting list, and there is no reason to believe that will change anytime soon. Therefore, it is imperative that DCHA does everything it can to notify families when it denies them assistance, and gives them all the information they need to challenge that decision.

Scheduling an Informal Review

DCHA should give families more than 14 business days to challenge the denial of assistance. Specifically, DCHA should not change its current policy of requiring that a family's hearing request be postmarked within 35 days of the notice DCHA sends. The reality is that low- and no-income residents have more demands on their time. They are more likely to have to spend hours traveling across the District to get their kids to school, or struggling for hours on the phone or in line with other District agencies to get the benefits they are entitled to and need. They are less likely to have consistent childcare or steady employment with regular, predictable hours. DCHA must give more time for families – most of whom have waited years if not decades for a voucher – to challenge DCHA's denial of assistance.

Similarly, DCHA should commit to continuing its current policy for informing applicants of their informal review dates and hearing procedures. 14 DCMR § 8903 lays out the requirements DCHA should hold itself to in detail, and there is no justifiable reason for DCHA to hold itself to a lesser standard in these new proposed rules. If anything, DCHA should be requiring more of itself than of participants given the years of mismanagement and agency failures.

Remote Informal Reviews

DCHA should be maximizing applicant choice when deciding whether it will hold an informal review remotely or in-person. To that end, DCHA should not be unilaterally allowed to require that an informal review occur remotely. Instead, the family requesting the review 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 an applicant's request for a remote hearing.

This will ensure that applicants who would have a harder time appearing in person as opposed to virtually can still have the informal review they are entitled to.

Conducting Remote Informal Reviews

While DCHA should be required to provide the applicant with all documents it intends to rely on at least 3 days before the hearing (and ideally longer. Three days is not a sufficient amount of time to review documents and prepare for a hearing), DCHA's document production requirements should not end there. Under its current regulations, applicants have the right "to view, or have their counsel or other representative view, subject to a timely request under § 8903.4 *any documents in the participant's file*, or any evidence in the possession of DCHA, upon which DCHA based the proposed action, inaction or determination, or that DCHA intends to rely on at the Hearing." 14 DCMR § 8003.3(b) (emphasis added). This is a critical protection. Just because DCHA does not intend to rely on a document in the applicant's file does not mean that document is not relevant to the applicant's defense. All applicant requests for their file under this subsection should be subject to the current rules laid on 14 DCMR § 8903.4, including the timeline laid out in the regulations (within 21 days of the document request or 7 days before the date of the hearing, whichever is sooner). FInally, if anything, DCHA should be permitting applicants greater access to their entire file by not charging any amount of money for copies of documents. These protections are critical. DCHA should be in the business of ensuring that applicants to its programs have as much due process as possible, not the bare minimum. DCHA should be invested in hearing officers reaching the right decision, and our proposed changes make that more likely.

Additionally, 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.

16-III.C Informal Hearings for Participants

As an initial matter, this section should be called "Informal Hearings for Participants and Applicants." This is because the section immediately prior makes clear that applicants are (and should be) entitled to an informal hearing if they lose the informal review stage.

Second, DCHA should not only provide applicants and participants with the opportunity for an informal hearing in instances when it is required by law and DCHA certainly should not be reducing the types of decisions that entitle applicants and participants to a hearing, which is exactly what DCHA is doing here. Instead DCHA should give applicants and participants the opportunity to request informal hearings to challenge any adverse decision DCHA makes. Specifically, DCHA should continue to allow applicants to challenge a decision by DCHA that they do not qualify for a preference. It should continue to allow applicants and participants to challenge denial of voucher extensions requests.

In short, DCHA should not remove anything from the current list of actions that entitle an applicant or participants to an informal hearing (14 DCMR § 8902.1), including decisions that impact: 1) Continued participation in the Housing Choice Voucher or Moderate Rehabilitation Program; 2) Whether a unit is deemed underoccupied in the Housing Choice Voucher and Moderate Rehabilitation Program and the participant's or applicant's request for exception is denied; 3) Approval or denial of an extension or suspension of a voucher term; 4) Termination or denial of assistance for any reason; 5) Any other determination that affects eligibility or receipt of assistance in which the individual requesting the informal hearing alleges a misapplication of law or DCHA policy or a mistake of relevant fact(s); 6) Denial of request for a reasonable accommodation; and 7) Determinations of household and head of household status. DCHA should not be using its process of rewriting its plans to pare back the rights that applicants and participants have. If anything, it should be striking to make those rights more robust to ensure that applicants and participants are as protected as possible.

Remote Informal Hearings

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.

Conducting Informal Hearings Remotely

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.

Informal Hearing Procedures

Notice to the Family. DCHA should not reduce protections for families. This means that the notice to families about their right to an informal hearing should, at a minimum, be required to meet the current standards that DCHA holds itself to in 14 DCMR § 8902.3,including by requiring DCHA to attach the form to request an informal hearing to any notice subject to review. Additionally, DCHA's plan should specify that it will include a "a brief **factual** statement of the reasons for the decision, **and include** the regulation and/or policy reference." Over the years we have seen many instances where DCHA has put next to no information in their termination notices outside of a brief and bare regulatory citations, leaving families and their lawyers to guess what the notice is about. This disadvantages applicants and participants.

DCHA should want to be transparent about its decisions and ensure that applicants have as much information as possible to defend themselves at an informal hearing.

Scheduling an Informal Hearing. First, DCHA should not put a 60-day deadline on a tenant's right to request a good cause hearing. Tenants request good cause hearings when, for example, they have not received proper notice from DCHA of their right to request a hearing. If a family has not received from DCHA the required notice, it cannot be expected to request a hearing (whether an informal hearing or a good cause hearing) within a specified period of time. That is exactly why good cause hearings are necessary. Additionally, this 60-day deadline is unlawful. HCVP participants are entitled to an adjudicative, trial-type hearing when DCHA proposes to terminate their vouchers. *See Goldberg v. Kelly*, 397 U.S. 254, 260-66 (1970) (due process requires a pre-termination hearing for loss of public benefits); *Mathis v. D.C. Hous. Auth*., 124 A.3d 1089, 1100 (D.C. 2015) (HCVP participant is "legally entitled to an adjudicative, trial-type hearing"). The deadlines by which to request a hearing, whether an informal hearing or a good cause heading, are claims-processing rules, and therefore subject to equitable tolling. *Mathis*, 124 A.3d at 1101. Whether a rule should be tolled in a particular case "is a fact-specific question that turns on . . . balancing the fairness to both parties[.]" *Id*. at 1104. Therefore, by denying participants a fair hearing and a good cause hearing outright if it has been more than 60-days violates participants' due process rights.

Second, DCHA should continue to abide by the policies in its current regulations, including 1) DCHA should automatically reinstate any relevant benefits retroactive to the date of termination, pending the issuance of a decision following a Good Cause Hearing if DCHA fails to schedule a good cause hearing within 30 days. 14 DCMR § 8903.2(d); (2) The hearing officer should be required to consider whether and when the participant received notice from DCHA, and any mitigating circumstances related to the untimely required for an informal hearing including, but not limited to, disability, incapacity, or emergency. 14 DCMR V 8902.2(f); and (3) The hearing officer should be required to render its decision within three days. 14 DCMR § 8902.2(i).

Third, DCHA should commit to continuing its current policy for informing applicants of their informal review dates and hearing procedures. 14 DCMR § 8903 lays out the requirements DCHA should hold itself to in detail, and there is no justifiable reason for DCHA to hold itself to a lesser standard in these new proposed rules. If anything, DCHA should be requiring more of itself than of participants given the years of mismanagement and agency failures.

Fourth, DCHA should not adopt more draconian rules for families that need to request that their informal hearing be rescheduled. Currently, DCHA allows participants to request that the first informal hearing date be rescheduled, whether or not there is good cause. 14 DCMR § 8903.1(g). Second, DCHA currently allows informal hearings to be rescheduled multiple times if good cause is shown. 14 DCMR § 8903.1(g). DCHA should continue to follow its current, commonsense rules.

Fifth, DCHA should not require families to contact DCHA within 24 hours of failing to appear. The exact type of emergency that could cause a person to miss an informal hearing date may take more than 24 hours to resolve. Instead, the hearing officer should consider the same factors, and

use the same standard, that the Court considers when deciding to vacate a default in a civil case: whether the party 1) had actual notice of the informal hearing, (2) acted in good faith, (3) took prompt action to contact DCHA after the hearing date, based on circumstances of their individual situation and reason, (4) made a prima facie showing of an adequate defense to DCHA's adverse action, and (5) whether rescheduling the hearing would prejudice the non-moving party. *See Wylie v. Glenncrest,* 143 A.3d 73 (DCCA 2016).

Prehearing Right to Discovery. DCHA's plan acknowledges that the family must be given the opportunity to review all documents relevant to the hearing. However, it then goes on to say that it will only provide the family with a copy of the documents it intends to use at the hearing. This is inconsistent. It is possible, in fact very likely, that there are documents in a family's file that are relevant to the hearing, but that DCHA does not intend to use. For example, documents that hurt, but don't help, DCHA's claims.

While DCHA should be required to provide families with all documents it intends to rely on at least 3 days before the hearing (and ideally longer - 3 days is not a sufficient amount of time to review documents and prepare for a hearing), DCHA's document production requirements should not end there. Under its current regulations, families have the right "to view, or have their counsel or other representative view, subject to a timely request under § 8903.4 *any documents in the participant's file*, or any evidence in the possession of DCHA, upon which DCHA based the proposed action, inaction or determination, or that DCHA intends to rely on at the Hearing." 14 DCMR § 8003.3(b) (emphasis added). This is a critical protection. Just because DCHA does not intend to rely on a document in the family's file does not mean that document is not relevant to the family's defense. All requests for documents under this subsection should be subject to the current rules laid on 14 DCMR § 8903.4, including the timeline laid out in the regulations (within 21 days of the document request or 7 days before the date of the hearing, whichever is sooner). Finally, if anything, DCHA should be permitting applicants greater access to their entire file by not charging any amount of money for copies of documents. These protections are critical. DCHA should be in the business of ensuring that applicants to its programs have as much due process as possible, not the bare minimum. DCHA should be invested in hearing officers reaching the right decision, and our proposed changes make that more likely.

Finally, participants should be allowed to drop off the documents they intend to use at the hearing in person at DCHA's office, in addition to either electronically or by mail.

Informal Hearing Officer. DCHA's plan should specify that the hearing officer will be neutral and not an employee of the agency or District government, consistent with DCHA's current practice.

Conduct at Hearings. This rule has to be more specific. Hearing Officer's need concrete guidance for when they can dismiss a person from a hearing for being"disruptive, abusive, or otherwise inappropriate." This are incredibly vague terms that could mean very different things to very different people. Often at informal hearings participants are at risk of losing their housing subsidy, and in turn their ability to keep themselves and their families housed. It is not surprising

then that emotions can run high during these hearings. Hearing Officers cannot have unfettered discretion to dismiss people from these hearings for being "disruptive" or "inappropriate."

Evidence. DCHA should make clear in these new rules that the applicant or participant has the right to present written objections and briefs to counter DCHA's proposed decision. 14 DCMR § 8904.1(b). We have often experienced DCHA staff object to our introduction of legal argument in the form of briefs at hearings, despite it being explicitly allowed by the rules and being a commonsense right. This problem will only be exacerbated if DCHA's new rules don't make clear that applicants and participants have the right to submit their reasons for opposing DCHA's decision in writing to the hearing officer.

***Procedures for Rehearing or Further Hearing*.** DCHA should employ the same standard when a person misses a further hearing date that we propose above when a person misses their first informal hearing date.

Hearing Officer's Decision. The proposed rules do not inform hearing officers of how long they have to issue a decision after a hearing. DCHA should continue to require hearing officers to issue decisions within 14 days. Oftentimes fair hearings are about whether a person's rent has been calculated correctly, or whether DCHA has violated some other program rule (like failing to grant a reasonable accommodation). In these instances, participants need to know the hearing officer's decision in a timely manner.

DCHA's rules should also make clear that hearing officers not only have to make findings of fact, but also often have to make conclusions of law. The current regulations state that a hearing officer's decision must state: "Whether the action, inaction, or determination of DCHA is in accordance with applicable federal and local law, including applicable HUD and DCHA regulations and the HCVP Administrative Plan." 14 DCMR § 8905.1(c). The proposed plan should incorporate this language.

The hearing officer's decision should also be required to state the deadlines for the parties' to seek executive director and DC Court of Appeals review of the decision.

Effect of Final Decision. DCHA should strike the entire first paragraph of the proposed policy. In effect, DCHA is saying that if it loses at the informal hearing it can unilaterally decide to not follow the decision because it didn't have to give the person a hearing in the first place or because the hearing's officer's decision is wrong. 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 DCCA), just like the participant can, and argue its points. This would ensure the participant 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.

16-III.D. Hearing and Appeal Provisions for Noncitizens

As an initial matter, DCHA should note that local law prohibits DCHA from using immigration status as a reason to deny applicants to and terminate participants from locally funded programs. Therefore, this section should make clear that it only applies to applicants and participants in the federal HCVP. Additionally, DCHA should, whenever possible, offer noncitizens locally funded vouchers instead of federally funded ones to ensure that they are not denied assistance due to their status. Finally, because DCHA has discretion, it should ensure that noncitizens have the same due process protections as all other participants in the HCVP program. To that end, DCHA should follow the same procedures suggested above for noncitizens who request informal hearings.

Representation and Interpretive Services.

If DCHA knows that a family's primary language is not English, it should provide an interpreter (and translate documents), even if the family does not make a specific request. Additionally, DCHA should be sure to always, at a minimum, meet its obligations under the Language Access Act. This document contains comments on that part of DCHA's plan as well, in the fair housing section at 2-III.A.

Part 4: Owner or Family Debts to the PHA

16-IV.B. Repayment Policy

Payment Thresholds

DCHA does not currently have thresholds for repayment agreements and should not establish them now. Instead of creating thresholds, DCHA should follow the recommendation in PIH Notice 2018 that a family's monthly share of the rent plus the monthly debt repayment amount should not exceed 40 percent of the family's adjusted income. In addition, DCHA could retain its current policy that families make a minimum monthly payment of $10. 14 DCMR § 5603.

DCHA should also establish procedures for modifying the repayment amount if the participant's income changes.

Further, DCHA should retain its current policies on hardship exemptions as described in 14 DCMR § 5603.6 and § 5603.7.

Execution of the Agreement

The following should be added to the PHA Policy: "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.

Part 8: VAWA: Notification, Documentation, Confidentiality

16-IX.A. Overview

As an initial matter, we want to remind DCHA that in 2019 Legal Aid sued DCHA over its failure to comply with VAWA procedures. We encourage the agency to review this lawsuit, as well as our comments on DCHA's regulations that followed the lawsuit, to ensure that the agency's plans are in full compliance with VAWA, from any documentation requirements to bifurcation procedures to removing family members from the household composition.

16-IX.D. Documentation

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.

Additionally, we are concerned that DCHA only gives survivors 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.

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 must 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.

Conflicting Documentation

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.