April 20, 2025

Via email only

District of Columbia Housing Authority
Office of the General Counsel
Attn: General Counsel
300 7th Street, SW, 10th Floor
Washington, DC 20024
PublicComments@dchousing.org

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

Dear General Counsel Glassman:

We are writing to provide our comments to DCHA's proposed final Admissions and Continued Occupancy Plan (the "ACOP," which are the regulations governing DCHA's public housing program) published on or around March 21, 2025.

We appreciate that DCHA has held regular meetings with us over the past two years and has implemented some of our suggestions into the proposed final ACOP. However, there remain many areas where DCHA can improve the regulations' clarity and consistency with federal and local law and where DCHA should exercise the discretion afforded to it under federal law to promote greater accessibility, fairness and equal treatment of residents, program transparency and accountability, and housing stability for public housing residents. Our comments explain in greater detail why our recommendations are either required by law and/or are good policy for DCHA, particularly as it seeks to rebuild trust with residents that was broken under prior administrations.

The document that follows acknowledges areas where DCHA has responded to our prior feedback but largely focuses on the comparatively many more areas in which DCHA did not accept our feedback. It details our continued concerns about the negative impact DCHA's unclear and/or unduly punitive policies will have on public housing residents. We highlight the following issue areas as ones where changes are still needed:

1. **Incomplete or Inconsistent Incorporation of Federal and Local Law, Including Civil Rights Laws** - While we appreciate that DCHA has updated this version of the ACOP to incorporate new federal requirements and local laws that govern DCHA (e.g., the DC Human Rights Act, the Language Access Act), this proposed version of the ACOP still contains notable inconsistencies with both federal and local law, including federal law related to persons with disabilities, inconsistencies with local laws regarding the use of

criminal records in tenant screening, missing citations to the housing code (e.g., the D.C. Property Maintenance Code), or proposed regulations that reflect an incomplete understanding of the laws governing the eviction process in D.C. The proposed final ACOP also has places where it is internally inconsistent with itself. We are troubled that DCHA has not taken the opportunity to carefully address and correct these inconsistencies in this draft, but we hope DCHA will do so now to avoid publishing final regulations that conflict with or do not accurately reflect applicable law.

2. **Waiting list (Section 6302) -** DCHA should prioritize robust outreach when updating and re-opening its waiting list(s) and should make applications to the waitlist list maximally accessible by default by allowing submissions in person, by mail, phone, or email, and not restricting submissions to an online portal. With respect to outreach, posting on DCHA's website and a few publications is insufficient. DCHA needs to engage community organizations and shelters and provide ample lead-up prior to re-opening or updating a waiting list.

3. **Removing households from the waiting list (Section 6302)** - DCHA should follow HUD's Guidance that "Prior to removing an applicant from a waiting list, PHAs are encouraged to contact an unresponsive applicant *through all means available*, which may include via mail, phone, email, and text message" (emphasis added). In addition, DCHA should follow HUD's guidance to give each family "a reasonable period of time to respond with their interest so as to not inadvertently remove an applicant who remains interested but may have moved, changed their contact information, or otherwise are difficult to reach." DCHA should also clarify that it will provide an informal hearing for an applicant to dispute their improper removal from the waiting list.

4. **Guests (Sections 6201.40-6201.43, 6201.46-6201.47) -** The guest policies in the proposed final regulations contain paternalistic requirements and will make it harder for public housing tenants to maintain family and community connections. The level of monitoring DCHA expects from its residents over their guests is unfair and simply unrealistic. As much as a resident may inform their guests of the rules they have to follow, it is unreasonable to expect anyone to be able to control another person's actions to the extent contemplated by the proposed ACOP regulations. Moreover, it is unduly punitive for a resident to face the consequence of a lease violation or potential eviction over the actions of others that they cannot reasonably control. For example, someone should not be deemed an "unauthorized occupant" simply because they seek to use the public housing resident's address as their own (potentially without the resident's knowledge). DCHA should also eliminate the requirement to notify DCHA if a guest will be staying more than 3 days, eliminate the prohibition on former residents who have been

evicted staying overnight, and eliminate the penalties for someone else using a public housing tenant's address as their own.

5. **Reexaminations (Chapter 68)** – While we appreciate that DCHA is now permitting biennial and triennial reexaminations, we still have concerns about the following policies:
    a. **Criminal background check** - DCHA should not be conducting a criminal background check on all family members annually or at each reexamination. HUD neither requires nor recommends annual criminal background checks for public housing residents.
    b. **Zero renters** - DCHA's proposed rules would have zero-income families recertify every 6 months. There is no basis to treat families that report zero income at their annual recertification any differently than other families. Additionally, DCHA's proposal is impractical and burdensome on both the family and DCHA, particularly in light of DCHA's well-documented challenges with timely notifying residents of and processing recertifications.

6. **Tenant screening (Section 6203) -** DCHA's proposed tenant screening procedures are not consistent with HUD guidance or local DC laws, including the Fair Criminal Record Screening for Housing Act, D.C. 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. DCHA's proposed ACOP is also inconsistent with the Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022, which governs how and when a District landlord can consider factors like credit and prior eviction cases. DCHA must revise its regulations to align with federal guidance and comply with local law.

7. **Right to return (Section 7702)** - DCHA's proposed regulations contradict DCHA Board Resolutions 24-51 and 16-06, as well as public promises made by Director Pettigrew regarding the right of return for public housing residents. DCHA should change this regulation and enshrine a public housing resident's right to return when DCHA mandates their transfer, including for any reason listed at 7701.5(e) (e.g., taking units offline because of severe maintenance needs), and more broadly as part of any redevelopment, including but not limited to Section 18 demolition/disposition-related applications.

8. **Grievance procedures (Section 7903) -** We appreciate that DCHA has partially responded to our feedback and adjusted the timeframe for filing a grievance procedure to six months. We remain troubled, however, with other changes that diminish fairness in the administrative hearing process. Compared to historical practice, DCHA's proposed ACOP would eliminate a long-standing requirement that a Hearing Officer not be a DCHA employee. The proposed regulations would also allow the Executive Director unfettered latitude to affirmatively overturn a Hearing Officer's decision. The proposed

regulations also do not provide residents with sufficient time to view DCHA's evidence before a hearing. Taken as a whole, the proposed regulations do not allow sufficient due process or assurances that residents will have access to a meaningful and fair grievance process.

9. **Good Cause -** Throughout these regulations, DCHA creates a heightened standard for what constitutes good cause. Good cause has legal meaning. Instead of trying to minimize the circumstances in which good cause exists to only the most serious situations, DCHA should use a standard more similar to what was formerly in place in the voucher program for good cause hearings. Under that standard, a hearing officer was required to consider if a tenant had good cause to miss a deadline by 1) determining if they got proper notice, and 2) considering a non-exhaustive list of mitigating circumstances. DCHA should adopt an analogous standard throughout the ACOP for determining "good cause" for public housing residents.

10. **Community service requirements (Chapter 73) -** The regulations in this chapter remain vague and hard to understand. Rather than clearly explaining what types of activities or situations exempt a person from this requirement, this Chapter relies on confusing cross-references to other laws. It remains unclear how DCHA will administer an annual community service requirement in light of biennial and triennial reexaminations. Overall, this remains a top area of confusion and concern for residents, and the proposed regulations do not aid in providing the needed clarity.

Finally, we continue to have concerns about the way these important rule changes are being communicated (or, more accurately, are not being communicated) to residents. The process has been difficult for residents to participate in, as was evident at the April 14, 2025 public hearing, where no resident council officers or Citywide Advisory Board members were present to provide comments. While the DCHA website includes a section called Proposed Changes to the ACOP, the resource is not downloadable and does not capture residents' biggest concerns and questions. It would be fundamentally unfair for DCHA to move forward in enforcing these new rules, and putting people's housing at stake, where residents have not been fully informed about them.

We welcome the opportunity to discuss our comments and suggested changes to DCHA's proposed public housing regulations with you in greater detail. We hope that DCHA will take the time to meaningfully engage with and adopt our recommendations before finalizing the ACOP.

Sincerely,

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Bread for the City

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Children's Law Center

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cc: Chairman Phil Mendelson, Councilmembers Kenyan McDuffie, Robert White, Anita Bonds, Chistina Henderson, Brianne Nadeau, Brooke Pinto, Matthew Frumin, Janeese Lewis George, Zachary Parker, Charles Allen, Wendell Felder.

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.

OVERALL COMMENT

Throughout the ACOP, different regulations refer to an "adverse action," a "notice of adverse action," the "notice requirements for adverse actions," or the like. We could not find a comprehensive definition of adverse action or a regulation that lists all the requirements of a notice of adverse action. DCHA must define the term "adverse action" and list the requirements of a notice of adverse action somewhere in the ACOP. Moreover, any notice of adverse action must include a notice of any appeal rights the recipient may have.

Chapter 60: Overview of the Public Housing Program and Admissions and Continuing Occupancy Plan

6002 THE PUBLIC HOUSING PROGRAM

6002.13 - This section must explicitly recognize that DCHA also has responsibilities under and must comply with local law and regulations. In particular, 6002.13(e) should say, "Screen applicant families for suitability as renters in accordance with local law[.]"

6002.13(h) must also specify that DCHA must maintain properties to a standard consistent with the D.C. Housing Code and the D.C. Property Maintenance Code, in addition to the NSPIRE standards.

6003 THE ADMISSIONS AND CONTINUED OCCUPANCY POLICIES

6003.2 - It is inappropriate to include "DCHA procedures" as a source of "governing" authority equivalent in force to federal regulations, HUD handbooks and guidebooks, notices, and state and local laws. DCHA may not always be required to publish its internal policies or notify residents or the public prior to changing those, so they should not be held out to be an authoritative source of law or equivalent to other laws and regulations that do carry the force of law.

6003.8 - This section should be edited to reflect that DCHA will also review and update the ACOP as needed to reflect changes in federal and local law and regulations.

Chapter 61: Fair Housing and Equal Opportunity

6101 NONDISCRIMINATION

6101.1 - DCHA must additionally note in subsection (b) that DCHA is seeking to further fair housing as part of its obligations to comply with the Fair Housing Act ("FHA"), as a recipient of

federal funds, and pursuant to 42 U.S.C. §§ 3608(d) and 3608(e)(5). *See also* 24 CFR § 91.225 (a)(1).

The Age Discrimination Act of 1975 was removed from the list in 6101.1. To the extent that the Age Discrimination Act of 1975 provides protections that are not otherwise covered by other civil rights and housing laws listed in 6101, it should be added back in.

6101.1(h) confusingly only references local applicable civil rights and housing laws, but the DC Human Rights Act is separately referenced in 6103.3. At 6101.1(h). The agency could instead say: "Any applicable federal or local laws or ordinances, *including but not limited to the DC Human Rights Act,* D.C. Code 2-1401.01 *et seq., locally administered by the Office of Human Rights*, and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted."

6101.3 - The full name of the statute should be the "District of Columbia Human Rights Act" or the "D.C. Human Rights Act," not the "District Human Rights Act." This change should be applied throughout the document.

6102 NONDISCRIMINATION

6102.1 - The second sentence should read, "State and local laws and regulations also prohibit discrimination against additional classes of people." It is a fact, and not simply a possibility, that DC laws protect additional classes of people from discrimination. And while it is good that DCHA policies may also protect additional classes of people, policies should not be held up as equivalent sources of legal authority with local laws and regulations.

6102.3 - The agency must conform its definition of "familial status" to the definition under the FHA because its current definition is inconsistent with federal law, which courts use to interpret the DC Human Rights Act. *See Paralyzed Veterans of Am. v. Ellerbe Becket Architects & Eng'rs, P.D.*, 950 F. Supp. 393, 405 (D.D.C. 1996) ("D.C. law is applied in the same manner as the parallel federal anti discrimination provisions."). Specifically, the agency's current definition leaves out parent designees that may substitute for parents or legal custodians of one or more minor children and instead inserts "a family with a child or children under the age of eighteen (18). . . securing custody of children under the age of eighteen," which is different than the relationships the federal fair housing law intends to cover.

DCHA accordingly should define "familial status" as it is defined under the FHA: "[O]ne or more individuals (who have not yet attained the age of 18 years) being domiciled with . . . a parent or another person having legal custody of such . . . individuals, or the designee of such parent or other person having such custody, with the written permission of such parent or other

person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years e." 42 U.S.C. § 3602(k).

6102.5 - The first sentence of this section should be edited to read: "DCHA furthermore acknowledges the following protected traits under the District of Columbia Human Rights Act…" This edit is to remove confusion given that some of these protected traits overlap with protected traits under federal law already listed above.

6102.6 - The first sentence of this section should be edited to read: "DCHA shall not, based on any of the protected traits under the D.C. Human Rights Act or the federal protected classes…"

DCHA should also add "any individual" to (a) such that subsection (a) reads: "Deny to any individual or any family the opportunity to apply for housing…"

Subsection (g) should be edited to read: "Steer an applicant or tenant toward or away from a particular area based on any of the protected traits under the D.C. Human Rights Act or the federal protected classes;"

Subsection (k) should be edited to read: "Discriminate against someone because they are related to or associated with a member of a protected class, or because they are perceived to be related to or associated with a member of a protected class"

Subsection (l) should be edited to more closely reflect the language in D.C. Code 2-1402.21(a)(5) and/or 42 USC 3604(c): "Make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to a transaction, or proposed transaction, in real property, or financing relating thereto, which notice, statement, or advertisement unlawfully indicates or attempts unlawfully to indicate any preference, limitation, or discrimination based on any of the protected traits under the D.C. Human Rights Act or the federal protected classes."

6102.7 - In prior iterations of these regulations, this section, which has now been stricken, read: "DCHA must take steps to ensure that families are fully aware of all applicable civil rights laws. As part of the public housing orientation process, DCHA shall provide information to public housing applicant families about civil rights requirements." We urge DCHA to add this section back into the regulations. In addition, DCHA should explicitly refer to protections under the D.C. Human Rights Act and any other applicable local laws, including source of income protections.

6102.9 - This subsection should be revised as follows: "In all cases, DCHA shall advise an individual or family to file a fair housing complaint if the individual or family feels they have

been discriminated against under the Fair Housing Act, D.C. Human Rights Act, or any other applicable federal or local law as described in Section 6101. Anyone who believes they have been discriminated against may file a fair housing complaint with the Department of Housing and Urban Development (for claims under the Fair Housing Act, Americans with Disabilities Act, or Section 504 of the Rehabilitation Act) or the D.C. Office of Human Rights (for claims under the D.C. Human Rights Act).”

As currently worded, the section does not require DCHA to advise a family of their rights. The section is also too narrow in scope.

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

6102.11 - As explained above, DCHA should emphasize in these situations that complainants have the option of filing their complaint with an outside agency if they desire.

New Regulation - A regulation should be inserted directly after 6102.11 that says, “DCHA will not notify anyone that a complaint has been made against them without permission from the complainant, but DCHA will not investigate a complaint without notifying the person who is alleged to have discriminated.”

6103 POLICIES RELATED TO PERSONS WITH DISABILITIES

6103.3 - As the provider of public housing, DCHA has an obligation to not only comply with its fair housing obligations to provide reasonable accommodations, but it must also provide for reasonable modifications. 24 C.F.R. § 100.203. Although DCHA provides examples of reasonable modifications at 6103.9, DCHA’s policy should make clear that reasonable modifications, i.e., physical changes to the structure, are also allowable and should be made without cost to the tenant.. This is because Section 504 of the Rehabilitation Act applies here and means that modifications are also free to the tenant, with some limited exceptions. 29 U.S.C. § 794; 24 C.F.R. Part 8. Thus, we recommend that Section 6103 be edited in its entirety to clarify that DCHA has an obligation to provide both reasonable accommodations and reasonable modifications.

6103.9 - Subsection (i) is confusingly worded. The regulation states that an example of an instance where DCHA must accommodate the needs of a person with disabilities is when a live-in aide is "essential to the care of a person with disabilities" and "is not obligated for the support of the person with disabilities[.]" Because a live-in aide does provide support to a person with a disability, the agency should delete the phrase "is not obligated for the support of the person with disabilities." Alternatively, if the word support here is referring to financial support, the word "financial" should be inserted for clarity.

6103.14 - 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 6501.1 applies "for the purpose of obtaining a reasonable accommodation" while "the HUD definition of disability" is to be used "for waiting list preferences and income allowances." Inconsistent application of the definition of a "disability" is highly problematic and will generate disparate outcomes for persons with disabilities depending on the nature of their request or issue. We recommend the agency accordingly apply the FHA and DC Human Rights Act definitions of "disability" across all aspects of public housing to avoid running afoul of the agency's fair housing obligations.

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

6103.18 - It is not appropriate for DCHA to use the same verification procedures for disability and the need for accommodation as it does for verifying income. See comments to 6103.21. Therefore the first paragraph of this regulation and subsection (a) should be deleted.

6103.21 - DCHA's reasonable accommodation policy states it "may require the family to sign a consent form so that DCHA may verify the need for the requested accommodation." Pursuant to the *Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act* (Joint Statement on Reasonable Accommodations), DCHA may not require that a person with a disability sign a consent form to verify a person's disability. The person can provide their own verification letter instead if one is needed. Joint Statement on Reasonable Accommodations at 17-18. (pages 12-13). The language regarding the requirement to sign a consent form should be removed.

6103.22 - 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.

Prior versions of these regulations provided that DCHA would review reasonable accommodations requests within 20 business days. That language has been replaced with a statement that DCHA will "timely" respond to such requests in subsections (a) and (d). As we have previously commented, DCHA should be able to review these requests within 10 business days. The language right now provides no timeline for response to these requests, as "timely" is subjective and gives residents no guidepost for when their requests may be considered.

The words "if applicable" should be removed from Subsections (b) and (d).

6103.25-27 - In addition to the forms of communication listed, DCHA should add that ASL interpreters and oral interpreters will be made available to meet the needs of persons with hearing impairments.

6103.28 - Subsection (e) should read "the Fair Housing Amendments Act of 1988."

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

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

6104.4 - DCHA should revise the wording of three of the four factors it considers to determine the level of access needed by Persons with LEP to ensure it complies with the LAA. Subsection (a) leaves out a consideration required by the LAA; subsection (c) reads confusingly; and subsection (d) mistakenly refers to costs as one consideration DCHA can take into account. Pursuant to the LAA, "resources" but not "costs" are a valid factor for the agency to consider. Revised language would read as follows:

In order to determine the level of access needed by Persons with LEP, DCHA shall balance the following four (4) factors:

(a) The number or proportion of Persons with LEP eligible to be served or likely to be **served or** encountered by the public housing program;

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

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

(d) The resources available to DCHA.

…

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

(a)(1) In making the determination under 6104.4(b) of the type of oral language services needed, DCHA shall consult the following sources of data to determine the languages spoken and the number or proportion of limited or non-English proficient persons of the population that are served or encountered, or likely to be served or encountered, by the covered entity in the District of Columbia:

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

(2) DCHA shall annually collect data about the languages spoken and the number or proportion of persons with LEP speaking a given language in the population that is served or encountered, or likely to be served or encountered, by DCHA. DCHA's databases and tracking applications shall contain fields that will capture this information. All information collected under this section shall be provided to the Language Access Director and made available to the public, upon request, within a reasonable time.

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

6104.6 DCHA's Language Access Plan
DCHA's language access plan is out of compliance with the LAA. The current DCHA language access plan must be re-written in order to comply with the LAA. Therefore, the current language should be stricken and replaced with the following:

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

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

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

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

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

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

6104.8 - Subsection (a) should more closely mirror D.C. Code § 2-1933(a) and read that "DCHA shall provide written translations of vital documents into any non-English language spoken by a limited or no-English proficient population that constitutes 3% or 500 individuals**,** whichever is less, of the population served or encountered, or likely to be served or encountered, by DCHA in the District of Columbia. *See* D.C. Code § 2-1933(a)."

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

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

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

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

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

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

CHAPTER 62: Eligibility

6201 DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

6201.10 - DCHA should move these provisions to 6201.4. As written, it is unclear what relevance this definition has to the rest of the regulations. Moving these provisions would provide clarity..

6201.34 - DCHA should re-insert and clarify the deleted definition of "nearly-elderly person," since the terms "near-elderly person" and "near-elderly family" are used in other sections of the ACOP.

6201.42 and **6201.43 -** DCHA should remove the language about the requirement that a resident family notify DCHA when overnight guests will be staying in the unit for more than three days. That additional requirement of notification despite an existing rule that ten (10) consecutive days is the limit is extremely paternalistic.

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

While the proposed language reflects an ability to request exemptions to the guest stay policies for valid reasons, it does not detail how a participant can request an exception and DCHA's obligation for response, both of which had been previously outlined in the regulations prior to the changes in 2023 in 14 DCMR § 5320. DCHA should indicate the process by which exceptions can be requested, including where and how exceptions are submitted. Under those regulations, DCHA was required to respond to an exception request by mailing a response within thirty days of request receipt. DCHA's final ACOP should continue to specify a deadline for DCHA to respond to a request for an exception and a requirement to provide a written response so that

participants can expect a clear, written response within a reasonable amount of time and to make clear that DCHA has an obligation to respond.

Finally, previous regulations expressly allowed guests to remain pending an exception request determination. The proposed regulations do not include 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. The regulations should also allow for an exception for live-in aides pending DCHA approval as a "live-in aide", as stated in 14 DCMR § 5320.5 prior to the changes in 2023. If a family member cannot effectively tend to their needs without their live-in aide and the live-in aide's approval is pending, the family member in need should not be penalized. A live-in aide, necessary for the family member and awaiting DCHA determination, should continue to bypass the standard guest stay deadlines while awaiting a DCHA decision.

6201.44(b) should be deleted. It is unreasonable to exclude all residents who have been evicted for any reason. Many former residents have family and close friends at DCHA's complexes. They have lived in the community together for years. This ban is overly broad because it applies to people who have been evicted for non-payment of rent, failure to recertify, or other lease violations that have no effect on the property. Anyone who is not barred from the property should be allowed to stay on the property as an overnight guest. They are already not allowed to stay for more than 10 consecutive days, so DCHA need not worry about an evicted tenant trying to move back in by being a guest.

6201.46 should be deleted. Tenants cannot be expected to be responsible for what their friends and family members do when they are not on the property. Designating someone an unauthorized occupant means that the occupants are at risk of eviction. Public housing residents should not risk eviction because people are using their addresses. Using someone else's address has no impact on the security or the wear and tear on the property, and tenants should not be put at risk of eviction because someone else has used their address. Many people who are experiencing homelessness or have a history of moving in and out of homelessness use relatives' addresses for important mail like notices about their position on DCHA's waiting lists. Public housing residents should be able to help their relatives in this way in the same way that residents of private housing can.

6201.56 - DCHA should remove the language, "information indicates that the student has established a separate household." No details are provided as to what information could lead DCHA to the finding that a student has "established a separate household." Students are often employed and/or reside in other housing while pursuing their education, but that does not

indicate an intention to "establish a separate household." The only information that DCHA should be relying on for a determination of whether a student family member is permanently absent is the information provided by the family at the family's discretion. Family members know and understand whether a family member student has left the family household. DCHA should not be using broadly undefined categories to potentially bar family member students from their existing households without the family's request or consent.

6201.60 - DCHA's proposed policy does not consider "an individual confined to a medical institution on a permanent basis" to be a family member. We challenge that an individual can ever be confined to a nursing home or hospital on a permanent basis. In *Olmstead v. L.C.*, 527 U.S. 581 (1999), the Supreme Court of the United States reinforced the right of individuals to live in the community. Therefore, a nursing home resident has an absolute right to leave that institution at any time. DCHA should craft an entirely new policy that permits nursing home residents to return to their homes without much administrative burden, while also not counting them as family members while they are in an institution. Such a policy would be consistent with the idea that individuals should not be institutionalized unnecessarily and receive care in the least restrictive setting.

6201.72 - Live-in aides are essential to the care of those who need them. Federal law requires ADA compliance and the ability to request reasonable accommodations. This regulation allows DCHA to disapprove or withdraw approval for a live-in aide based on broad categories. DCHA should be clear about the specific criteria it will consider in determining whether it can exclude or withdraw live-in aides. Broadly permitting disapproval or withdrawal of a live-in aide for potential past acts regardless of whether there was a conviction and/or without consideration to time or other mitigating factors is potentially unlawful, frustrates the reasonable accommodation compliance, is contrary to the spirit of HUD's Affirmatively Furthering Fair Housing guidance, and encourages subjective screening practices. Also, it is unreasonable to deny someone as a live-in aide because they owe a debt to a PHA. This is not related to the safety or security of either the family requesting the live-in aide or the safety of the other tenants in the development and should not be considered more important than the need for a person's disability to be accommodated so that they may have equal access and enjoyment of their housing.

6202 BASIC ELIGIBILITY CRITERIA

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

6202.9 - This regulation should also detail what the notice must include. The federal guidance is clear that the notice must also include a statement informing the family that financial assistance is contingent upon the appropriate submission and verification of documentation of citizenship or

eligible immigration status *and* detail the types of documentation required and time period for submission. 24 CFR 5. The manner in which the language is clearly indicated and detailed in the former regulation 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 specific provisions that apply to their duties and lawful administration of public housing, DCHA will have monumental compliance issues because they will continue to have staff that lacks substantial knowledge of the programs they are responsible for implementing.

6202.28 - The additional language to this regulation, "[r]evocation of consent to the form HUD-9886-A by any family member will result in termination or denial of admission," creates unnecessary barriers to affordable housing. The applicant family should be given the option to remove the family member who revoked their consent to prevent a denial of the entire family.

6202.35 - DCHA should allow tenants who are denied only for debts to go back on the waiting list such that they can be reconsidered after their debt is repaid. Additionally, people seek admission to public housing because they are struggling to afford housing otherwise. Penalizing applicants for their inability to afford housing (the very reason they need public housing) is counterproductive and contrary to DCHA's purpose.

6203 DENIAL OF ADMISSION

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

than HUD requires. When given the option and chance to expand housing opportunities by utilizing the least restrictive requirements for denial, DCHA has chosen to create additional barriers for DC residents. DCHA should change its regulations to reflect the three-year look back required by HUD instead of a longer period of time.

6203.3(b) - 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.

Additionally, the definition of "currently use" is nebulous and overly broad. It defines it as when a "person has engaged in the behavior recently enough to justify a reasonable belief that there is a continuing illegal drug use by a household member during the previous three (3) months" without providing guidance or a definition on what "behavior" is considered to indicate current use of illegal drugs. It also refers to a "reasonable belief" but provides no definition or standard for "reasonable belief."

6203.4 - DCHA should make these criteria permissive, should not include any criteria not listed in federal regulations, and should look only at the past 3 years, not the past 5 years. 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. DCHA should use this opportunity to minimize barriers to housing for DC residents instead of being more restrictive than HUD recommends. DCHA's policy decision to exercise its discretion to impose more burdensome requirements that perpetuate unfair and discriminatory effects and create additional barriers to housing security is simply punitive.

6203.4(d) - DCHA using its discretion to exercise an ability to prohibit households based on the fourth category, *(4) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent)*, is extremely problematic due to the subjectivity and consequential nature of such a prohibition determination. DCHA program participants and applicants should not be subjected to prohibition due to potential frustrations with DCHA employees/agents. DCHA employees and agents also should not be empowered to weaponize their positions to wield such serious consequences for applicants.

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

6203.4(f) - This subsection should be removed. First, this proposed policy to use arrest records seems to be in violation of HUD rules that prohibit the use of arrest records as a basis for denial and in violation of DC's "ban the box" law, the *Fair Criminal Records Screening for Housing Act*. DCHA must revisit its policy and craft one that is not in violation of federal and DC law. Second, the assertion that arrest records would not be used as the sole basis for denial *or* as proof that the applicant engaged in disqualifying criminal activity defies logic. There is no other purpose for a desire to utilize arrest records *except for* the purpose of inferring some assumption of truth and proof of any criminal activity alleged within the arrest record. Any assertion by DCHA to the contrary is disingenuous and nonsensical.

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

property and other criminal acts which would adversely affect the health, safety or welfare of other tenants. 24 CFR 960.203(c).

Overall, DCHA's proposed language is broader than prior 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. By saying here that DCHA *shall deny* families admission, DCHA is opting to be more restrictive and deny more people housing. DCHA should instead consider the unique circumstances of each family. Additionally, denials based on past performance to meet financial obligations are punitive and counter-productive to DCHA's mission and the needs of low-income DC residents. DCHA applicants need housing precisely because their income is so low that they may have struggled in the past to pay market rent.

6203.5(c) and **(f)** - These subsections are either redundant or, if they are not completely overlapping, confusing because it is unclear how they are distinct. Moreover, we disagree that debts owed to another PHA or assisted housing program should disqualify someone from eligibility for public housing in DC.

Additionally, further down, at (j), DCHA appears to require itself to consider mitigating factors (because the subsection reads, "DCHA may, on a case-by-case basis, decide not to deny admission). However, the cross-reference to "the factors discussed in § 6203.3" appears to be in error, as 6203.3 does not contain a list of mitigating factors but is rather a list of categorical exclusions.

6203.5(i) - DCHA's proposed language to use its discretion to deny families that have allegedly "engaged in or threatened violent or abusive behavior toward DCHA personnel," is particularly problematic due to the inclusion of mere language indicating frustration and the subjectivity and consequential nature of such a prohibition determination. DCHA public housing applicants should not be subjected to prohibition due to potential frustrations with or of DCHA employees. This regulation is overly broad and undefined, leaving space for abuse or mistreatment from DCHA staff or contractors. Under DCHA's proposed language, a frustrated applicant that uses a simple curse word or questions the behavior of staff could have that action used as justification for denial if the DCHA employee chooses to categorize it as "abusive behavior." DCHA employees should not be empowered to weaponize their positions to wield such serious consequences for applicants. Also, this is counterproductive to efforts of DCHA staff and the testimony of DCHA leadership that the agency is working to improve customer service due to the years of applicant and residents' complaints concerning abusive behaviors by staff; the language of this proposed regulation will likely create an environment that is the antithetical to the written and oral promises that DCHA leadership have made.

6203.5(j) - DCHA's proposed language indicates that it may choose not to deny assistance on a case-by-case basis, but its decision to opt for the "shall deny" qualifier as the default instead of

"may deny," as HUD allows, casts doubt on that intention. HUD does not even require consideration of the factors, yet DCHA opts to consider the factors and require denial.

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

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

6203.9 - DCHA attempts to describe a procedure for verifying an applicant's family member's drug-use or non drug-use. The proposed language uses different definitions and terms for the denial based on "currently use" or "currently engaged." Consistent terms and definitions should be used throughout the regulations and especially throughout chapters.

6203.10 - As previously mentioned throughout these comments, DCHA's considerations of "the family's history" should not be overly broad and open-ended as written. Criminal activity that is not otherwise excepted by HUD should only be limited to a 3-year "look-back," and past rental history should only include rental history during a DCHA administered subsidy or public housing unit. Otherwise, the regulation is punishing families for poverty and the symptoms of poverty.

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

In evaluating suitability, DCHA proposes language that very broadly seeks to examine past performance in meeting financial obligations and overall habits and behaviors within the past three years. In evaluating the financial obligations, DCHA proposes landlord references, including information about eviction filings, late payments, and utility disconnections; utility company references; credit history; pulling court and eviction action records; and personal references. In evaluating the habits and behaviors, DCHA proposes landlord references, including information on unit cleanliness, unit damage, and neighbor complaints; searches of police and court records for convictions and arrests; personal references; and home visits.

DCHA's proposed language makes it clear that this comprehensive level of screening *shall* be performed for applicants. HUD authorizes PHAs to deny admission based on relevant information regarding a family's previous behavior and suitability for tenancy; however, HUD *does not require* prohibition. DCHA continues to exercise its discretion to be more restrictive and create more opportunities to deny housing. Requiring an evaluation of the aforementioned categories for applicant suitability within this proposed policy is overly intrusive, paternalistic, and appears to violate HUD and DC laws. Again, DCHA's claim that arrest records would not be used as the sole basis for denial *or* as proof that the applicant engaged in disqualifying criminal activity defies logic. There is no other reason to utilize arrest records *except as* proof of the truth of the criminal activity alleged in the arrest record. Any assertion 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 of DC's "ban the box" and tenant screening/eviction record sealing laws (*Fair Criminal Records Screening for Housing Act* and the *Eviction Record Sealing and Fairness in Renting Amendment Act*) that prohibit the use of arrest records and sealed eviction records in contemplation of any denial of housing. DCHA should revise this policy to lower barriers to accessing housing and to avoid conflicts with federal and local law.

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

6203.14 - This policy is punitive and paternalistic. The language to certify that a family member does not visit or to stay as a guest should be based on a case-by-case basis and "must" should be replaced with "may."

CHAPTER 63: Applications, Waiting List, and Tenant Selection

This chapter must clarify whether DCHA intends to use a lottery or a time-and-date-based system to manage waiting lists and whether waiting lists will be continually open or will close when approximately 2 years worth of applicants are on the list.

6301 THE APPLICATION PROCESS

6301.3 - The proposed regulation says DCHA shall require "only the information needed to determine the family's placement on the waiting list" but does not specify what that information is. Moreover, it specifies that "Applications must be filled out completely in order to be accepted by DCHA for processing" but does not include any obligation for DCHA to notify an applicant

that their application is incomplete and, if so, to notify the applicant about what information is missing.

6301.3, 6301.4, and **6301.5 -** Rather than generically describing "steps" that DCHA will take to make the application process accessible, DCHA should simply make the default process accessible by automatically allowing applications to be requested and completed in-person by phone, by mail and by email, in addition to submission via online portal. Many families do not have reliable access to the internet, and mail is often unreliable. Widely accessible options should not have to be requested, and they should not be limited to people with a disability or to LEP individuals. 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 wherever possible.

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

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

6301.9 - This regulation references a "pre-application" but does not explain what that is or what that means.

6301.10 - Just as DCHA should allow applicants to request and submit applications in-person and by phone, mail, and email, DCHA should send confirmation of receipt to each applicant by the same means that the applicant submitted the application (i.e., in person receipt, mail, email,

or phone confirmation), in addition to email (if the applicant has an email). Many low-income residents will not have reliable access to email or to electronic devices or will want a hard copy confirmation of their waitlist application submission. In addition, if an applicant's email account becomes inaccessible to them, it will create additional hurdles for the applicant to be able to continue to communicate with DCHA about their place on the waitlist.

6301.11 - These regulations must explain how DCHA will determine the "number of [anticipated] vacancies" for a site-based waiting list that is open for a finite period. It must also explain how DCHA will limit the number of applicants selected to the waiting list, under such a scenario. Further, DCHA must explain how it will notify anyone who submitted an application but is excluded from the waiting list that they are not on the waitlist. Finally, DCHA should specify how it will determine whether waiting lists will remain continuously open or will only open for a finite period.

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

6302 MANAGING THE WAITING LIST

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

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

6302.13 and **6302.14 -** It is concerning that DCHA has chosen to strike emergency regulations 6302.13 and 6302.14, which previously outlined DCHA's obligations to comply with fair

housing requirements by analyzing the housing market to identify underserved populations, avoiding outreach efforts that prefer or exclude people who are members of a protected class, providing application forms to public and private agencies that serve low-income residents, and partnering with organizations that serve similar populations, including agencies that provide services for persons with disabilities, among other steps.

6302.16 - We appreciate that DCHA has eliminated the onerous 10-business day requirement for families on the waiting list to inform DCHA of a change in family size or composition or update their contact information. We still recommend that DCHA affirmatively reach out to families who are likely to reach the top of the waitlist in the next 12 months and remind those families to inform DCHA about any changes in family size or composition or contact information, consistent with th**e** HUD Public Housing Occupancy Guide Waiting List Chapter 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."). This will ensure that families who have been on the waitlist the longest, possibly for over a decade, get a fair shot at obtaining housing.

6302.18 - The Public Housing Occupancy Guidebook recommends prioritizing transfers for all emergencies (including those for physical hazards, VAWA, and other causes); reasonable accommodations; demolition, disposition, revitalization, and rehabilitation; and occupancy standards transfers over admissions from the waiting list. While it is helpful that the proposed final regulation includes more of these conditions under the definition of "emergency transfers" (see proposed regulation 7701.5), the definition leaves out transfers based on reasonable accommodation requests. DCHA should include reasonable accommodation transfers in the definition of "emergency transfers" or should otherwise clearly indicate what level of priority reasonable accommodation transfer requests will be given relative to new admissions off the waitlist.

6302.21 and **6302.22** - We appreciate that DCHA's proposed regulation requires DCHA to send an update request to a family on the waiting list by means including but not limited to mailing address and email. We recommend that the regulation further specify the other means DCHA may use, including phone call, text message, or contacting an approved third-party point of contact. If DCHA plans to remove people from the waiting list or simply wishes to update the list, DCHA should contact families through all means available before removing them from the waiting list.

Further, many people on the waiting list are homeless and do not have a fixed address, have mental and physical disabilities, lack reliable internet access, and/or have literacy challenges. During the 12 or more years that people have been on the waiting list, they have received little

communication from DCHA, so updating their contact information with DCHA was not a top priority. For these reasons, DCHA should partner with other government agencies such as the Department of Human Services and the Department of Aging and Community Living as well as social services agencies to get updated contact information. DCHA should provide forms to update contact information in public libraries, medical clinics, Family Success Centers, food pantries, homeless shelters, Virginia Williams, and other places frequented by people likely to be on the public housing waiting list. The regulations should affirmatively specify that update forms will be available in these locations.

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

6302.23 - DCHA should allow people to deliver their responses in person, not just by mail or email. DCHA should also accommodate LEPs, people with literacy challenges, and people with disabilities by specifying that DCHA will reduce the response to writing for the family or provide other accommodations as necessary.

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

Further, if DCHA has reason to believe that the applicant is experiencing homelessness, the Agency should collaborate with DHS, homeless shelters, and other service agencies to get in contact with the applicant. If the applicant is known to be elderly, DCHA should collaborate with DACL.

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

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

6302.28 - We appreciate that DCHA has opted to strike emergency regulation 6302.27 to the extent it proposed eliminating the right to an informal hearing when removing a family from the waitlist. DCHA should clarify that an informal hearing is available. There must be an established process for a family to seek reinstatement on the waiting list and for those requests to be evaluated. Using the informal hearing process would ensure that those decisions are fair and consistent, not arbitrary. Again, keeping the procedures described in 14 DCMR 6103.4 would be the best method, but if DCHA does not preserve the ability to make someone inactive and then restore them to the waiting list, then DCHA should at least make the informal hearing process available to those who are removed from the list for failure to respond.

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

6303 TENANT SELECTION

6303.7 - We recognize that the intent of this proposed regulation is to allow DCHA the maximum flexibility to accommodate elderly families entering or returning to redeveloped sites; however, as we previously explained in comments submitted to DCHA in June 2024, the proposed language is vague and fails to provide the guidance, transparency, and oversight to avoid confusion and uncertainty for applicants. We are also concerned that the language saying that DCHA may establish preferences for properties "including but not limited to" the Kenilworth 166 and The Asberry gives DCHA too much discretion and is overly broad without meaningful public oversight and input.

6303.33 and **6303.34 -** 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.

6303.35 - For the reasons discussed above (see comment to 6302.25) , 6303.35 should be deleted.

6303.36 and **6303.38(h)** - The regulations in this Chapter are unclear about the consequence of failing to respond to or being unable to attend an eligibility interview. It is troubling that proposed 6303.36 and 6303.38(h) state that "no informal hearing shall be offered," when Chapter 62 lays out a process and standard by which a family may seek reinstatement to the waiting list. This Chapter should adopt or cross-reference the standard in Chapter 62, clarify that an informal hearing is available for any actions that result in a family's removal from the waiting list, clarify that DCHA will consider reasonable accommodation requests and ensure full accessibility for eligibility interviews, and adopt a "good cause" standard for any failure to respond or attend, as described in our comments above.

6303.38(e) should specify that DCHA will grant an extension if the family is unable to obtain the information or materials within the required time frame and requests an extension.

6303.38(f) was edited from the emergency rulemaking to shift the burden to the applicant to request the assistance of an "advocate, interpreter or other assistant" with the application and eligibility interview process. The final regulation should undo this edit and clarify that DCHA will both permit an advocate, interpreter or other assistant to assist the family and will reschedule an eligibility interview to allow an advocate, interpreter or other assistant to attend the eligibility interview with the family.

6303.38(h) - There should also be a process that allows families to schedule appointments at times that fit their schedules instead of DCHA just assigning appointments.

6303.38(g) - This regulation should clarify that DCHA shall provide "translation and interpretation services" and reschedule eligibility interviews as necessary to accommodate the provision of such services.

6303.43 - DCHA should continue to provide applicants who are deemed ineligible with the right to have their application reviewed by an independent third party as described in 14 DCMR 6107.7(a) in addition to the right to have an informal hearing.

Additional regulation:
DCHA should add a regulation so as to retain its former 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. Even if DCHA does not maintain an "inactive waiting list," they should fashion a clear policy that says that applicants may resolve debts or show proof that the debt has been resolved and be reconsidered for admission as if they had not been removed from the waiting list in the first place.

CHAPTER 64: Occupancy Standards and Unit Offers

6401 OCCUPANCY STANDARDS

6401.7 and **6401.8** - While DCHA's revisions address some of our prior comments, DCHA should consistently use the term "gender" instead of "sex." DCHA should edit 6401.8(a) to replace the term "opposite sex" with "different genders" and edit 6401.8(b) to replace the term "same sex" with "same gender."

6401.14 - This regulation should clarify that requests must either be submitted in writing or that DCHA will assist a family in reducing a request to writing.

6402 UNIT OFFERS

6402.4 - This regulation is inconsistent with 6302.18, which states that "emergency transfers" as defined in 7701 are exempted from the 5-to-1 ratio for prioritizing new admissions from the waiting list to transfers. Because of this inconsistency, DCHA's true policy is unclear.

6402.6, 6402.9, 6402.10 and **6402.13** - We appreciate that DCHA has largely adopted our recommendation that applicants be allowed to refuse unit offers for good cause, and that the circumstances that may constitute "good cause" are non-exclusive.

However, the refusal of two unit offers, even without "good cause," should not automatically result in an applicant being removed from all waiting lists, especially under DCHA's proposed policy of allowing applicants to select up to 5 properties that they want to be considered for. Instead, this regulation should be amended to add, "If DCHA determines that an Applicant's refusal to accept a unit is without good cause, the Applicant must be given an opportunity to voluntarily ask to be removed from the waitlist for that site/property without impacting the Applicant's placement on other waitlists." Allowing a degree of choice and personal preference

is important because people's circumstances and preferences may change, and the characters of certain sites or properties may change, during the course of the many years that an Applicant may remain on a waitlist. Applicants should have an ability to adjust their preferences somewhat in response to changing circumstances without foregoing completely their ability to receive housing.

6402.7 - This regulation should make clear that the timeline for accepting or refusing a unit offer does not begin until DCHA actually makes contact with the Applicant by telephone. Applicants should be given 10 days from the date that they were contacted by DCHA to view the unit. This is consistent with the current 14 DCMR 6111.8 and reflects the reality of people's busy and complicated lives, balancing work, childcare, eldercare, their own healthcare needs, transportation difficulties, and more. Applicants should then be given an additional 3 days after viewing the unit to accept or refuse the unit. Applicants who cannot be reached by telephone should be given 21 days to respond to a letter from DCHA and schedule a time to view the unit. Having 21 days to respond to a letter is important because mail does not reliably arrive in a timely manner, and it often takes a number of phone calls to reach the correct person, or any person, at DCHA. Applicants should not be penalized.

6402.9 - A clause should be added to the end of this regulation to clarify its meaning: "Applicants may refuse to accept a unit offer for 'good cause' without *adversely affecting the Applicant's position on any public housing waiting list*."

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

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

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

6402.10 - This regulation should be edited slightly to clarify that, in the case of a unit refusal for good cause, "the applicant shall not be removed from any waiting list" and shall remain at the top of the waiting list until the family receives "the required number of unit offers specified by this Chapter."

CHAPTER 65: Income and Rent Determinations

6501 ANNUAL INCOME

6501.5 - This regulation and its subsections can be greatly improved by changing phrases such as "DCHA reviews and analyzes" to "DCHA will review and analyze" so that the regulation is not merely descriptive but proscriptive. For example, in subsection (c) where it says, "In such cases DCHA calculates annual income…," that phrase should be edited to say, "In such a case, DCHA will calculate annual income…." These edits ensure that the regulation articulates a clear policy (and therefore imposes a requirement on DCHA), as opposed to simply describing a general practice.

6502 DETERMINING ANNUAL INCOME

6502.13(c) - Notwithstanding the prospective elimination of the Earned Income Disallowance (EID) under HOTMA, for families still eligible for or currently receiving the EID, DCHA could, and should, use its MTW authority to 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.

6502.25 - The words "and any payments to individuals or families based on need that are made under programs funded separately or jointly by federal, state, or local governments" should be removed from this regulation. 24 CFR 5.609(b)(6) specifies that only TANF income counts towards annual income, not "any payments…based on need." This is an important distinction because, for example, the way DCHA has worded this rule, SNAP benefits could be counted as income, even though that money can only legally be used to pay for food and it is excluded income under HOTMA. *See* PIH Notice 2023-27.

6506 CALCULATING RENT

6506.30 - While it is good that DCHA may grant requests for relief from charges in excess of the utility allowance on "reasonable grounds," the factors DCHA will consider and the process that DCHA will follow to consider and render a decision on such a request are not clear. This policy should be further fleshed out so that DCHA, residents, and property managers all understand what is required by whom and how DCHA will make a decision.

6506.31 - DCHA should adopt and affirmatively state in these regulations that if a public housing Lessee in privately managed mixed finance property is responsible for directly paying the utility bill and overdue payment places them at risk of having their utilities disconnected, DCHA will pay the overdue utility bill and/or have the utility service switched into DCHA's name to avoid having the utilities disconnected. As HUD notes in their Guidelines, "[t]his is a helpful tool for PHAs to protect the integrity of the unit (e.g. to prevent the pipes in the unit from freezing) [and] to protect the health and safety of residents." (Public Housing Occupancy Guidelines, Utilities, p. 5).

6506.33 - This regulation should be edited to indicate that information on reasonable accommodation and individual relief for charges in excess of the utility allowance will be provided to all residents with tenant-paid utilities at move-in and with any notice of proposed allowances, schedule surcharges, or revisions. This regulation should clarify whether DCHA will provide this information or whether the property manager of the privately-managed or mixed-finance property will provide this information.

6503.36 - This regulation must be clarified to say "if the excessive consumption…is beyond the family's control…, *DCHA will grant the family relief from charges in excess of the utility allowance.* The ~~individual~~ relief to the *family* ceases when the situation is remedied."

CHAPTER 66: Verification

6601 GENERAL VERIFICATION REQUIREMENTS

6601.4 - 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, and states that such revocation does not result in denial or termination of benefits unless the PHA

establishes a policy. DCHA should allow families the ability to revoke this consent without automatic denial of admission or termination of assistance.

6601.8 - The regulations should make clear that HUD requires DCHA to use the most reliable form of verification available and document reasons when it uses a lesser form. The new language is not as concrete and seems to allow DCHA discretion to not follow the hierarchy of forms of verification. DCHA should not require any third party verification of income from residents/tenants unless the HUD EIV system or a non HUD UIV system returned no result.

6601.10 - The regulation should strike the phrase "be damaged" because it is likely to present an unnecessary hurdle to residents/applicants. A document that may be damaged but otherwise legible should be accepted. Forcing applicants and residents to produce documents without damage ignores the reality that many residents and applicants may lack ways to properly store or maintain important documents.

6601.15 - The regulations should make clear that, if a family disputes the accuracy of UIV data, "no adverse action can be taken until DCHA has independently verified the UIV information and the family has been granted the opportunity to contest any findings through DCHA's informal review/hearing processes." If a family challenges UIV information, it is improper and inequitable to take the adverse action before allowing for review and investigation. The previous regulation provided for that.

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

6601.27 - HUD requires a minimum of 2 current and consecutive pay stubs for determining annual income. DCHA's policies are now silent on how many pay stubs DCHA will require. The regulation should be explicit that DCHA will ask for 2 paystubs and then has discretion to ask for more if necessary because of sporadic income, etc.

6601.38, 6601.40, 6601.41 - 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 states that "Upon HUD approval, DCHA will implement an MTW policy permitting DCHA to accept the family's self-certification…" It is not clear why HUD approval is needed for something explicitly permitted in the regulations.

6602 VERIFYING FAMILY INFORMATION

6602.10, 6602.15, 6602.29 - These regulations have added language stating that specific facts will only be verified once "unless DCHA has reason to believe the information provided is inaccurate." No specificity is provided for what constitutes reason to believe information is inaccurate. Adding this language undermines the protection from administrative burden that families receive by only having to provide documents once. If DCHA has valid reason to believe the information provided is inaccurate, DCHAhas other means of verifying information such as through federal or local databases.

6602.28 should specify "Federal housing assistance is not available…" Since DCHA administers several local assistance programs that are available to immigrants, this clarification is necessary.

6602.31 - This regulation should specify what is required for whom, not just say that requirements vary.

6602.33 - This regulation has added a requirement that eligible immigrants under the age of 62 must provide verification of their status, in addition to DCHA verifying their status with USCIS. If DCHA must verify the status regardless, it is unnecessary for the family to also provide verification.

6603 VERIFYING INCOME AND ASSETS

6603.3 - This regulation cites a definition in § 6601.24 that does not exist. The regulations in § 6601 do not define the amount of pay stubs required (see above comment for § 6601.27).

6603.4(c) - If a self-employed person is already submitting complete financial statements, those financial statements should be considered presumptively valid. It is bureaucratically burdensome and inefficient for DCHA to request additional supporting documents for such financial statements at any reexamination.

6603.22 - Families making zero income should be treated no differently than families that have income. Reexaminations are administratively burdensome for PHAs and participants. Allowing for reexaminations at DCHA's discretion 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 conducting an interim reexamination every 6 months or requiring them to report income increases in between biennial/triennial recertification would be beneficial or make them more likely to increase their

income – in fact, it may have the opposite effect given the amount of time completing recertifications takes. DCHA should instead require families making zero income to report any employment, or receipt of benefits within 30 days of receipt and conduct a reexamination at that time.

CHAPTER 67: Leasing and Inspections

6701 LEASING

6701.4(m) - There is no DCHA Tenant Bill of Rights, only a "Public Housing Bill of Rights" and/or the D.C. Tenant Bill of Rights published by the D.C. Office of the Tenant Advocate. This regulation must be clarified to refer to the appropriate document.

6701.6, 6701.14(a) - The Rent Change letter should only serve as a supplement to the lease if the tenant does not dispute the calculation. If a tenant requests a rent review or informal hearing, the regulation should be clear that the Rent Change letter is not a supplement to the lease until the administrative process has been finalized.

6701.14(g) - A security deposit should only be paid once under DC law and cannot be unilaterally changed to increase a tenant's obligation during their tenancy. Transfer tenants should not be required to pay additional security deposit amounts.

6701.15, 6701.16 - These regulations seem overly broad because tenants are generally not legally obligated to accept lease addenda that substantially alter their obligations under the lease unless they expressly agree to it. For example, if a tenant moves into a unit that has utilities included, a landlord could not simply issue a lease addendum to make the tenant responsible for the payment of utilities. Therefore, DCHA cannot lawfully unilaterally change a Lessee's obligations without a formal modification with express assent. DCHA should narrow the regulations to state that a Lessee only has to accept modifications required by DC and federal law.

6701.18 - This regulation should provide that if a Lessee disputes the legality of any added provisions to the lease, DCHA shall take no adverse action against the Lessee until the administrative process has been finalized.

6701.19 - The regulations no longer explicitly state that residents and resident organizations must be provided at least thirty days' written notice of modification or revision of schedules of special charges and rules and regulations and the opportunity to present written comments. It also no longer states that comments must be taken into consideration before any proposed modifications or revisions become effective. The regulations should be clear that residents and resident

organizations will receive this notice at least 30 days in advance of any change, will have the right to comment on proposed changes, and DCHA will take these comments into consideration.

6701.20, 6701.21 - DCHA should broaden the regulations to provide DCHA the ability to waive security deposits for applicants who can demonstrate that they have no income or for whom paying a security deposit would result in undue financial hardship.

6701.23 - This regulations falls short of DC laws which require that if a landlord uses any portion of a security deposit to cover any appropriate charges such as unpaid rent or costs of repairs for damage that exceeds wear and tear, the landlord shall provide the tenant with an itemized document showing the deductions and the reason(s). Thus, the regulation should be amended to say that DCHA will provide an itemized document to a former tenant showing any deductions made from the security deposit and the reason. The regulation should also provide that a tenant can use the administrative process to challenge any use of their security deposit they believe is improper.

6701.24 - DCHA should pay interest to tenants on security deposits. While 14 DCMR § 308.8 does not require federally-subsidized housing properties to pay interest on security deposits, almost all federally-subsidized landlords in D.C. do pay interest on security deposits. Further, 24 CFR 966.4(b)(5) requires that interest earned on security deposits either be refunded to tenants or used for tenant services or activities. For these reasons, DCHA should change 6701.24(c) to say that, notwithstanding 14 DCMR § 308.8, DCHA will pay interest on security deposits as otherwise described in 14 DCMR § 308.

6701.27 - If the Lessee transfers to a new unit and is sued based on any consent judgment agreement, settlement agreement, pending cause of action, notice to vacate, notice to cure or vacate or notice of past due rent, or repayment agreement that relates to the old unit, then the rules should be amended to reflect that the Lessee may challenge any amounts owed or conduct alleged based on the conditions or situations concerning the prior unit.

6701.30 - This regulation should be amended to be consistent with language used elsewhere in this section. The Notice of Rent Adjustment is used here while a Rent Change letter is used in 6701.6. If there is a substantial difference between the two or they are used interchangeably, that should be made clear.

6701.31 - 24 CFR 966.4(b)(4) says that late charges "shall not be due and collectible until two weeks after the PHA gives written notice of the charges. Such notice constitutes a notice of adverse action, and must meet the requirements governing a notice of adverse action (see § 966.4(e)(8))." This regulation or 6701.32 should specify that tenants have at least two weeks to pay late charges. In addition, this is a significant increase in late charges. The maximum late

charge should be the lesser of 5% of the monthly rent or $10, as this is a much more reasonable amount for public housing families on limited income. Increasing a monthly late fee to up to $50 puts an undue financial burden on residents who may already be struggling to pay their rent in light of other bills and rising costs.

6701.33 - The "shall" in this regulation should be changed to a "may." Neither federal nor local regulations require DCHA to send a notice of intent to file a claim when a tenant is only a few days behind on rent payments. Indeed, D.C. Code § 42–3505.01(a-1) prohibits evictions when the amount owed is less than $600. Given the variety of circumstances of public housing residents and the large number of tenants whose monthly rent is less than $600, mandating that an intent to file a claim be sent whenever someone does not pay rent by the 10th of the month does not make sense.

6701.36 - Where DCHA intends to charge the tenant for maintenance and repair "beyond normal wear and tear," DCHA should reference how it defines the term. We are concerned that this regulation could be used to charge tenants for repairs that are DCHA's obligation to make. It is common knowledge that the majority of DCHA's housing stock is in deplorable condition. Tenants should not be expected to pay for maintenance that is a result of years of DCHA's deferred maintenance, if DCHA can use a standard as vague and undefined as "normal wear and tear."

Additionally, the regulation should provide that a resident may challenge DCHA's assessment using all processes available under DC or federal law and DCHA shall not take any adverse action until the resident's challenge has concluded.

6701.38 - Federal regulations state that PHAs cannot charge tenants for maintenance and repair beyond normal wear and tear until at least two weeks after the PHA gives written notice of the charges. The regulations also do not prevent PHAs from setting a longer time. See 24 CFR § 966.4(b)(4). For example, the Housing Authority of Baltimore City's ACOP states that such charges are not due and collectible until **thirty calendar days** after written notice (Housing Authority of Baltimore City, Public Housing Admissions and Continued Occupancy Policies, 2023, p. 11-6). Any additional costs in a month can be difficult for a household with a low income to absorb. Providing thirty calendar days before maintenance and repair charges become due would give residents more time to budget for the cost and allow residents who are paid every two weeks to receive two paychecks and be more likely to pay the charges on time.

6701.40 - Nonpayment of maintenance and damage charges should not be grounds for eviction. This is essentially eviction for non-payment of a debt. DCHA should use other means to collect debt, not making people homeless. Additionally, in these regulations, DCHA should specify that pursuant to federal regulations, it will not take action against a tenant for nonpayment of maintenance and damage charges until the time for the tenant to request a grievance hearing has

expired and if a tenant requests a grievance hearing, DCHA will not take action for nonpayment of the charges until the conclusion of the grievance process. See 24 CFR § 966.4(e)(8)(ii)(B).

Requiring charges to be paid within 14 business days is a significant burden for tenants with limited income. DCHA should provide more time before charges become due. See above comment for § 6701.38.

In addition, a blanket statement that nonpayment of maintenance and damage charges is a "serious" lease violation is overly general and overly punitive. Whether such a situation is a serious violation of the lease requires case-by-case consideration and analysis.

6701.41 - DCHA should also specify that it shall comply with the requirements of the DC Property Maintenance Code as it relates to heating (12G DCMR 602) and to air conditioning (12G DCMR 608.1), and any other applicable local or federal cooling standards regarding safe internal temperatures in rental units (e.g., NSPIRE standards).

6702 INSPECTIONS

6702.4 and **6702.5 -** As stated in the comment above regarding regulation 6701.36, in any subsection that references maintenance and damage beyond normal wear and tear, DCHA should reference how it defines the term "normal wear and tear."

6702.9 - This regulation should also provide that DCHA shall maintain inspection reports in residents' files until a resident either vacates the unit willingly or via the eviction process.

6702.11 - Previous regulations do not allow for DCHA staff to enter a unit to do a housekeeping inspection, to check on the unit condition outside of regular inspections, or to check for a suspected lease violation. These are unreasonable invasions into people's privacy and interfere with a family's quiet enjoyment of their home. Therefore, subsections (a), (b), and (c) should not be added.

6702.23 - DCHA should also include in these regulations that as part of its obligation to maintain dwelling units and buildings in decent, safe, and sanitary condition, DCHA shall:

a. "[I]ncorporate ongoing lead-based paint maintenance and reevaluation activities into regular building operations in accordance with 24 CFR § 35.1355." (24 CFR § 35.1120(c)); and
b. Incorporate ongoing inspection for and maintenance to remediate indoor mold hazards in accordance with D.C. Code § 8-241.04.

6702.26 - Previous DCHA inspections and the recent HUD inspection have found that **many** public housing units in DC are not in decent, safe, and sanitary condition as required by 24 CFR § 966.4(e). (HUD Report, Finding PH 31). Given how widespread serious conditions problems

are across DCHA housing, it is possible that offered alternative accommodations will also contain health and safety hazards of reasonable concern to tenants. Tenants should not be punished with lack of abatement for rejecting an alternative accommodation offer with good cause. Therefore, we recommend clarifying that provision to state "or if the resident rejects the alternative accommodations without good cause."

6702.30, 6702.31 - These regulations are repetitive to provisions in 6701 and only provide a very general, self-referential citation to Chapter 67 rather than citing to the specific provisions referenced. As mentioned previously, in any subsection that references maintenance and damage beyond normal wear and tear, DCHA should reference how it defines the term "normal wear and tear."

6702.32 - Adding this provision as a regulation is unnecessary when these obligations are already included in the model lease.

6702.33 - The addition of "clutter that in DCHA's sole discretion affects or may affect the health and safety of the dwelling unit or on the premises" is overbroad and provides excessive discretion to DCHA and is likely to lead to arbitrariness. If clutter is truly significant to rise to the level of a lease violation, the tenant requirements in the model lease and under D.C.'s housing code should be sufficient for enforcement. **6702.41 -** The regulation should be clear that family obligation to allow access to the unit to make repairs is subject to proper notice under 6702.13-19.

6703 SMOKING POLICY

6703.1 - 6703.8 - These regulations should more clearly state that the smoke-free policy applies within DCHA's administrative offices and applies to all DCHA staff, personnel, and contractors (not just employees). The regulations should also provide for clear no smoking signage to be placed in public housing apartment buildings and the common areas of townhome properties.

CHAPTER 68: Reexaminations

6801 ANNUAL REEXAMINATIONS FOR FAMILIES PAYING INCOME BASED RENTS

6801.15 - Families transferring to a new unit should not need a new reexamination. Prior DCHA regulations did not require a reexamination when a family transferred units. Most transfers happen because of an emergency or because of a redevelopment. Unless families are moving because of a change in family composition, there is no reason to require them to gather documents and go through recertification while also moving.

6801.17 - For years, DCHA did not have a requirement that families participate in in-person reexamination interviews. Former 14 DCMR 6118.1(a), gave families 30 days to return a recertification packet with documentation. The newly-proposed 6802.12 says that families paying flat rents are generally not required to attend an interview for an annual update. The agency should not impose this new requirement on families. DCHA says that it is trying to support families in being economically independent, but this requirement means that an adult family member has to attend an appointment during the work day (the only time that on-site property management offices are open), causing them to miss work and often miss out on pay. Imposing this requirement makes particularly little sense post-public health emergency, when both agency staff and program participants have learned to perform a variety of functions without in-person contact. This requirement also places an additional, unnecessary burden on DCHA staff. Finally, implementing the hardship exemption will further burden DCHA's already overburdened ADA/504 office. If an in-person interview is not necessary for people paying flat rents, it should not be necessary for those paying income-based rents. For all of these reasons, the requirement for an in-person interview should be eliminated. If the requirement is implemented, there should be additional categories of exceptions for other kinds of hardships such as losing income, inability to miss work, inability to find childcare, temporary illness (like the flu), etc.

6801.18 - If DCHA is going to have in-person interviews, it should specify that notifications of the date of the interview will be sent at least 30 days in advance. Given the postal system, the need to take off from work and/or arrange childcare, combined with the need to collect all necessary documents, 30 days is a reasonable time period. DCHA should also seriously consider delivering these notices to tenants' doors since they all live on public housing properties.

6801.29, 6801.30 - Both of these regulations should be eliminated. HUD neither requires nor recommends annual criminal background checks for public housing residents. HUD's June 10, 2022 Memorandum on the Implementations on the Office of General Counsel's Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions includes this guidance: "Housing Providers should evict for criminal activity only as a last resort (which includes conducting an individualized assessment to determine if eviction is necessary)." 24 CFR 5.903 has significant limits on disclosing criminal conviction records even within a PHA. Given that the HUD report also found that "DCHA is not safeguarding personally identifiable information" and that PH 15 says that DCHA is improperly maintaining criminal records in tenant files, it is even more important that DCHA limit its requests for criminal background information to those required by HUD regulations or a reasonable suspicion that someone has engaged in criminal activity affecting a public housing property. Checking the lifetime sex offender registration as described in 6801.31 and 6801.32 is sufficient.

6801.29 is particularly problematic, and the changes make it worse. Both DC and federal law have limits on how criminal records can be used in the housing context. DCHA giving itself blanket authority to use these records however it wants carries the risk that agency staff knowingly or unwittingly engage in discriminatory or other unlawful behavior when using these records.

6802 REEXAMINATIONS FOR FAMILIES PAYING FLAT RENT

6802.13 - DCHA should strive to notify residents in more than one way to ensure receipt. This regulation should specify that notification will be sent by mail and email. DCHA should seriously consider hand-delivery or posting notifications to residents, too, since they live on public housing properties managed by DCHA.

6802.14 - Families should be given 30 calendar days, not 10 business days, to submit documentation to DCHA. Former regulation 14 DCMR 6118.1(a) gave families 30 days to return a recertification packet with documentation. Given that mail sometimes takes as long as 5 business days to arrive, limiting families to 10 business days gives them less than a week to gather their documents and send them back to DCHA. For families mailing the required documentation, the documentation could arrive late even if they put it in the mail the day after they receive the notice. A large number of documents are required for recertification, often requiring trips to the bank or asking payroll departments for paystubs. Families with children and/or jobs need time to complete all of these tasks. Giving families 30 days has worked successfully for years. Families should not be given less time to submit reexamination documents.

6802.15 - DCHA should also call families to let them know what is missing. Many public housing residents have difficulty reading and understanding notices or do not know what documents can be used to fulfill a missing requirement. Many issues with reexamination documents could be avoided with a phone call.

6802.18, 6802.19 - Both of these regulations should be eliminated. HUD neither requires nor recommends annual criminal background checks for public housing residents. HUD's June 10, 2022 Memorandum on the Implementations on the Office of General Counsel's Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions includes this guidance: "Housing Providers should evict for criminal activity only as a last resort (which includes conducting an individualized assessment to determine if eviction is necessary). 24 CFR 5.903 has significant limits on disclosing criminal conviction records even within a PHA. Given that the HUD report also found that "DCHA is not safeguarding personally identifiable information" and that PH 15 says that DCHA is improperly maintaining criminal records in tenant files, it is even more

important that DCHA limit its requests for criminal background information to those required by HUD regulations or a reasonable suspicion that someone has engaged in criminal activity affecting a public housing property. Checking the lifetime sex offender registration is sufficient.

6803 INTERIM REEXAMINATIONS

6803.13 - The proposed change in this regulation from 30 days to within a timely period makes it worse. In a document that shortens tenant deadlines in almost every situation, DCHA should not give itself more flexibility to perform its tasks more slowly. This is particularly true in the case where a household member is being added. DCHA's decision may impact spouses and step-children being able to move into a unit or, even worse, the ability of a family to take in a foster child or foster adult who is likely to be in urgent need of a place to live.

6803.15 - This regulation should be deleted. It conflicts with **6803.17** and **6803.18**, which provide concrete guidance on when DCHA can conduct interim recertification. On the contrary, this phrasing gives DCHA unlimited discretion to demand that tenants recertify any time for any reason. This is an unreasonable standard and is a significant departure from DCHA's years-old policy of limiting the number of recertifications that are required to minimize the administrative burden for both the agency and the tenants.

6803.17(b) - 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 a family to report income increases in between biennial/triennial recertification, would be beneficial or make the family more likely to increase their income – in fact, it may have the opposite effect, given the amount of time completing recertification takes.

6803.24 - DCHA should also allow families to report changes in income or expenses by phone, in addition to mail, email, or in person.

6803.26(b) - For clarity, this sentence should read: "Rent decreases are effective on the first <u>of the month</u> after the change <u>is reported</u>."

6805 OVER-INCOME FAMILIES

This section should specify what exactly happens when a family is terminated for being over-income, either by describing the process in this section or referring to another section in the

regulations that describes the termination process. DCHA should also consider how this process will comport with applicable DC law.

6805.4 - DCHA should consider rewording the phrase, "DCHA will notify the family in writing that over-income policies no longer apply to them" to more accurately describe what happens when a family is no longer considered over-income (i.e., "DCHA will notify the family in writing that the family is no longer considered over-income").

CHAPTER 70: Assistance Animals and Pets

7001 ASSISTANCE ANIMALS

7001.8 - This regulation should be edited to say "DCHA will next determine whether…" to be appropriately proscriptive and stylistically consistent with DCHA's overall edits to the ACOP.

7001.9 and **7001.10** appear superfluous and redundant of other, clearer regulations at 7001.16 and 7001.17. DCHA should seek to eliminate superfluous regulations in this sub-chapter, as they cause more confusion than clarity.

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

7003 PET POLICIES FOR ALL DEVELOPMENTS

7003.2(d) should be eliminated, as it provides for no objective way for DCHA to determine whether a pet owner is able to comply with house rules in advance. This regulation opens up the possibility of age, gender, and disability discrimination as well as the possibility that property managers will use this discretion to retaliate against tenants for personal reasons or in illegal or discriminatory ways.

7003.9 - Subsection (a) makes sense as a definition of "common household pet." Subsection (b), however, prohibits many common household pets such as hamsters and guinea pigs, which are rodents, and turtles, which are reptiles. Indeed, pet stores commonly carry and sell varieties of lizards and insects as pets. These are common pets that are generally less expensive to buy and maintain than dogs and cats. Therefore, subsection (b) should be eliminated or at least limited to

only numbers 5 and 6 on the list. Alternatively DCHA should return to its former regulation, which said: "Only domesticated animals that are commonly kept as household pets, such as dogs, cats, birds, rodents, fish, or turtles, are permitted. The term 'common household pet' shall not include reptiles, other than turtles." 14 DCMR 6126.3

7003.9(c)(1) - It is not reasonable to allow dogs and not allow dogs over 25 pounds. Low-income residents of public housing are most likely to get their dogs from shelters. Dogs like beagles, basset hounds, poodles, and cocker spaniels are all over 25 pounds as adults. There is no reason that DCHA should be limiting the range of permissible dogs this narrowly. The result will likely be more people applying for exceptions to this rule as reasonable accommodations and more paperwork for DCHA staff instead of people being able to have medium-sized dogs that are readily available at local shelters. Further, prior DCHAregulations only limited dogs to 40 pounds, and it would be unfair to change a policy and potentially force tenants to give up dogs that DCHA previously allowed.

7003.12(e) - This restriction is overly broad and out of line with reality. Exercising pets includes walking them, and pet owners will need to walk their pets through various parts of property in order to take them on a walk. 7003.12(b)already requires that dogs and cats must be on a leash or carried. Unduly restricting where residents may walk their pets by regulation is unnecessary and ripe for abuse by staff.

7003.19(d) - The proposed policy states that residents must designate two responsible parties to care for their pet in the event of owner incapacity. This requirement places an unreasonable burden on residents, and potentially penalizes socially isolated individuals. At a maximum, DCHA should require pet owners to designate <u>one</u> responsible party, and residents should have a process for requesting a waiver of this requirement.

7003.19(e) - This policy is unnecessary and overly burdensome on both the resident with the pet and the hypothetical other resident who agrees to care for the pet; as a result, it should be deleted. Residents may rely on non-residents to help care for their pet, and subjecting residents specifically to added paperwork and penalties is neither a better guarantee that the pet will behave appropriately nor an aid to residents being able to comply with these requirements.

7003.22 - 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."

7003.23 - The proposed policy states that pets not owned by a tenant are not allowed on the premises. DCHA should clarify that this does not apply to service and assistance animals of tenant guests.

7003.24(c) - The proposed policy states that, if it is determined that a resident/pet owner has violated rules regarding dog bites and animal cruelty, the resident will receive a notice stating that failure to correct the violation, request a meeting, or appear at a requested meeting "may result in initiation of procedures to remove the pet, or to terminate the pet owner's tenancy." Termination of tenancy should not be pursued before DCHA first attempts to initiate procedures to remove the pet, and this regulation should be amended to clarify that DCHA will explore the latter as a first resort.

7004 PET DEPOSITS AND FEES

7004.3 - Pet deposits should not be more than the total tenant payment. In addition, an earlier ACOP proposal listed the pet deposit as the higher of the total tenant payment or $50, and now DCHA is proposing $100. The pet deposit should be the lower of $100 or the total tenant payment. Further, DCHA should maintain its former, less financially burdensome policy of allowing pet owners to pay a refundable pet fee in monthly installments. 14 DCMR 6126.3(b)(6).

CHAPTER 73: COMMUNITY SERVICE

The community service and economic self-sufficiency requirement remains difficult for residents to understand, and DCHA should consider further streamlining and revision of this Chapter to make it easier to understand and implement. To date, residents have not been provided a detailed explanation of allowable activities, how to log hours, who to submit them to and how to request an exemption. In order for residents to successfully comply with these new community service requirements, these details have to be communicated clearly.

In addition, DCHA should flesh out further and explain how it is going to administer this annual requirement when most residents will have biennial or triennial reexaminations, and it should edit the regulations in this Chapter to appropriately refer to biennial or triennial reexaminations. Similarly, this Chapter appears to be the only chapter that refers to "lease renewal." Lease renewal is not required by DC law, as leases continue on a month-to-month basis after the end of the initial lease term. While we take "lease renewal" to mean or imply some sort of annual anniversary date, this does not line up with the schedule of biennial and triennial reexaminations, and thus the timelines in the regulations that are tied to "lease renewal" do not make sense.

7301.6 - 7301.6(c) should be combined with (b) to clearly refer back to the persons defined in (b). In addition, for this regulation to be actually useful to residents and DCHA staff, DCHA

should amend it to refer more clearly to work exemptions under DC's TANF state plan and DHS's regulations for SNAP recipients and list out parenthetically examples of who is exempt from the requirements under each program.

7301.15 and **7301.16** - These regulations should be clarified and fleshed out further because they remain vague to the point that residents do not understand the process. DCHA could include in its regulation an Appendix including the description of the community service requirement it will provide residents; specify that it will provide residents with a form to claim status as an exempt person (and the form itself should include easy-to-understand, check-the-box categories of exemptions that incorporate work exemptions under TANF and SNAP); and explain how DCHA will verify exempt status (i.e., will DCHA request documentation from the resident, the family, or from another agency like DHS or SSA). 7301.16 should specify how and when DCHA will notify the family of its determination (i.e., in writing and within a set timeframe) of which family members are subject to the requirement and which are exempt.

7301.35, 7301.39 - If DCHA will do an annual review for compliance and send reminder notices as suggested by the proposed regulations, it should allow families to report a change in exempt/nonexempt status at the annual review or within a timeframe that is reasonably after the reminder notice gets sent to the family. Given how confusing the community service requirement and the exemption categories are, families cannot be expected to know when a change occurs or remember to report such changes. DCHA should work with families to help them identify when someone becomes exempt/nonexempt and should not penalize families who fail to report a change.

New regulation - DCHA should create (or clarify) an exception to the community service requirement in the case where a head of household has requested or attempted to remove a household member from the lease who would otherwise be required to satisfy the community service requirement. The family should not be penalized if a person they are seeking to remove from the household fails to satisfy the community service requirement (or if the family is unable to get that person's cooperation to prove they have complied).

7302 I.D. DOCUMENTATION AND VERIFICATION

7302.4 - This is an example of a potentially superfluous/redundant regulation that repeats the same policy as in a prior subchapter and which DCHA could eliminate to streamline this Chapter and make it easier to read and understand. If DCHA keeps this regulation, it should say "DCHA will make…" so that the regulation is proscriptive rather than descriptive. The same could be said for 7302.3 and 7302.6.

7302.8, 7302.9, 7302.10 - These regulations are confusingly worded and overly vague. They make it unclear whether DCHA allows self-certification (by phrasing the regulation as, "If DCHA accepts self-certification…"). They also imply that self-certification is not acceptable by itself, because DCHA will nevertheless "validate" a sample of self-certifications through third-party documentation, which itself is a phrase whose meaning is unclear. What does it mean to "validate" (is this the same as verify)? What constitutes a "sample" (how many)? Why is self-certifications plural, when presumably a person would self-certify annually their compliance with the requirement? What third-party will be contacted, and by whom? What documentation must be provided and by when? How are these regulations distinct from 7302.13?

7302.11 - The forms should not have a place for signature, or this regulation and the forms themselves should clearly indicate that additional third party signatures are optional, because family members should be allowed to self-certify. The inclusion of phone numbers is reasonable so that DCHA can verify the completion of qualifying activities.

7302.14 - 7308.17 - These regulations are confusing because they purport to distinguish "non-renewal of a lease" from termination of a tenancy, which is a distinction that is not cognizable under D.C. law. Termination of a lease in DC is only permitted for good cause and can only be effectuated through an eviction action in D.C. Superior Court. Further, this section refers to hypothetical lease provisions that, to our knowledge, are not currently in place. Until such time as a new lease is executed or an existing lease is amended, we believe these requirements to be unenforceable.

7302.22 and **7302.30** - These regulations suggest that the period to grieve DCHA's allegation of noncompliance is limited to 10 days, where the ACOP provides that the timeframe to grieve an adverse action is 6 months. These regulations must be amended or clarified to be consistent with the 6-month grievance time frame.

CHAPTER 74: Reasonable Accommodation Policies and Procedures

7405 OCCUPANCY OF ACCESSIBLE UNIT

7405.7 and **7405.8 -** A resident or applicant on the accessible units waiting list should not be automatically removed from the waiting list because they rejected two offers of accessible units. There are many reasons an accessible unit may be rejected, such as a person with a disability determining that the unit will not meet their disability-related needs. People with disabilities are best situated to determine whether a unit will or will not meet their needs. This policy could be a FHA and DCOHR violation by applying different terms and conditions to people with disabilities that have requested accessible units when compared to those without disabilities on the waiting list. At minimum, DCHA should revise the terms to state that an individual will not

be removed if they have good cause to show that the accessible units offered do not meet their disability-related needs.

CHAPTER 77: Transfer Policy

7701 EMERGENCY TRANSFERS

7701.5 - Victims of violent crimes that do not meet the definition of domestic violence or dating violence who will be in danger if they remain in place should be added to the list of emergency circumstances warranting an immediate transfer.

7701.10 -7701.13 - DCHA's proposed policy suggests that it will require residents to bear the cost for an emergency transfer upfront with reimbursement by DCHA only after the expenses are incurred. This policy should be amended or clarified to allow for DCHA to pay a resident's reasonable moving expenses upfront. Many residents of public housing do not have cash on hand to absorb these costs.

7702 DCHA REQUIRED TRANSFERS

7702.1(g) - Since a mandatory transfer is an adverse action, the notice should include information about appeal rights as well.

7702.4 - DCHA should clarify what is meant by "DCHA shall transfer a family living in an accessible unit that does not require the accessible features." It is unclear who will make that determination and how. It is possible that the needs for the family change over time. DCHA should amend this policy to allow families to remain in an accessible unit if they wish and provide the right to file a grievance if DCHA disagrees with the family.

7702.11(c) - DCHA should enshrine the residents' right to return as promised in Resolution 16-06 adopted by DCHA's board in March 2016 and Resolution 24-51 adopted by DCHA's board in April 2025., DCHA should also ensure that that right is enforceable by including it in ground leases, management agreements, and resident leases. The proposed policy states that a resident "may be allowed to return … depending on contractual and legal obligations," which falls far short of DCHA's promises to residents.

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

7703 TRANSFERS REQUESTED BY TENANTS

7703.4 - DCHA's proposed policy does not properly define what is meant by the term "compliant" with the lease. The list of requirements that follows – including being "current on rent or any repayment agreement," being "current with recertification process," "subject to a citation for any lease violation," having a "good housekeeping record," "subject to Notice to Correct or Vacate or a Notice to Vacate" – are all questions of law or fact and, without clear definition, could be subject to different interpretation by different staff. The proposed policy does not allow for residents to dispute DCHA claims of non-compliance, either. 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, the resident has a right to file a grievance where the burden of proof would be on DCHA.

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

7703.11 - DCHA should clarify the process behind billing tenants for any maintenance or other charges due for the "old" unit including scheduling walkthroughs and providing tenants with invoices for maintenance work done that account for any unreturned portion of the security deposit.

7704 TRANSFER PROCESSING

DCHA should create a system whereby a resident can find their position on the transfer list through an online portal. The current transfer list is opaque and not easily accessible.

7704.1(e) - This proposed policy creates an exception that swallows the rule. It essentially gives the Executive Director power to bypass the transfer list and transfer priority rules "in order to achieve DCHA's stated strategic goals and objectives." There is no explanation provided for why such a rule needs to exist. There is no clarification as to what goals and objectives are referenced. Once adopted, these rules will become permanent and, therefore, they should be drafted based on the goals of the current Executive Director, or the current goals and objectives. At a minimum, DCHA should explain why this exception needs to exist and what guardrails are in place to prevent it from being abused.7704.2 - A transfer for a reasonable accommodation should not be limited to two offers; see our comments to 7405.7 and 7405.86, above. The cross-reference to 7704.4 seems to be in error. We believe this should refer to either 7704.3 or to 6402.9.

7704.4 - Residents should not have to complete a reexamination when they transfer units; see our comment to 6801.15. Changing a resident's reexamination date when they transfer also seems potentially much more cumbersome for DCHA and the resident to administer and comply with.

CHAPTER 78: Lease Terminations

7800 INTRODUCTION

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

7800.4 - This section should be amended to read "DCHA has the authority to terminate the lease based on the Lessee's failure to comply with HUD regulations, for serious or repeated violations of the terms of the lease, and for other good cause *as defined under DC law or in accordance with the regulations at 24 CFR 966.4(l)(2).*"

7800.5 - This section is in conflict with local law and unreasonably expansive. District law provides a three-year statute of limitations in contract actions. The regulations should require that DCHA bring actions based on breach of lease within these same time limitations, both to maintain consistency with DC law and to ensure that tenants are able to adequately defend against these claims and have a reasonable measure of housing security.

7801 TERMINATION BY TENANT

7801.1(d) - The insertion of "In order to be valid," here generates confusion and needlessly creates a vague and unreasonable standard for DCHA to determine that a Lessee has terminated their lease with DCHA. The phrase should be deleted so that the obligation to leave the unit in a clean and good condition and return all keys and other entry devices remains but does not create a subjective gray area around whether a tenant has voluntarily terminated their lease and vacated.

7801.2 - This section should be amended to extend the time for remaining family members to notify DCHA of the death or departure of the Head of Household to at least 30 days, if not more. Fourteen days, particularly in the case of death of the Lessee, is unreasonable short and harsh, given the emotional, financial, and logistical challenges the family may be experiencing following the death or departure of a loved one who was also the Head of Household, including but not limited to the steps involved in determining guardianship of minors following such a death or departure.

7801.4(d) - Subsection (d) does not take into account potential challenges and delays for an adult not listed on the lease to commence guardianship proceedings. DCHA should consider evidence of a caregiving relationship and a statement that the applicant intends to commence guardianship proceedings sufficient for provisional approval as Head of Household, unless another adult produces evidence that that relationship is contested or they are seeking or have been granted guardianship.

7802 LEASE TERMINATION BY PUBLIC HOUSING AUTHORITY

7802.1 - We appreciate that DCHA has changed "shall terminate" to "may … terminate" a lease in this section. Still, the regulation does not make clear that under DC law, a tenant generally cannot be evicted for one serious violation of a lease term and must be given the opportunity to cure (other than in the case of "one-strike" cases).

7802.2 - This provision is in conflict with local law and basic legal principles. District law imposes a statute of limitations of 3 years on claims for breach of contract, including lease violations. This is already significantly longer than District law affords other housing providers, who are required to serve a Notice to Cure or Vacate within 6 months of an alleged violation of an obligation of tenancy. DCHA's regulations should be written to require DCHA to comply with local law, which prevents housing providers from holding legal claims rather than timely raising them, a practice which both prevents tenants from mounting a fulsome defense and creates too great a risk for potential abuse.

7802.3 and 7802.4 - The categories of persons covered by these provisions are overly expansive and should be limited to "household members, guests, and live-in aides." "Visitors" (a term not defined in the ACOP), "unauthorized occupants," "others under the Lessee's control or on the Premises with Lessee's consent" (including those using or occupying the premises with "actual or implied consent") are unreasonably expansive categories of people for DCHA to presume to be within the Lessee's control, and seeking to enforce the lease based on the actions of such persons would lead to potentially absurd and overly punitive outcomes. Including these additional categories of people also does not appear to be supported or required by federal regulations or local law.

Additionally, by saying that a "violation of any of the terms of the lease … shall be considered a serious violation of the lease," DCHA removes any apparent discretion to distinguish between material and non-material violations of the lease or to exercise its judgment in determining whether a violation is sufficiently serious or repeated to warrant the severe consequence of termination. We do not believe DCHA's intent was to limit its discretion in this way, but this section must be reworded to reflect DCHA's true intent here.

7802.5 - We appreciate that DCHA has changed "shall terminate" to "may … terminate" in this section. However, his provision remains in apparent conflict with local law, which requires housing providers to give tenants an opportunity to cure any alleged lease violation, except as preempted by federal law as related to one-strike evictions. As written, this provision appears to suggest that DCHA will terminate a lease for one incidence of an alleged violation.

7802.6 - This provision is circular and confusing, as it defines "obligation of tenancy" by reference to terms of the lease, federal and local regulations, and violations "including but not limited to" violations set forth in 7802. This regulation needs to either be deleted or substantially edited to avoid being self-referential and to accurately describe a clear and definite list of the grounds for potential termination.

7802.7 - This section is overly broad and not supported by federal regulations that limit terminations to instances of "serious and repeated violations of a lease," which includes family obligations but does not include the provision of information as described in this provision. This section should be deleted or narrowed to "such information and certifications regarding family composition and income as may be necessary for DCHA to make determinations with respect to rent, eligibility, and the appropriateness of dwelling size." See 24 CFR § 966.4(c)(2). As currently written, the provision provides DCHA with a nearly limitless power to terminate a lease based on a tenant's failure to provide information to DCHA, irrespective of the type of information requested, whether DCHA can use other means to obtain that information, or the availability of other means to achieve program needs, such as self-certification. Additionally, this does not appear to allow DCHA to consider the totality of the circumstances or mitigating factors in determining whether termination is an appropriate remedy for failure to provide information.

7802.9 - Given the potential for slow response from USCIS as the agency's priorities shift, DCHA should modify this provisionWe are concerned that a failure by USCIS to timely verify a family or household member's eligible immigration status could result in an unlawful termination of an otherwise eligible family from assistance. We recommend that DCHA provisionally accept a family's submitted documentation of its evidence of citizenship or eligible immigration status and only terminate assistance if USCIS later confirms that a family or household member is not eligible.

In addition, the sentence in subsection (c) that says, "Such termination must be for a period of at least twenty-four (24) months," is confusing, as it is unclear how a lease may be terminated for only 24 months and then be reinstated thereafter. DCHA must clarify this provision to reflect its intent.

7803 TERMINATION BY DCHA – OTHER AUTHORIZED REASONS

7803.4-7 - We recommend replacing "shall" or "will" with "may" in each of these sections. DCHA has discretion in determining whether to terminate a lease for these categories of criminal activity, and the regulations should be written to allow DCHA to exercise that discretion. Additionally, writing "may" allows DCHA to consider mitigating factors and assess cases individually based on the seriousness of any alleged crime, the circumstances of the alleged crime, and whether the alleged crime warrants eviction, or if there is something short of such a serious consequence that DCHA should pursue instead. This is consistent with HUD guidance

for all housing providers which states: “Housing Providers should evict for criminal activity only as a last resort (which includes conducting an individualized assessment to determine if eviction is necessary.).” HUD's June 10, 2022 Memorandum on the Implementations on the Office of General Counsel's Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions.

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

7803.9 and **7803.13** - These provisions should also state that DCHA “may” terminate the lease, rather than “shall.” Federal regulations only require DCHA to establish a policy that allows for termination on this basis. DCHA should adopt a policy that maintains discretion to decline to terminate. This provision should also make clear that tenants will be given notice and the opportunity to cure for any alleged violation of this provision as alcohol abuse is not criminal activity subject to one-strike law. Finally and critically, given the nature of alcohol abuse disorders, it is particularly important that DCHA be able to exercise discretion to take related disabilities and treatment options into account when determining whether any alleged violations could be resolved without termination.

7803.14 - We urge DCHA to remove this provision entirely. The practice of issuing barring notices infringes on residents’ right to use and quiet enjoyment of their properties, disproportionately affects individuals of color, and can lead to unnecessary involvement in the criminal justice system. However, should DCHA maintain a barring policy, any termination based on such policy should be discretionary, rather than mandatory, to allow DCHA to consider the facts and circumstances surrounding any alleged violation and whether termination is the appropriate remedy. Additionally, it is unreasonable and unrealistic to expect residents to maintain constant awareness of each barred individual based on a posted list in the property management office. DCHA should bear the burden of providing affirmative notification to residents regarding any barring notices that have been issued, as well as the terms and basis of any such barring notice, prior to holding residents accountable for complying with the notice.

7803.15 - This provision should also state that DCHA “may” terminate the lease, rather than “shall.” Federal regulations only require DCHA to establish a policy that allows for termination on this basis. DCHA should adopt a policy that maintains discretion to decline to terminate. Additionally, this provision should make clear that residents are entitled to notice of any alleged violation and an opportunity to cure.

7803.16 - This section should be amended to state that DCHA “may” terminate for each violation listed in this section. Making such termination mandatory is not required by federal regulation, and prevents DCHA from exercising discretion to consider the seriousness of any

alleged violation, mitigating circumstances, or other less punitive measures to resolve the violation. Additionally, this section should make clear that residents will be provided with notice and an opportunity to cure any of these alleged violations in accordance with local law.

7803.17 - This section should be amended to state that DCHA "may" terminate under these circumstances, to allow DCHA to use discretion in determining whether termination is an appropriate remedy considering all facts and circumstances.

7803.18 - This section should be removed. Federal regulations do not provide for household members becoming subject to sex offender registration as a basis for termination, but suggest instead that DCHA should examine whether there is a basis for termination under other regulations related to criminal activity. Notice PIH 2012-28.

7803.19-28 - For each of these sections, we recommend amending them to read that DCHA "may" terminate the lease, rather than "will." DCHA should adopt a policy that maintains discretion to decline to terminate. Additionally, these provisions should make clear that residents are entitled to notice of any alleged violation and an opportunity to cure.

In addition, this regulation conflicts with 6803.8, which specifies that a family must inform DCHA of the birth, adoption, or court-awarded custody of a child within thirty (30) calendar days. Under proposed regulation 7803.24, fifteen days to notify DCHA of the birth, adoption, or court-awarded custody of a child is too short. DCHA should give new parents or guardians at least 30 days, if not more, to provide DCHA with this update, in consideration of the many important and time-consuming tasks and adjustments families will be undertaking immediately following the addition of a child to the household. DCHA should maintain the policy of 6803.8 and amend 7803.24.

7803.29 - We oppose the inclusion of "[i]f a household member has engaged in or threatened violent or abusive behavior toward DCHA personnel" as grounds for lease termination. To the extent the behavior contemplated threatens physical violence, there are other grounds under which DCHA could exercise discretion as to whether to terminate the lease. Where these interactions do not rise to the level of a criminal act, this provision not only implicates speech protections, but also requires an extremely subjective assessment of what constitutes "abusive" behavior, which is likely to be informed by biases, conscious or unconscious, that will disadvantage already-marginalized communities.

7803.32, 7803.33, 7803.35, 7803.36, 7803.38 - For each of these sections, we recommend amending them to read that DCHA "may" terminate the lease, rather than "will." DCHA should adopt a policy that maintains discretion to decline to terminate. Additionally, these provisions

should make clear that residents are entitled to notice of any alleged violation and an opportunity to cure.

7804 NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING

7804.1 - 7804.5, 7804.13 – DCHA should only conduct criminal background checks when required by HUD, not in any instances when it is discretionary. HUD neither requires nor recommends annual criminal background checks for public housing residents. HUD's June 10, 2022 Memorandum on the Implementations on the Office of General Counsel's Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions includes this guidance: "Housing Providers should evict for criminal activity only as a last resort (which includes conducting an individualized assessment to determine if eviction is necessary.)." 24 CFR 5.903 has significant limits on disclosing criminal conviction records even within a PHA. Given that the HUD report also found that "DCHA is not safeguarding personally identifiable information" and that PH 15 says that DCHA is improperly maintaining criminal records in tenant files, it is even more important that DCHA limit its requests for criminal background information to those required by HUD regulations.

7804.14 – While it is true that PHAs are allowed to pursue eviction based on alleged criminal activity, even if there was no arrest or conviction, it is bad policy to do so. DCHA's judgment about whether criminal activity occurred is not going to be better than law enforcement agencies' or the Courts'. Additionally, allowing DCHA to pursue eviction absent arrests and convictions in the past has led to DCHA issuing some questionable notices that led to protracted litigation because the nature of the alleged offenses was, to be frank, absurd. Therefore, DCHA policy should be to only pursue eviction for criminal activity in instances where there is a conviction.

7804.15 - 7804.18 – While we understand that these regulations are pulled from 24 CFR 966.4(k)(e)(3), they skip over an important federal regulation: that DCHA is required to issue an eviction notice that complies with local law. 24 CFR 966.4(k)(3)(iii). The local regulations regarding notice that DCHA is obligated to follow in all eviction proceedings are contained in 14 DCMR 4301. 14 DCMR 4301.5 makes clear that these regulations apply to DCHA. DCHA's regulations should specify that it is obligated to and will comply with all local laws, including eviction notice requirements, when attempting to evict any public housing resident.

7804.19 and **7804.20** – There is no instance in which DC law allows for an eviction notice to give less than 30 days' notice. The sentence of this regulation suggesting that there might be an exception should be deleted. Moreover, under current federal regulations, 30 days' notice must be given in cases of nonpayment of rent. See "30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent," 89 Fed. Reg. 101,270 (Dec. 13, 2024); 24 CFR

966.4(l)(3). DCHA should clarify that a 30-day notice to vacate is also required in all lease violation cases or cases alleging a violation of an obligation of tenancy, and not mere in the more limited circumstances enumerated in proposed regulation 7804.20.

In addition, 7804.20 should be edited to say, "Where DCHA seeks to terminate a lease based on … DCHA shall issue a thirty (30) day notice to vacate to Lessees." Otherwise, the regulation suggests that DCHA must terminate a lease under these circumstances, when in reality DCHA has discretion to determine whether or not it will issue a notice to vacate based on criminal activity. DCHA should use this discretion.

Moreover "violent criminal activity or possession of a firearm or ammunition in violation of District law" are not grounds for termination under federal law and should be struck from this section.

7804.25 – This regulation conflicts with local law. In D.C., evictions are carried out in accordance with DC Code 42-3505.01a. This law requires landlords, including DCHA, to properly store remaining personal property in the seven days following an eviction..

7804.29 – Nothing in federal regulations requires DCHA to limit the period of time that a family member can cure the alleged violation to three months. While three months could be a floor, it should not be a ceiling. DCHA should instead work with each family to determine an appropriate agreed-upon timeline of at least 3 months to fulfill the community service requirement and edit this regulation to reflect that more flexible policy.

7804.32 – While federal law allows DCHA to exempt these categories from grievance procedures, DCHA has discretion not to and should use that discretion. 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.

7804.33 and **7804.34** - While we appreciate DCHA's attempts to incorporate local eviction law in these proposed regulations, the regulations should be edited and clarified to more accurately reflect the terminology and eviction court process in DC. Section 7803.33 should say, "When a family does not vacate the unit after expiration of the required Notice to Vacate, DCHA will follow District landlord-tenant law in filing an eviction action with the local court…." Section 7804.34 should be substantially reworded to say, "If a judgment is entered against a Lessee by the court, DCHA may seek a writ of restitution from the court to regain possession of the unit, subject to and in accordance with local law and court rules."

Chapter 79: Public Housing Grievances and Appeals

7901 INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS

7901.5 and 7901.6 - These regulations must clarify that DCHA will offer an informal hearing upon notifying an applicant that DCHA is removing them from the waiting list.

7901.12 – This regulation should state that in all instances when DCHA proposes to deny an applicant based on a criminal record or sex offender registration information, it must give the family the opportunity to dispute the information, instead of just saying that DCHA must do so "in some cases." This change will make the regulation consistent with proposed regulations 6203.21 and 6203.22 and ensure that the requirements are clear for both applicants and DCHA staff.

7901.13 – Fifteen days is a drastic cut from the 1 year that was available for both applicants and participants under DCHA's prior permanent regulations located 14 DCMR 6301. Fifteen days is not a reasonable nor 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 the need to work long or unpredictable hours, limitations related to disabilities, and unstable housing that can mean mail takes even longer to reach them. Fifteen days also does not allow enough time for families who may not be comfortable or familiar with these administrative processes to consult with a legal assistance provider to determine whether they have grounds to challenge a denial of admission. People are motivated to get into housing as soon as possible and do not need this draconian time limit to motivate them to act quickly.

7901.13(d) and **(f) –** DCHA should amend these regulations to conform to DCHA's prior permanent regulations, which required DCHA to have a contracted hearing officer (not a DCHA employee) preside over all informal hearings and for the person to render the decision that DCHA is bound to. This process worked well and safeguarded against actual and perceived conflicts of interest, partiality, and unfairness. It undercuts the entire informal hearing process if the person conducting the informal hearing works for DCHA and, on top of that, that person only has the authority to recommend a decision to DCHA. It also undercuts trust in DCHA at a time when DCHA should be actively trying to build trust with DC residents.

7901.14 (a) - (b) – DCHA should be maximizing applicant and participants choice when deciding whether it will hold an informal hearing remotely or in-person. To that end, DCHA should not be unilaterally allowed to require that an informal hearing occur remotely. Instead, the family requesting the hearing should have to consent to a remote hearing. This will ensure that no family is made to participate remotely when they would otherwise benefit from, or simply have an easier time participating in, an in-person hearing. Similarly, DCHA should not be able to

deny a family's request for a remote hearing. This will ensure that families that would have a harder time appearing in person as opposed to virtually can still have the informal hearing they are entitled to.

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

7901.15 – First, DCHA should add mitigating circumstances presented to the list of matters to be evaluated in rendering a final decision on denial of admission. This is consistent with federal guidance indicating that "[t]he purpose of the hearing is to permit the applicant to hear the details of the reasons for rejection, present evidence to the contrary if available, and claim mitigating circumstances if possible." Public Housing Occupancy Guidebook, p. 58. Second, DCHA's notice must inform the applicant of their right to appeal the decision and the process for doing so.

7903 GRIEVANCE PROCEDURES FOR PUBLIC HOUSING

7903.3 - 7903.4 – We assume that DCHA is providing for 30 days of comments when grievance procedures change because that is the minimum allowed notice and comment period required by federal law. However, DCHA should give its residents more process and time, especially regarding things like changes to the grievance procedure which is critical to tenant rights. This is particularly true during this period of time when the agency should be aiming to build back trust with the people the agency serves. We recommend, at minimum, a 90 day period to comment on any changes to the lease, including the grievance procedures contained in it.

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

7903.6(g) – This definition is not grammatically correct and as a result is confusing. We recommend it be edited as follows:

"'Tenant' is: the adult person (or persons) (other than a live-in aide):

(1) The adult person (or persons) (other than a live-in aide) who resides in the unit, and who executed the lease with DCHA as Lessee of the dwelling unit, or, if no such person now resides in the unit;

(2) The adult person (or persons) (other than a live-in aide) who resides in the unit, and who is the potential remaining head of household of the tenant family residing in the dwelling unit;"

We believe these proposed edits preserve DCHA's intent, but make clear that subsection (2) is an alternative to subsection (1). Additionally, it is important that the word "potential" be added before Head of Household, because if the person in subsection (2) were already the Head of Household, they would have signed the lease for the unit and fall under subsection (1).

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

7903.10 – We appreciate that DCHA increased the grievance window to six months in these regulations. However, DCHA should continue to give public housing residents up to one year to grieve any action or inaction by the agency as it did under its prior permanent regulations. There is no reason to reduce this window, especially when so many DCHA residents have come know and rely on their right to grieve decisions within a year.

7903.13 - 7903.14 – DCHA should strike the definition of good cause in these regulations. Good cause has legal meaning, and this regulation creates an unnecessarily heightened standard for what constitutes good cause. Instead, DCHA should use a standard more like what it used to require in the voucher context for good cause hearings. There, a hearing officer was required to consider if a tenant had good cause to miss a deadline by 1) determining if they got proper notice, and 2) considering a non-exhaustive list of mitigating circumstances.

7903.17 – Residents should be given more than 14 days to request a hearing following receipt of the summary of the informal settlement. This is not a reasonable amount of time for a resident to be able to consider the settlement, seek advice of legal counsel if necessary, and request a hearing. We recommend a minimum of 30 days.

7903.19, 7903.20, 7903.21 – We appreciate that DCHA eliminated the unduly restrictive definition of good cause from this regulation. However, we are concerned that the definition of good cause contained in 7903.14 will be read into this regulation by hearing officers, and as discussed above, it is simply too high a standard. Additionally, DCHA should at a minimum adopt a regulation more akin to its prior HCVP regulations. Specifically, DCHA should allow any party to request the first hearing date be moved, with or without the showing of good cause,

and allow either party to request future hearing dates be continued as long as there will not be prejudice to the other side. 14 DCMR 8903.1(2).

7903.22 – DCHA should amend this regulation and conform to its prior permanent rules and practices regarding hearing officers (14 DCMR 6304). Specifically, hearing officers should be impartial, disinterested members of the bar, in good standing. This means hearing officers should have legal training and also not be employees of DCHA.

7903.24, 7903.25 – DCHA should be maximizing applicant and participant choice when deciding whether it will hold a grievance hearing remotely or in-person. To that end, DCHA should not be unilaterally allowed to require that a hearing occur remotely. Instead, the family requesting the hearing should have the choice of selecting a remote or an in-person hearing according to their preference. 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.

7903.26 – DCHA should provide the hearing packet more than three business days prior to the scheduled remote hearing. Three business days does not provide adequate time for residents, who may or may not have the assistance of legal counsel, to review and prepare defenses to the evidence DCHA intends to present.

7903.36 – DCHA should inform families of the technological requirements to attend a virtual informal hearing more than 5 days before the scheduled hearing, and also inform of their right to opt for an in-person hearing. Five days is simply not enough time to ensure that the family gets the notice and can then reach someone at DCHA in time to make a request for an in-person hearing or other assistance if necessary.

7903.40 – We appreciate that DCHA changed its proposed regulations to eliminate costs to residents for receiving copies of documents.

7903.42 – Residents should be given a longer grace period than 20 minutes. Many of DCHA's residents rely on public transportation, including unreliable buses and trains. We recommend a minimum of one hour. Additionally, if after an hour the resident shows up, and all parties are ready and still available for a hearing, DCHA should hold the hearing despite it being late. Finally, this grace period should be extended even further if the resident calls or makes contact with DCHA and informs the agency that they are running late.

7903.43, 7903.44 – DCHA should permit residents to request to reschedule a hearing they did not attend for good cause for longer than 24 hours following the scheduled hearing date. Given that this regulation already requires that the tenant establish good cause, a high standard, and that many emergencies do not fully resolve so as to permit those experiencing them to resume their normal business within 24 hours, it is unreasonable to impose such a strict limit on the period of time for which a resident can request that a hearing be rescheduled for good cause. Additionally, DCHA should strike the definition of good cause contained in this regulation. Good cause has legal meaning, and this regulation creates an unnecessarily heightened standard for what constitutes good cause. Instead, DCHA should use a standard more like what it used to use in the voucher program for good cause hearings. There, a hearing officer is required to consider if a tenant had good cause by: 1) determining if they got proper notice, and 2) considering a non-exhaustive list of mitigating circumstances.

7903.46 – DCHA should make clear that the resident has the right to present written objections and briefs to counter DCHA's proposed decision. We have often experienced DCHA staff object to our introduction of legal argument in the form of briefs at hearings, despite it being a common sense right and not prohibited by any rules.

7903.49 – DCHA should not change this regulation to make recording the hearing optional at the tenant's request. Instead DCHA should always record the hearings. If tenants want to challenge any decision, it is important that there is an accurate transcript of what happened at the hearing.

7903.53(a)(4) – DCHA should remove the references to "DCHA policies." DCHA's regulations are its rules and it should follow them. It is unclear what DCHA means by "DCHA policies" and this is too vague a standard by which to adjudicate a person's termination from a program. Further the DC Administrative Procedures Act requires that all such policies be published for notice and comment as regulations.

7903.56 – DCHA should strike this entire section and retain its prior permanent rule regarding the binding effect of a hearing officer's decision contained in the old 14 DCMR 6313. It appears that DCHA is basing the proposed regulations in all of section 7901 on 24 CFR 982.554(a)-(d). Nothing in those federal regulations gives DCHA the right to disregard a hearing officer's decision. If DCHA chooses to keep this regulation, it is in effect saying that if it loses at the informal hearing it can unilaterally decide to not follow the decision. This undercuts the entire informal hearing process, and undercuts trust in DCHA at a time DCHA should be actively trying to build bridges with participants.

Chapter 80: PROGRAM INTEGRITY

8001 PREVENTING, DETECTING, AND INVESTIGATING PROGRAM ABUSE

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

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

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

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

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

"DCHA shall regularly train staff on rent calculation."

8002 CORRECTIVE MEASURES AND PENALTIES

8002.8 - 24 CFR 960.257(b)(6)(ii) allows PHAs to decrease rent retroactively when a family has failed to report a change that would lower their rent. DCHA should establish a written policy for when it will reimburse a family for overpayment instead of declaring that it will never do so. This policy should allow DCHA to decrease rent retroactively when a family demonstrates that it had good cause to delay reporting a change that would lower their rent. These failures to report often occur when someone has recently lost a job, has had a baby, or has unexpected medical expenses. These are precisely the times when families cannot afford higher rent and need extra help and consideration from DCHA.

Chapter 81: Program Administration

8101 SETTING UTILITY ALLOWANCES

8101.15 - DCHA should provide more clarity on if and when residents will be required to pay "surcharges" for utilities.

8103 FAMILY DEBTS TO DCHA

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

8103.8 - DCHA should not require a down payment. While this may be seen as a good faith gesture by a tenant, many DCHA families are not in a position to make a lump sum payment of this nature. Further, if DCHA insists on some sort of payment, regulations must explain the process and criteria for granting a hardship exemption.

8103.9(b) should include a process for requesting a hardship exemption and the process DCHA will use to make a decision about a request to lower a monthly payment amount. Just saying "in its sole discretion" leaves room for DCHA staff to treat different tenants differently and does not create a predictable system for residents.

8103.11 - DCHA should work with families to identify payment terms that are favorable and realistic, rather than setting a specific date for all agreements. For example, some families may receive their monthly social security check on a particular day of the month and be in the best position to pay at that time of the month.

8103.12 - Both provisions of this section should say that DCHA <u>may</u> terminate the tenancy not that DCHA will terminate the tenancy. This gives DCHA discretion to not terminate tenancies when there is a hardship, a health-related emergency, or other extenuating circumstances that prevent a tenant from paying on time. The current language would also require DCHA to terminate tenancy even if the tenant has caught up on their payments. That outcome would not be good for DCHA or the tenant.

8103.13 - This section should be replaced with the former regulation at 14 DCMR 5602.4:

> "The circumstances in which DCHA may decline to enter into a Repayment Agreement include, but are not limited to, any of the following:
>
> (a) If the participant Family or owner already has a Repayment Agreement in place;
>
> (b) If DCHA determines that the Family or owner:
>
> (1) committed program fraud;
>
> (2) intentionally withheld information; or
>
> (3) intentionally provided false information; or
>
> (c) If the Family already has a Repayment Agreement in place and incurs an additional debt to DCHA, any old debts to DCHA shall be paid in full before DCHA enters into a new Repayment Agreement."

The former regulations are detailed and clear and also give DCHA appropriate discretion where necessary.

8106 REPORTING REQUIREMENTS FOR CHILDREN WITH ELEVATED BLOOD LEAD LEVEL

8106.1 - The regulations should specify that DCHA shall adhere to the responsibilities required by HUD's Lead Safe Housing Rule (LSHR), as codified in subparts B through R of 24 CFR § 35, when a child living in public housing is identified as having an elevated blood lead level (EBLL). In adherence to these statutory responsibilities, in addition to providing written notice of the address of any child identified as having an elevated blood lead level, and providing notice to the HUD field office, to OLHCHH, and DOEE (but see our next comment below), DCHA should enumerate in its regulations that it shall ensure that:

a. A certified lead-based paint risk assessor completes:
    i. An environmental investigation, as defined in 24 CFR § 35.110, of the child's home and any common areas that service the home within 15 calendar days of verification of the child's EBLL; and
    ii. Any necessary risk assessments in other covered units if the child's home is in a multiunit property; and
b. Any lead-based paint hazards identified by an environmental investigation or risk assessment are controlled within 30 calendar days by a certified lead-based paint

abatement or lead renovation firm and confirmed by a clearance examination on the unit and common areas when the work is complete.

8106.2 - Responsibility for the District's childhood lead poisoning prevention program is currently in transition. DCHA should contact the Department of Energy and Environment (DOEE) and DC Health to determine which agency it should provide written notice of EBLLs to and update the regulations accordingly.

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

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

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

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

8107.10, 8107.12, 8107.13, 8107.14 - DCHA should not deviate from its former policy of **not** requiring third party documentation in all instances of conflicting documentation. DCHA often can and should be able to make a determination based on the initial conflicting reports, and ensuring that this is an option for survivors is important. Survivors will not always have access to third party verification and requiring it in all instances will ensure that some survivors go unprotected. This is simply unacceptable. Further, the word <u>will</u> in 8107.13 should be changed to <u>may</u>. Survivors do not always have access to third party documentation. If their statements are credible, they should not be denied protections, and DCHA should have the option of providing those protections if it is satisfied by what has been provided.