

April 30, 2020

Via electronic mail

Tyrone Garrett
Executive Director
District of Columbia Housing Authority
1133 North Capitol Street NE
Washington, DC 20002
tgarrett@dchousing.org

Dear Director Garrett:

We write to request that you use your existing authority to allow persons who need to leave congregate settings to move in with family members who reside in public or Housing Choice Voucher-subsidized housing. This is an individual and public health imperative. DCHA can meet these health imperatives by implementing an exception to the “guest stay” and “unauthorized occupant” regulations and related lease provisions that apply to public housing and the Housing Choice Voucher Program (“HCVP”) until the current pandemic is safely behind us. This would permit persons leaving congregate housing facilities, including nursing homes, shelters, and halfway houses, to avoid homelessness and exposure to covid-19 to live with family members who live in public or voucher-subsidized housing without exposing the family to the risk of losing their housing for violating the limitations on guests. It is the humane and compassionate decision, and one that will contribute to reducing the number of people living in conditions that contribute to the spread of the virus.

Currently, DCHA permits individuals who reside in housing with the assistance of a Housing Choice Voucher to have guests in their unit for “no longer than thirty (30) consecutive days or a total of ninety (90) cumulative calendar days during any twelve (12) month period.” 14 DCMR § 5320.1. Although families may request exceptions to the guest lease provision for “valid reasons,” such as caring for a family member recovering from a medical procedure, 14 DCMR § 5320.3, and there are categories that recognize certain individuals who are generally entitled to remain as guests upon DCHA’s approval, 14 DCMR § 5320.5, neither appears to cover the present circumstances. Under current regulations, a failure to comply with HCVP’s guest stay policy permits DCHA to terminate the individual from the program, leaving the family without a subsidy and likely to face homelessness. 14 DCMR § 5320.4; *see also* 14 DCMR § 5808.3(c) (permitting termination of assistance if a family member, “as determined by DCHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit”).¹

Public housing rules and regulations are similar, though more restrictive. Overnight guests are permitted to stay in a public housing household for up to ten consecutive days and up to thirty non-consecutive days in a twelve-month period. *See* District of Columbia Housing Authority Dwelling Lease Agreement at 4.2.1. Such short stays, however, will not help individuals who are unable to secure their own housing under the current circumstances. There is no viable alternative, given that public housing tenants are prohibited from permitting “anyone other than authorized Household Members either listed in [the] Lease or approved in writing hereafter as Household Members”; all others are barred unless the tenant

¹ The standard addendum” for the “Section 8 Tenant-Based Assistance Housing Choice Voucher Program” that is attached to all HCVP leases similarly provides that (1) “[t]he composition of the household must be approved by the PHA”; (2) “[o]ther persons may not be added to the household without prior written approval of the owner and the PHA”; and (3) “[t]he contract unit may only be used for residence by the PHA approved household members.” *See* “Tenancy Addendum [for the] Section 8 Tenant-Based Assistance Housing Choice Voucher Program,” OMB Approval No. 2577-0169 at 3.(b.)-(c.).

receives prior written consent from DCHA. *Id.* at 4.2. Accompanying regulations confirm as much: “Any person using or occupying the Leased Premises not in compliance with this Section is an unauthorized occupant without tenancy or other rights under the Dwelling Lease, including any person using or occupying the Leased Premises without approval from DCHA.” 14 DCMR § 6117.1; *see also* 14 DCMR § 6205.5.² The approval process is not suited to this emergency where public housing and voucher holders are seeking to have their family members immediately move in because of the current crisis, rather than seeking to permanently add new household members. Requiring residents to seek approval from DCHA through a formal administrative process to add individuals to their leases as household members would unnecessarily burden DCHA, leave families caught between protecting loved ones and risking eviction, and take too long to process to be meaningful.

In short, there is abundant “good cause” for waiver of the guest stay and unauthorized occupant regulations and accompanying lease provisions under your existing authority³ until the World Health Organization (“WHO”) determines the COVID-19 pandemic is over.⁴ Such a waiver is a prudent and compassionate response for the families who need housing assistance and for the public, whose health is protected when the number of persons in congregate settings is reduced. The waiver should be widely publicized to ensure that HCVP and public housing residents, as well as their family members seeking housing, know of this important option, and to comply with District law. 14 DCMR § 6003.1.

We urge you to implement the requested change immediately. We appreciate that there may be logistical or other questions to which such a change may give rise, and we would be happy to discuss how any such issues could be addressed. Thank you for your attention to this matter. If you wish to further discuss the issue or have any questions, please contact Catherine Cone at the Washington Lawyers’ Committee for Civil Rights and Urban Affairs at 202-319-1000, ext. 122, or catherine_cone@washlaw.org.

Sincerely,

Bread for the City

Legal Aid Society of the District of Columbia

Legal Counsel for the Elderly

The Public Defender Service for the District of Columbia

Washington Lawyers’ Committee for Civil Rights and Urban Affairs

Washington Legal Clinic for the Homeless

cc: Neil Albert, Chair, DCHA Board of Commissioners

² Exceptions are limited to (1) reasonable accommodation requests, (2) additions by way of birth, adoption, custodial power of attorney, or court order for guardianship, conservatorship, or legal custody, or (3) persons who are approved by DCHA upon a written request by the lessee and who “meet all applicable eligibility and screening requirements” without causing the unit to exceed occupancy standards. 14 DCMR § 6117.1-6117.3.

³ Based on “good cause,” the Director of DCHA “may waive any provision of this subtitle, subject to statutory limitations of Federal and District law. Each waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds on which the waiver is based.” 14 DCMR § 6003.1.

⁴ The WHO declared COVID-19 to be a pandemic on March 11, 2020, *see* <https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19>.