

January 16, 2021

District of Columbia Housing Authority
Office of the General Counsel
1133 North Capitol Street, N.E., Suite 210
Washington, DC 20002-7599

VIA EMAIL ONLY to PublicationComments@dchousing.org

Re: Comments on Proposed Regulations Title 14 DCMR Chapter 95 “Rent Subsidy Programs: Local Rent Supplement Program”

Please find below comments from the undersigned organizations on the agency’s proposed amended regulations to Chapter 95. Overall, we do not believe that these regulations comply with the letter or the spirit of the law and must be significantly altered before they are finalized. When the regulations are amended, we recommend that they be republished as emergency and proposed, as the legislation requires.

Background

Last summer, the DC Council funded a historic increase in tenant vouchers to end homelessness for thousands of DC households through Permanent Supportive Housing, Targeted Affordable Housing, and other tenant vouchers.¹ The Council was, however, well aware of delays and barriers in the voucher process and wanted to make sure that the vouchers were utilized as quickly as possible this fiscal year. To that end, via the Fiscal Year 2022 Budget Support Act of 2021, the Council instituted several new requirements for the tenant-based voucher program to reduce barriers and decrease processing time.

First, it required that the DC Housing Authority (DCHA) “promulgate emergency and final rules for tenant-based voucher assistance. Rules issued... *shall establish a process to allow applicants to self-certify eligibility factors when an applicant cannot easily obtain verification documentation.*” Emergency rules were required to be issued by November 1, 2021 and the Council has approval authority over final rules.

Second, the Council amended DC Code §6-228(a):

Except as provided in this section, tenant-based assistance provided through the Rent Supplement Program shall be subject to the Authority’s existing rules, regulations, policies, and procedures for the Housing Choice Voucher Program; *provided, that the Authority shall waive or modify such rules, regulations, policies, and procedures so as not to exclude households on the basis of immigration status, prior criminal convictions, or pending criminal matters.*

Self-certification of eligibility factors

To evaluate the proposed regulations, it is important to compare them to the current system for eligibility verification. Under 14 DCMR §5402 (Methods of Verification), DCHA already allows self-certification, but it is the lowest priority type of verification of 5 categories. The proposed

¹ See <https://www.legalclinic.org/historic-housing-investments-present-opportunity-to-make-real-progress-in-ending-homelessness/>.

regulations change that by stating that “DCHA may allow an applicant to use self-certification as the highest form of verification of the eligibility factors.” §9505.6. **To be consistent with the Council’s intent, we recommend that DCHA change the “may” to “shall” in this section.** The use of self-certification is not intended to be discretionary.

Self-certification can, though, be limited to situations in which an applicant “cannot easily obtain verification documentation.” §9507.7 may be attempting to get at that limitation, but instead creates a far more vague standard and process by requiring the applicant to “provide DCHA with a written statement addressing the reasons why the applicant was unable, at the time the applicant submitted an application for Tenant-Based Housing Assistance, to provide the required verification documents...” **We recommend instead that the self-certification form itself include a statement that the applicant cannot easily get requested verification documents.** The Council intent was to create a lower barrier eligibility process, so DCHA should avoid unintentionally adding additional barriers or processes to the self-certification process itself. In addition, the way this section is framed suggests that DCHA intends to approve or deny requests to use self-certification, based on a standard that is not laid out in these regulations. Such decisions run the risk of being arbitrary and capricious without a clear standard. The Council already laid out a clear standard in the legislation: “cannot easily obtain verification documentation.”

Section 9505.9 requires that applicants using self-certification have to provide the “required verification” within 90 days or by lease-up, whichever occurs first. This section is not consistent with the statutory language requiring the agency to allow self-certification, is a higher standard than currently exists in the regulations, and is untenable for many applicants. First, the legislative intent of the Budget Support Act language is clearly to require the agency to accept self-certification *in place of* verification documents, not to temporarily allow a respite from searching for documents that may never be obtained. Second, despite the intent of the law being to *lower* barriers to vouchers, the procedure contemplated in the proposed regulations actually *increases* documentation requirements as compared to the existing provisions in §5402, which do not require later submission of documents after self-certification.

Finally, §9505.9 establishes a requirement and timeline that are untenable for many applicants who need to avail themselves of self-certification procedures. For example, a permanent supportive housing provider reports that, due to different names being listed on their identifying documents, a client had to file for a legal name change in order to obtain DC identification. The process took 11 months. In another case, an out-of-state birth certificate took one year and five months to obtain. Another housing provider had at least two clients who had different names listed on their birth certificate and social security card, delaying the process of providing identification by months. Another client reached their “maximum” requests for a birth certificate in Pennsylvania and the vital records office refused to provide any additional copies. Under the system contemplated by the proposed regulations, particularly §9505.9, all of these homeless clients would be denied voucher eligibility and remain unhoused. **We recommend removing §9505.9 entirely.**

Barriers based on immigration status and criminal matters

The proposed regulations completely fail to “waive or modify... rules, regulations, policies, and procedures so as not to exclude households on the basis of immigration status, prior criminal convictions, or pending criminal matters.” The only mention of these considerations is found in §9505.11, which doubles down on the agency’s desire to deny eligibility to or terminate any applicant who has a member of household who “is proven to have committed” specific offenses. (Note that this appears to be a lower standard than “convicted.”) **We recommend that §9505.11 be removed.**

For tenant vouchers not referred by DHS, the rules for eligibility (as well as termination) have too many provisions to list that should be modified in order to effectuate the intent of the recent statutory change—to avoid exclusion on the basis of immigration status or criminal conviction or charge. For vouchers referred by DHS, governed by §9508, there are fewer barriers, but the barriers still exist. For example, §9508.2(b) requires provision of social security numbers or certification that there is no social security number. Requiring an undocumented immigrant to certify in writing to a government agency that they have not been issued a social security number may result in excluding such households. Similarly, §§9508.4- 9508.6, while providing reduced barriers as compared to the federal rules, still erect barriers that could exclude households on the basis of prior or pending criminal matters.

We recommend a more thorough review of the agency’s regulations and procedures to determine which must change in order to avoid exclusion of these populations. We recommend meeting with immigrants and people who have interacted with the criminal justice system and organizations that provide services to these populations to better understand which policies and procedures create barriers to inclusion.

In the interim, because applicants are currently going through the eligibility process, **we recommend that you publish emergency regulations that state that the agency shall accept self-certification of eligibility factors when the applicant cannot easily obtain verification documents and will waive or modify any eligibility rules that could screen out households based on immigration status or interaction with the criminal justice system.**

We appreciate your attention to these comments and regulations. Please contact Amber Harding at amber@legalclinic.org if you have any questions or to schedule a meeting to discuss further.

Sincerely,

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Washington Legal Clinic for the Homeless

on behalf of

Marta Beresin, Visiting Professor of Law, Acting Director, Health Justice Alliance Law Clinic,
Georgetown University Law Center

Bread for the City

BreakFree Education

Children's Law Center

The DC Center for the LGBTQ Community

DC Fiscal Policy Institute

DC Jail and Prison Advocacy Project

DC Kincare Alliance

Disability Rights DC

Empower DC

The Equal Rights Center

Everyone Home DC

Friendship Place

GLAA

Harriet's Wildest Dreams

Homeless Children's Playtime Project

Jubilee Housing

Legal Counsel for the Elderly

Legal Aid Society of the District of Columbia

Miriam's Kitchen

Mother's Outreach Network

National Center for Lesbian Rights

Neighborhood Legal Services Program of the District of Columbia

Pathways to Housing

The Platform of Hope

The Public Defender Service for the District of Columbia

See Forever Foundation and the Maya Angelou Schools

Washington Lawyers' Committee for Civil Rights and Urban Affairs

Who Speaks for Me?

Woodhull Freedom Foundation