

June 10, 2014

By email only

Lori Parris
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Re: Proposed Rulemaking & Amendment to MTW Plan – Rent Reform Demonstration Program

Dear Ms. Parris:

Thank you for this opportunity to submit initial comments on the proposed rulemaking and amendments to the 2014 MTW Plan to implement the Rent Reform Demonstration Program (“Demonstration”). We appreciate all of the efforts DCHA already has made to “do no harm” in implementing this program, a commitment that we know Director Todman and all DCHA staff share. Nonetheless, we remain seriously concerned about the potential impacts of the Demonstration on our client community, and particularly on those families with no or very limited income. Our comments principally focus on additional steps DCHA could take to ensure that these families are not adversely impacted by the Demonstration.

This letter addresses overarching concerns we have with the minimum rent requirement, the hardship waiver policy, and the initial recertification calculations for families entering the Demonstration. Attached is a redlined version of the draft regulations, which addresses some of our comments below as well as other technical suggestions. We also have attached a short summary of suggested changes for the MTW Plan Amendment.

Minimum Rent Should Be Set at a Lower Amount

We are concerned that the minimum rent amount of \$75 will impose a serious hardship for many of the participants chosen for the Demonstration. While we have concerns about a minimum rent in any amount – something which DCHA has avoided to date despite minimum rent policies adopted by many other jurisdictions – if DCHA must implement such a policy, then we suggest a lower amount such as \$25 or \$50 per month.¹

The effects of a minimum rent policy will be most dramatic for those families with no or little income. Overnight, these participants could face a dramatic and unrealistic rent burden, putting them at risk of eviction. This concern is borne out by some of the data provided by DCHA. For example, 77 percent of the households that will pay higher rent under the

¹ Although Moving to Work allows DCHA to establish a higher amount, we note that public housing and the Voucher Program ordinarily are limited to a minimum rent of \$50, while other section 8 programs are limited to \$25. *See* 24 C.F.R. § 5.630(a).

Demonstration currently have no earned income. Given that disabled and elderly households are excluded, it is likely many of these families rely solely on TANF income in amounts as low as \$270 per month (or less if sanctions are in place). For participants with such limited income, paying even \$75 per month presents a real hardship. For families with no current income – 14.9 percent of those who will see a rent increase – the rent burden of \$75 per month likely is insurmountable.

We understand from our prior discussions that DCHA negotiated this minimum rent figure with HUD and other PHAs, and ultimately may not be able to change this figure. If the minimum rent remains set at \$75 per month, then it will be vital for the hardship waiver policy to be strong enough to prevent harm to numerous affected families. The first protection that participants facing a steep rent increase have under the Demonstration is the initial 6-month grace period and temporary TTP. But for those families with no or consistently low income, this protection will not help; they will need to rely solely on the hardship waiver. Even for those families that receive the benefit of the initial grace period, many will need to fall back on the hardship waiver process after the temporary TTP expires.

Because the hardship waiver is critical to these and other families, it must be easy to access, quick, effective, and sufficiently robust to protect vulnerable families. In addition to the suggestions noted below, DCHA should:

- Ensure that participants are fully informed about the hardship waiver policy, including when it applies and how to access it;
- Train DCHA staff to be proactive in offering the hardship waiver to participants at all contact points, including the recertification appointment itself, walk-in appointments, and telephone contacts with DCHA;
- Provide a simple and accessible form for requesting a hardship waiver, and make DCHA staff available to help applicants complete the form; and
- Ensure that the system for reviewing and responding to requests for hardship waivers will be efficient and deliver timely responses.

The Hardship Policy Should Be Strengthened

1) Broaden Acceptable Proof of Imminent Risk of Eviction or Utility Shut-Off

As drafted, the rent reform regulations and MTW Plan Amendment require a participant to present DCHA with a 30-day² notice to vacate in order to demonstrate an imminent risk of eviction. *See* 14 D.C.M.R. § 9115.2; MTW Plan Am. at 36-37. There are two problems with this approach. First, many leases waive a tenant's right to receive a 30-day notice prior to an

² The MTW Plan Amendment references a 10-day notice. *See* MTW Plan Am. at 37. Under District law, if a notice is required at all it would be a 30-day notice. *See* D.C. Code § 42-3505.01(a); 14 D.C.M.R. § 4300.1.

eviction suit for nonpayment of rent, which District law allows. *See* D.C. Code §§ 42-3208, 42-3505.01(a); 14 D.C.M.R. § 4300.1. This means often the first notice a tenant receives of a nonpayment of rent eviction suit is the summons and complaint itself. The hardship policy should expressly allow for this alternative form of proof.

Second, requiring the landlord to serve a notice to vacate or summons and complaint first may delay a hardship waiver until the point that a tenant has run up a significant rent deficit, possibly beyond the point that emergency rental assistance or other resources can solve. To ensure that participants can and will be proactive in approaching DCHA as soon as they run into financial trouble, DCHA should not require a specific form of proof of imminent risk of eviction. Instead, the regulations should list examples (rent ledger with an overdue balance, 30-day notice to vacate or summons and complaint) and then allow a participant to provide any other proof acceptable to DCHA.

This latter comment applies with equal force to proof of risk of utility shut-off. The proposed MTW Plan Amendment states that a participant would need to bring a formal shut-off notice to seek a hardship waiver; the regulations are silent on this issue. *See* MTW Plan Am. at 37. Depending on the policies and procedures of the utility, a participant may not receive a formal shut-off notice until a large balance has accrued, possibly beyond the point that energy assistance or other resources can address. Again, we encourage DCHA not to require a specific form of proof, but instead to list examples (shut-off notice, recent bill showing an accruing balance, notice from the landlord) and also allow other proof acceptable to DCHA.

2) Include Circumstances Such as Disability, Illness, or Similar Household Changes as Those Warranting a Hardship Waiver

The proposed regulations list three specific circumstances where a hardship waiver may apply – imminent risk of eviction, rent above 40 percent of current gross income, or zero income – and then include a catch-all provision for “other circumstances as determined by DCHA.” *See* 14 D.C.M.R. § 9115.1. We appreciate DCHA’s willingness to consider a variety of circumstances, reflected in the catch-all category. However, we also believe that a few additional situations – including several already noted in the MTW Plan Amendment, but not in the regulations – should be expressly included. *See* MTW Plan Am. at 36. This will inform participants facing such a crisis that they may qualify for a hardship waiver.

Specifically, we would add:

- Temporary or permanent disability, incapacitation or illness, or death of a household member;
- Significant income loss because of other changed circumstances, including the loss of employment, reduction in work hours or pay, or loss of public benefits.

3) Clarify the Timing of Hardship Waiver Requests

Several timing issues in the hardship waiver regulations need clarification. First, the regulations specify that a rent adjustment under a hardship waiver will be effective on the first of the month following approval. *See* 14 D.C.M.R. § 9115.7(a). Instead, we ask that DCHA make the change effective on the first of the month following *submission* of the hardship waiver request. This would do two things: 1) treat hardship waivers similar to interim recertification changes, which are similar; and 2) ensure that if a hardship waiver is granted through the grievance process following an initial denial, the requesting family receives the full benefit of the policy. Otherwise the relief offered to the family through the granting of a hardship waiver may be too late to avert a crisis.

A second concern relating to timing is that a participant may request a hardship waiver only after the initial grace period has passed. The proposed regulations provide that such a request cannot be made until “after the initial grace period ends and the new TTP is effective.” *Id.* § 9115.1. This means that a participant who knows in the last month of her grace period that she will face a hardship the following month still must wait to submit a request, leaving at least one month of rent at the new TTP outstanding. The wording also may be confusing as applied to situations where there is no initial grace period. In addition to clarifying the language, we suggest allowing a participant that receives a temporary TTP in the initial grace period to apply for a hardship waiver within the 30 days before or at any time after the initial grace period expires.

4) Specify the Grievance Process When a Hardship Waiver Is Denied

The new regulations should specify that when a hardship waiver is denied, the existing grievance/informal hearing process is available to challenge that decision. This point already is made in the MTW Plan Amendment, but it is not in the regulations, and it provides helpful clarification. *See* MTW Plan Am. at 37. DCHA also should add a provision to the regulations that any grievance related to a hardship waiver request will receive expedited review. *See id.*

Initial Certifications Should Be Based on Current Household Income

Under the proposed regulations, the initial certification for families entering the Demonstration will be based on average income over a 12-month retrospective “look-back” period. *See* 14 D.C.M.R. § 9102.1(a). For families that have recently experienced a significant drop in income, this 12-month look-back methodology may produce a rent calculation far above what the family currently can afford. We have serious concerns about this change from using current household income as the baseline.

While we appreciate that some safeguards are in place, we do not see the logic of calculating rent based on income that, in some cases, both the participant and DCHA know to be out-of-date and inaccurate. Because this change is brand new and the family will not be aware of it until it enters the initial certification process, the change will not have impacted the family’s past behavior. Applying the 12-month look-back methodology at the initial certification also

does not save DCHA administrative resources. If anything, determining past income over a 12-month period will be more onerous than focusing solely on current income.

If DCHA cannot change the methodology used at the initial certification, we suggest that you increase the initial grace period and temporary TTP for qualifying families from 6 months to 12 months, or at the very least provide an automatic 6-month extension if the family's income circumstances have not substantially improved.

The Risk of Perverse Incentives

We understand that one of the overarching goals of the Demonstration is to encourage families that can work to do so. Unfortunately, the elimination of the child care and dependent deductions may create the opposite incentive for some families with young children.

The MTW Plan Amendment illustrates this problem in the analysis of different scenarios involving single mothers with children. "Maria" is a single mother with a one-year-old child. Under the new rent reform rules, there are several scenarios in which Maria's incentive to go back to work is significantly higher under the current rules than the rent reform rules. If Maria needs a child care subsidy – whether or not she receives one – she is better off under the current rules compared to the rent reform rules. This holds regardless of whether she is working full-time for \$16 per hour, working full-time for \$8 per hour, or not working at all. The rent reform rules provide a better incentive for Maria only in the limited scenario where she is working and does not need a child care subsidy. Presumably, single mothers who do not need child care – because a family member or friend can provide such care for free, for example – already have a powerful incentive to work under the existing rules. Even if Maria does not need a child care subsidy and works full-time for \$8 per hour, her net income will be only 4% higher under the new rules compared to the current rules.

We point this out only to note that the elimination of child care and dependent allowances may be particularly problematic in terms of encouraging families with young children to find work. DCHA should consider whether there are any other changes that could be made to the Demonstration to improve incentives for work in this situation.

* * *

We appreciate this opportunity to comment on the proposed regulations and MTW Plan Amendment surrounding the Rent Reform Demonstration Program. We look forward to meeting with you and other DCHA staff on June 17, 2014 to discuss these comments in greater detail. If you have any questions before then, please let us know.

Sincerely,

Julie H. Becker
Beth Mellen Harrison
Shirley Horng
*The Legal Aid Society of the
District of Columbia*

Rebecca Lindhurst
Bread for the City

Jennifer L. Berger
*Washington Legal Clinic
AARP*

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY
NOTICE OF PROPOSED RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority (DCHA) pursuant to D.C. Official Code § 6-203 (2007 Ed.), hereby gives notice of its intent to adopt the following newly proposed Chapter 91 of Title 14 of the District of Columbia Municipal Regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The proposed regulations contain a new chapter establishing the United States Department of Housing and Urban Development (HUD) Moving to Work Housing Choice Voucher Rent Reform Demonstration. The proposed regulations are designed to implement and evaluate an alternative rent policy.

CHAPTER 91 HOUSING CHOICE VOUCHER PROGRAM: RENT REFORM DEMONSTRATION PROGRAM

Secs.

- 9100 Program Purpose
- 9101 Selection of Study Group and Control Group
- 9102 Enrollment
- 9103 Annual Income
- 9104 Utility Payments and Reimbursement
- 9105 Adjusted Income and Determination of Rent
- 9106 Overview of Rent and Subsidy Calculations
- 9107 DCHA's Housing Assistance Payments
- 9108 Delayed Tenant Share and Initial Certification under the Rent Reform Demonstration
- 9109 Changes in Family Share and Housing Assistance Payments
- 9110 Apply Utility Allowances
- 9111 Triennial Recertification of Income
- 9112 Recertification Notice to the Family
- 9113 Interim Recertification
- 9114 Utility Allowances
- 9115 Assets
- 9116 **Family Moves**
- 9117 Portability
- 9118 Hardship Waiver Policy
- 9999 Definitions

9100 PROGRAM PURPOSE

- 9100.1 The United States Department of Housing and Urban Development (HUD) is conducting the Moving to Work (MTW) Housing Choice Voucher Rent Reform Demonstration program (Rent Reform Demonstration or Program), designed to

implement and evaluate an alternative rent policy, implemented by several MTW agencies. DCHA has been selected to participate in the study, and as such, will modify its policies and rent calculations for a group of program participants (experimental group), and will compare the results to a group of program participants who are assisted under the rent policies used for all other DCHA assisted households (control group). The Rent Reform Demonstration Program is designed to implement and study an alternative strategy to standard HUD operating rules for HCVP. The proposed alternative rent policies will include the following five key features:

- (a) Simplify income determination and rent calculation of the household's Total Tenant Payment (TTP) and subsidy amount by:
 1. Eliminating deductions and allowances,
 2. Changing the percent of income used to calculate the total tenant portion of rent payment from 30% of adjusted income to a maximum of 28% of gross income,
 3. Ignoring income from assets when the asset value is less than \$25,000, and
 4. Using retrospective income, i.e., 12-month "look-back" period and, in some cases, current/anticipated income in estimating a household's TTP and subsidy.
- (b) Conduct triennial income recertification rather than annual or biennial recertification with provisions for interim recertification and hardship remedies-waivers if income decreases or if the participant otherwise is unduly impacted.
- (c) Streamline interim certifications to eliminate income review for most household composition changes and moves to new units.
- (d) **Require that the TTP-family rent to owner is the greater of 28% of gross monthly income or at least the minimum rent of \$75.**
- (e) Simplify the policy for determining utility allowances.
- (f) Additionally, the program will offer appropriate hardship protections to prevent any participant in the experimental group from being unduly impacted as discussed in Section 9118.

Comment [BH1]: This does not account for situations with utility allowances. We think the point you want to make is that the family rent to owner always will be a minimum of \$75. See our comments on the MTW Plan Amendment.

9101 SELECTION OF STUDY GROUP AND CONTROL GROUP

9101.1 Program participants will be selected from among current HCVP participant families, using a random assignment methodology. Households will be selected

for either the experimental or control groups prior to their scheduled recertification interview.

9101.2 The following households will be excluded from the study:

- (a) Elderly as defined in this Chapter
- (b) Disabled
- (c) Project Based Voucher
- (d) VASH (Veteran's Administration Supportive Vouchers) voucher
- (e) Enhanced Voucher
- (f) Moderate Rehabilitation/Single Room Occupancy (SRO)
- (g) Family Self-Sufficiency (FSS) program participants
- (h) Households exercising the portability option
- (i) Households who end participation in the program (either voluntarily or involuntarily)
- (j) Mixed household of eligible and non-eligible household members

9102 ENROLLMENT

9102.1 Once a participant is enrolled in the experimental group and has begun receiving assistance using the alternative rent policy, the following regularly scheduled events shall occur:

- (a) Triennial recertification, at which time income is calculated and total tenant payment and ~~tenant-family~~ rent to owner are determined,
- (b) Interim recertifications, limited to no more than one participant initiated interim per year except in the case of a hardship waiver.

9102.2 At initial enrollment, the household may be provided with a temporary Total Tenant Payment, pursuant to Section 9110.

9103 ANNUAL INCOME

9103.1 For the purposes of determining all forms of income for families participating in the program, DCHA shall follow HUD requirements to verify income, but will calculate and treat gross annual income as follows:

- (a) To establish annual gross income for the three year certification period, DCHA will review the total household income without deductions for the twelve-month period prior to recertification, i.e., the “retrospective income.” The household’s TTP will depend on its retrospective income during a 12 month “look back” period. However, at the initial certification when participants enter the experimental group, annual gross income will be based on current household income.
- (b) If, at the certification/recertification, the household’s current/anticipated income is less than its retrospective income by more than 10%, a “temporary” TTP based on current income alone will be set for a six month grace period.
- (c) If, at the initial triennial certification only (this is a one-time reduction for a household), the childcare expense exceeds \$200 per month, the gross income will be reduced by a deduction of reasonable childcare costs above the \$200 per month, to create a “temporary” TTP for a six month grace period. After the grace period, the TTP will revert to the amount based upon the previously determined average retrospective income.
- (d) Income recalculations will be initiated by DCHA only triennially.
- (e) If the household reports a decrease in income or a change in household composition that requires a recalculation of the family’s share of rent, the annual income can be recalculated once per year. See, Section 9113 below.

Comment [BH2]: If DCHA accepts our suggestion that the initial certification be based on current income, then we believe this section could be deleted. Alternatively, DCHA could keep this section, and incorporate either a 12-month initial grace period or an automatic extension of the initial grace period for an additional 6 months.

9104 UTILITY PAYMENTS AND REIMBURSEMENTS

9104.1 DCHA, under its MTW Authority, established its “Simplified Utility Allowance Schedule.” The calculation of the Utility Allowance and Reimbursements shall be in accordance with Chapter 5311 and 5322 of Title 14, pursuant to DCHA Moving To Work authority.

9104.2 If, when the utility allowance is subtracted from the household’s TTP, the family ~~share rent to owner~~ is lower than the minimum rent of \$75, the ~~entire~~ utility allowance will be partially reimbursed to the family through a deposit on the utility reimbursement debit card provided by DCHA. The amount of the deposit on the utility reimbursement debit card shall be the total utility allowance minus the difference between the TTP and the minimum rent of \$75. Under these circumstances the family will be responsible to pay the owner \$75 rent each month.

9105 APPLYING UTILITY ALLOWANCES

9105.1 A DCHA-established utility allowance schedule is used in determining Family Share and HAP. DCHA shall use the appropriate utility for the lesser of the dwelling unit actually leased by a family ~~rather~~ or the voucher unit size for which the Family qualifies using DCHA subsidy standards.

9105.2 When utility schedules are updated to reflect rate changes, utility allowances (and UAPs) will be adjusted only when HAP subsidies or TTPs are recalculated for other reasons. More specifically, updated utility schedules will be applied when households: (1) face a contract rent change, (2) have their TTPs recalculated during interim or triennial recertifications, (3) move to new units, ~~and or~~ (4) have a change in household composition requiring a change in voucher size.

9106 UTILITY ALLOWANCES

9106.1 Pursuant to Section 5311, the allowances are based on actual rates and average consumption estimates, not on a family's energy consumption.

9106.2 The utility allowance is applied as follows:

- (a) as a reduction in the family's portion of rent;
- (b) as a subsidy allowance to the family through the use of a utility debit card; or
- (c) in some cases, both.

9106.3 When the family's TTP minus the utility allowance plus any amount of gross rent above the payment standard exceeds the minimum rent of \$75, the utility allowance is given as a reduction in TTP.

9106.4 ~~If, when the utility allowance is subtracted from the family's TTP minus, the family rent to owner the utility allowance is less than the TTP minimum rent of \$75, the family is required to pay the minimum rent of \$75, and the subsidy-utility allowance will be partially provided to the family through the use of a utility debit card. The amount of the deposit on the utility reimbursement debit card shall be the total utility allowance minus the difference between the TTP and the minimum rent of \$75.~~

Comment [BH3]: This tracks with the language in section 9104.2 above.

9107 ADJUSTED INCOME AND DETERMINATION OF RENT

9107.1 The alternative rent policy does not use adjusted income to calculate rent and ~~subsidy~~ Housing Assistance Payment; therefore there are no deductions or allowances applied to the gross income calculated in accordance with Section 5306, and with the following exception:

Comment [BH4]: The regulations do not use the term "subsidy" elsewhere.

- (a) As provided under Section 9103.1 above, a At the initial triennial recertification only, households whose child care expenses exceed \$200 a

month, gross income is reduced temporarily (for 6 months), by the amount of reasonable childcare costs above the \$200 per month.

9108 OVERVIEW OF RENT AND SUBSIDY CALCULATIONS

9108.1 In order to calculate ~~family rent to owner~~~~Total Tenant Payment (TTP)~~ for the Rent Reform Demonstration, DCHA shall calculate annual income ~~and the TTP~~ pursuant to Section 9107, ~~but~~ ~~and~~ will ~~calculate~~ ~~require~~ the ~~TTP~~ ~~family rent to owner to be at least as 28% of gross income, or~~ the minimum rent of \$75; ~~whichever amount is greater.~~

9108.2 DCHA has established a hardship policy that will provide relief to families experiencing hardship in paying their rent. The hardship policy is described in Section 9118.

9109 DCHA'S HOUSING ASSISTANCE PAYMENT

9109.1 **DCHA shall pay a monthly Housing Assistance Payment (HAP) for a family that is equal to the lower of the applicable payment standard or the gross rent, minus the greater of the family's TTP or the minimum rent of \$75.**

9109.2 If a Family chooses a unit with a gross rent that exceeds DCHA's applicable payment standard, the family ~~rent to owner shall pay the TTP plus~~ ~~will include~~ the ~~amount by which the gross rent exceeds~~ ~~difference above~~ the payment standard; ~~and.~~

9109.3 At initial occupancy, DCHA may not approve the tenancy if it would require the family share to exceed forty percent (40%) of the family's gross monthly income.

9110 ~~DELAYED TENANT-FAMILY SHARE AT INITIAL CERTIFICATION UNDER THE RENT REFORM DEMONSTRATION~~

9110.1 To help protect households from unreasonable increases in TTP when the alternative rent policy is implemented, the following safeguards will apply:

- (a) When a household's ~~current or~~ anticipated monthly income for the coming year is substantially lower (i.e., by more than 10 percent) than its retrospective monthly income for the past year, a "temporary" TTP based on the ~~current or~~ anticipated income ~~(or the minimum rent, whichever is higher)~~ will be set for a six-month "grace period." This grace period will only apply, at the beginning of the three-year period ~~(and at any subsequent triennial recertifications).~~
- (b) At the end of the six-month grace period, **unless the household qualifies for another exception interim recertification (see below)**, the temporary TTP will expire, and the household will be switched automatically to the "regular" TTP amount that was previously determined based on

Comment [BH5]: If DCHA accepts our suggestion that the initial certification be based on current income, then we believe this entire section could be deleted. Alternatively, DCHA could keep this section with the edits below, and incorporate either a 12-month initial grace period or an automatic extension of the initial grace period for an additional 6 months.

Comment [BH6]: We think this is not quite right in situations where a utility allowance applies or the gross rent is above the payment standard, and the same ground is covered elsewhere in the regulations.

retrospective income. No interim is required or offered.

- (c) If, however, at the end of the grace period, the household has not fully restored its income to the original retrospective gross income level, the household may request and will be granted an interim recertification interview. The new 12-month look-back period for that interim recertification (counting back from the end of the grace period) will take into account the more recent period of lower income. The new TTP calculated at this interim will apply until the next triennial recertification, unless an intervening interim recertification is required or the family receives a lower TTP as part of a hardship waiver.
- (d) **If this interim recertification (after the grace period) results in a new TTP that is higher than the grace-period temporary TTP, the family may qualify for a hardship ~~remedy-waiver~~ pursuant to Section 9118. ~~The hardship remedy will apply only if the new TTP is more than 40 Percent of the household's current/anticipated gross income at that time (any amount of the rent to owner that is due because the family chose a unit that rents for more than the payment standard is not used in determining this 40% rent burden).~~**
- (e) If a working-age/non-disabled household that is enrolled in the Rent Reform Demonstration subsequently becomes a fixed-income household due to disability by the time of its next triennial recertification, its new TTP will be based on its fixed current/anticipated gross income.

Comment [BH7]: This statement is incomplete, because a family also could receive a hardship waiver under one of the other provisions. Also it seems that the broader statement about how to evaluate rent burden really belongs in the hardship waiver provision itself, and you already have it there.

9111 CHANGES IN FAMILY SHARE AND HOUSING ASSISTANCE PAYMENTS

- 9111.1 Households are not required to report changes in income during the three-year period between recertifications, however they must report changes in household composition. This includes both additions and removals of members (including the death of any member) to the household, so that DCHA may determine continued eligibility for housing assistance.
- 9111.2 Unless the addition of ~~fr~~ change in members results in a required change in the voucher bedroom size, no income information will be requested.
- 9111.3 If the removal of a household member results in a decrease in income, the household may request an interim certification to reset the TTP. If the loss of income causes the household's ~~retrospective-current retrospective~~ income with the household member's income removed to drop by more than 10 percent ~~of from~~ its previously established retrospective income level, the TTP shall be reset to the household's current retrospective income with the household member's income removed.
- 9111.4 If the addition or removal of a household member results in a change in the appropriate voucher bedroom size, DCHA will review the income of the new or

removed member only, apply the appropriate utility allowance for the bedroom size and will reset the TTP. If there is a reduction in subsidy or increase in family share, DCHA will automatically grant a one-time hardship for six months to allow the Family to move to an affordable unit. .

9112 TRIENNIAL RECERTIFICATION OF INCOME

9112.1 Families shall be required to provide information on household income, assets valued at \$25,000 or more and family composition triennially (every three years).

9112.2 Triennial recertification for midmonth move-ins (e.g., September 15th) shall be conducted no later than the third following year by the first of the move-in month (e.g., September 1)

9112.3 When families move to another dwelling unit, the family will not be required to complete an interim recertification unless the household composition has changed and the family member who was added or removed had income counted in the last triennial recertification. The family rent to owner will be calculated using the family's most recent TTP, together with the utility allowance and contract rent applicable to the new dwelling unit.

9113 RECERTIFICATION NOTICE TO THE FAMILY

9113.1 In accordance with Section 5313.1, DCHA shall maintain a recertification tracking system that shall ensure that at least one hundred fifty (150) days in advance of the scheduled triennial recertification effective date, the Head of Household shall be notified by mail that she or he is required to attend a recertification interview on a specified date, or rearrange a date in advance, if the scheduled date is unacceptable. The notice shall tell the participant which documents to bring. Except for the timing of the recertification appointment, all other procedures required by Sections 5313 and 5805 will be followed.

9114 INTERIM RECERTIFICATIONS

9114.1 Interim recertifications in the Rent Reform Demonstration are limited in frequency and scope.

9114.2 Families are not required to report increases in income between triennial recertifications.

9114.3 Family's may request and receive an interim reduction in rent:

- (a) When their income falls, households may request, an interim recertification of their income. An interim will be conducted only when a household has a reduction ~~of~~ in current household income of 10% or more from the retrospective income used to calculate their TTP.
- (b) DCHA will re-calculate the household TTP based on a new retrospective income ~~to determine the greater of 28% of gross income or the minimum~~

Comment [BH8]: See our comments to the MTW Plan Amendment on this issue.

~~rent of \$75 as provided under Section 9103 above.~~ This new TTP will remain in effect until the next triennial certification unless an interim ~~is~~ recertification is required or the family receives a lower TTP as part of a hardship waiver.

- (c) The household may request and receive one interim recertification per year, unless an additional interim recertification is granted as part of a hardship waiver.

9114.4 Households are required to report changes in household composition within thirty (30) calendar days of the change in household composition.

9114.5 Households seeking to move to a new unit will not be required to complete an interim review of income and have TTP recalculated, unless the move is the result of a change in household composition and voucher size (as described above), or when the tenant requests an interim due to a decrease in income. The family rent to owner will be calculated using the family's most recent TTP, together with the utility allowance and contract rent applicable to the new dwelling unit.

9114.6 When the utility allowance schedule is updated to reflect rate changes, utility allowances and utility allowance payments (UAPs) will be adjusted only when HAP subsidies or TTPs are recalculated for other reasons. More specifically, updated utility schedules will be applied when households:

- (a) Experience a change in unit rent; or
- (b) Recertify and the TTP is recalculated during interim or triennial; or
- (c) Move to a new units, or
- (d) Change the household composition and qualify for a different voucher size.

9114.7 DCHA will conduct a third party verification every ninety days for those families who report zero income and initiate an interim recertification.

9115 ASSETS

9115.1 Households will not be required to report the value or income from assets that are valued at less than \$25,000, but will be required to certify that their combined asset value is under \$25,000. This income will not be included in the income calculated to determine TTP. If a household has assets that are \$25,000 or more, they will be required to report this information, and the income from assets will be calculated.

9116 FAMILY MOVES

9116.1 Family moves for participants (Control and Study Group) who are in the MTW Rent Reform Demonstration shall be governed by Chapter 85 and this Chapter only.

9116.2 DCHA shall not approve requests to move a Family more than once in a twelve (12) month period unless one of the following exceptions applies:

- (a) A victim or Family seeks to move under the protections enumerated in the VAWA;
- (b) DCHA terminates the HAP contract with the owner;

(b) (e) The move is necessary to grant a request for a reasonable accommodation;
or
(c) A transfer voucher is granted as part of a hardship waiver.

9116.3 Families may only request a Voucher transfer briefing if the Family:

- (a) Has lived in their unit for at least a year;
- (b) Has not been terminated or is not currently being recommended for termination;
- (c) Is in good standing with the lease in the current unit (no outstanding rent or tenant-responsible utility bills); and
- (d) Does not have any current tenant-caused HQs violations in their existing unit.

9116.4 If the request is timely and granted, a Family shall receive no more than two (2) transfer vouchers and two (2) transfer briefings between every triennial recertification.

9116.5 Notwithstanding Section 9116.2, 9116.3, and 9116.4, Families who qualify for emergency transfer vouchers shall be issued a transfer voucher as an emergency if one (1) or more of the following conditions apply:

- (a) The Family has demonstrated a need based on the protections for victims of intrafamily violence as explained in Section 4907 of Title 14;
- (b) DCHA has terminated the HAP contract with the Family's landlord;
- (c) The Owner has initiated eviction proceedings against the Family
- (d) Emergency Transfer was granted after request from the Office of the Attorney General or the United States Attorney's Office as a matter of safety
- (e) If DCHA determines the family voucher size is too large, and the Family is not within the first year of tenancy
- (f) The family has been granted a transfer voucher as part of a hardship waiver.

9116.6 Transfer Vouchers.

- (a) For a Family that qualifies for a move under this Section, the Participant Household shall be offered a Transfer Voucher to search for another unit.
- (b) The Transfer Voucher shall expire at the earlier of 180 days from the date

of its issuance, or the date DCHA has terminated the Housing Assistance Contract on the Family existing unit with notice to the Household,

- (c) Any denial or refusal to issue a Transfer Voucher shall be issued in writing and state the reasons for such denial, including the specific nature of any denial due to any violation of Family Obligations or failure to be in good standing.

9116.7 Processing the Move. After issuance of a Transfer Voucher, if the Family locates a dwelling unit it wishes to lease, it shall be processed by DCHA as a new lease-up, including the following:

- (a) Provision of a lease-up packet when the Transfer Voucher is issued;
- (b) Inspection of the new unit for compliance with HQS; and
- (c) Approval of the lease-up lease package, including the lease and the lease terms including the gross rent and the contract rent subject to a rent reasonableness determination.

9116.8 Failure to Relocate. After a Transfer Voucher is issued, if the Family does not locate a new dwelling unit to move to:

- (a) The Family may continue on where it is currently leasing, provided that:
 - (1) The Family has not yet given notice to terminate their lease to the owner; or
 - (2) The Family has delivered to the owner a notice rescinding the earlier termination notice with a copy of such notice simultaneously delivered to DCHA; and
 - (3) The HAP Contract has not otherwise been terminated by DCHA.
- (b) The Family is not required to provide new lease-up or other documents to DCHA and the owner shall continue to receive Housing Assistance Payments as if the Participant had never requested the Transfer Voucher.
- (c) The Family's prior Total Tenant Payment continues in effect.

9116.9 Future Moves. If a Family decides to move at a future date while the Transfer Voucher is still in effect, or upon obtaining another Transfer Voucher, the Family is required to:

- (a) Give the Owner notice as provided under the lease or otherwise by mutual consent with the Owner permitting termination of the existing lease; or
- (b) If the Transfer Voucher has expired, the Family is required to request a Transfer Voucher under the conditions identified in Section 9116.3.

9117 PORTABILITY PROCEDURES

9117.1 If, at the time of their triennial certification, households report that they are interested in exercising their portability option to move to another jurisdiction, they will be referred to the appropriate receiving PHA, and will not be included in the rent reform study. Another family will be selected to replace the household porting out.

9118 HARDSHIP WAIVER POLICY

9118.1 A Family ~~may request~~ is eligible to receive a Hardship waiver at any time if the family can demonstrate one of the following circumstances listed below. If the family receives a temporary TTP during the initial grace period, then the family may request is eligible to receive a hardship waiver within 30 days before the expiration of after the initial grace period or thereafter, ends and the new TTP is effective and can demonstrate one of the following

- (a) Imminent danger of eviction as a result of non-payment of rent ~~after the effective date of the new TTP, and~~ the hardship cannot be remedied by the one interim recertification permitted each year (which cannot reduce a household’s TTP below the minimum level);
- (b) The Family is at an income level or experiences a loss of income and/or a TTP increase such that its total monthly TTP exceeds 40 percent of its current monthly gross income. **Any amount by which the gross rent exceeds the payment standard must be paid by the family and is not used in determining this 40% rent burden.** The gross income will include imputed income in the same manner as current calculations;
- (c) Zero household income;
- (d) Loss of eligibility for a federal state, or local assistance program;
- (e) Temporary or permanent disability, incapacitation or illness, or death of a household member;
- (f) Significant income loss because of other changed circumstances, including the loss of employment, reduction in work hours or pay, or loss of public benefits; or
- (g) Other circumstances as determined by DCHA.

9118.2 The process for requesting a Hardship Waiver ~~Request~~ is as follows:

- (a) The Head of Household must initiate a request for a Hardship Waiver, by completing and submitting a written hardship request to the Housing Choice Voucher's Program ~~within 30 days of a Notice to Cure or Vacate or a Complaint for possession of the unit received showing an eviction risk (or negative impact on the Family);~~
- (b) The Head of Household must supply information and documentation that supports a hardship claim with their written request. For example, a household must provide proof of the following: loss of eligibility for a federal state, or local assistance program; loss of employment, ~~or~~ reduction in work hours, or loss of public benefits; or the temporary or permanent disability, incapacitation or illness, or death of an income-earning household member and amount of lost income;
- (c) If the Head of Household claims zero household income as part of its hardship request, it must provide a detailed accounting of funds used to cover basic costs of living (food, personal/family care necessities, etc.);
- (d) ~~To request receive~~ hardship based on the risk of eviction for non-payment of rent ~~or utilities~~, a household must provide a copy of a rent ledger showing an accruing balance, a notice from the landlord, the a 30 day Notice to Vacate or Cure or a Summons and Complaint from the landlord ~~of for~~ non-payment of rent or any other proof acceptable to DCHA;
- ~~(d)~~(e) ~~To request receive~~ hardship based on the risk of utility shut-off, a household must provide a copy of a shut-off notice, a recent bill from the utility company showing an accruing balance, a notice from the landlord, or any other proof acceptable to DCHA.

Comment [BH9]: There are situations where the disability, incapacitation or illness, or death of a non-income-earning household member will result in loss of employment or reduced employment income for another household member. We ask that DCHA not limit the application of this factor.

9118.3 The Hardship Review Process is as follows:

- (a) DCHA will review the Hardship Request in accordance with this Section and provide written notice to the Head of Household within ten (10) business days of its decision to grant the Hardship requests;
- (b) DCHA will complete all information regarding the request for Hardship and the outcome in the Head of Household file;

(c) Where a hardship waiver is denied, the household may request an independent review of its case through DCHA’s normal grievance process under Chapter 89;

~~(b)~~(d) For hardship claims related to imminent risk of eviction or utility shut-off, DCHA will conduct an expedited hearing process.

9118.4 At the sole discretion of DCHA, the Hardship Remedies may include any of the following:

- (a) Allowing an additional interim recertification beyond the normal one-per-year option. This could lower household’s TTP, which includes lowering the minimum rent until the next triennial recertification;
- (b) Setting the household’s TTP below the minimum, at 28 percent of current income, for up to **180** days;
- (c) Offering a “transfer voucher” to support a move to a more affordable unit (including a unit with lower utility expenses); or
- (d) Any combination of the above remedies.

9118.5 During the **180** day period when the TTP is reduced, DCHA will recalculate the subsidy payment based on the reduced TTP. DCHA will notify the Landlord and the Head of Household of the change in subsidy payment.

9118.6 In addition to the remedy or remedies offered, the Head of Household may be referred to federal, state or local assistance programs to apply for assistance, or to obtain verification that they are ineligible to receive benefits.

9118.7 The Hardship remedies are subject to the following limitations:

- (a) The new Family ~~portion of the rent payments~~rent to owner will be effective on the 1st of the following month after ~~approval~~submission of the request;
- (b) Remedies will not affect any rent attributable to a gross rent that exceeds the applicable payment standard;
- (c) Opting out of the alternative rent policy is not a remedy option.

9118.8 Expiration of the Hardship Waiver Period:

- (a) If after the ~~six (6) month~~ 180-day Hardship period expires and the Family's hardship continues, the Family may submit a request for an extension of the hardship remedy. However, the hardship waiver will never go past the triennial recertification date;
- (b) At the end of the hardship waiver period, the household's regular TTP will be reinstated.

9999 DEFINITIONS

Control Group – HCVP participants who are randomly selected for the program, but have their vouchers administered pursuant to the existing DCHA HCVP Administrative Plan. ~~The~~ these families will be followed for the entire length of the program and their progress toward self-sufficiency will be compared to the experimental group.

Current/Anticipated Income – Prospective annual income based upon the earnings and benefits received at the time of the certification. It may be used in calculating income used to determine TTP in certain circumstances.

Elderly Household - Elderly households are defined, for the purposes of participation in the Rent Reform Demonstration, (both the experimental and control groups), as households whose head, spouse or sole member is 56 years or older at the time the family would enter the experimental group ~~each elderly status by age (62 years old) during the term of the study.~~

Family Share - The Family Share is the gross rent minus the Housing Assistance Payment.

Interim Recertification – a certification of a household's income that occurs in between regularly scheduled triennial recertification. Households may request one interim recertification if they experience a reduction in income each year.

Minimum Rent – The minimum amount a Head of Household must contribute toward their lease rent. This amount must be paid directly to the owner each month, **even if 28% of monthly income is less than the minimum rent.** The minimum rent for study participants is \$75.

Rent Reform Demonstration – a study commissioned by the U.S. Department of Housing and Urban Development (HUD) to evaluate a Housing Choice Voucher (HCVP) alternative rent reform policy. The demonstration implements alternative

Comment [BH10]: It may be easier to use the MTW Plan Amendment definition of 56 years old or younger.

Comment [BH11]: Federal regulations define family share as "The portion of rent and utilities paid by the family." Is there a reason to use a different definition here?

rent calculations and recertification strategies at several PHAs across the country in order to fully test the policies. DCHA is one of the participants in the study.

Rent Burden – When a family is initially certified for the Rent Reform Demonstration, and when they move to a new unit, the maximum rent burden is 40% of the household’s gross monthly income. If the family’s TTP exceeds this amount, the unit will be disapproved. This maximum rent burden does not apply in future certifications if the household remains in the same unit.

Retrospective Income – Total household income that was received in the 12 month (look-back) period **prior to the recertification being conducted.**

Study Group—HCVP Participants who are randomly selected for the program and will have the alternative rent policies of the Rent Reform Demonstration applied to their subsidy participation. This family will be followed for the entire length of the program and their progress toward self-sufficiency will be compared to the control group.

Temporary TTP – a TTP set for a six-month grace period.

~~**Total Tenant Payment** – the TTP is the greater of 28% of monthly gross income, or the minimum rent of \$75.~~

Triennial Recertification – certification of a household’s income and family composition that is used to establish the household’s TTP three years from the date of the initial recertification for entry into this program.

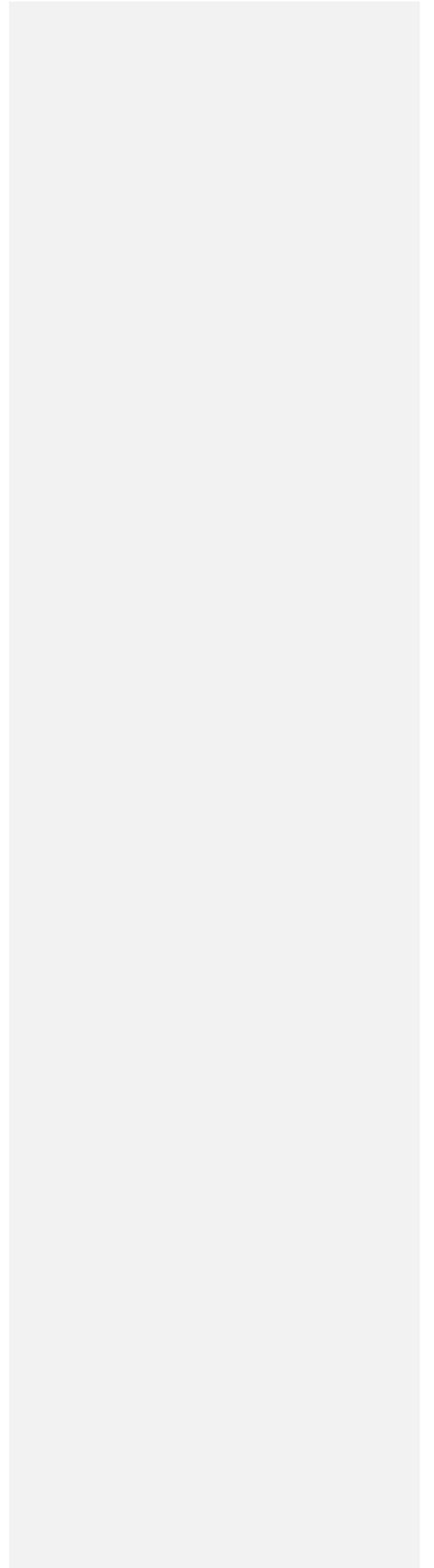
Comment [BH12]: We do not believe this is accurate for situations with utility allowances, and there is no need to define the term. The same ground already is covered in the regulations themselves.

Interested persons are encouraged to submit comments regarding this Proposed Rulemaking to DCHA’s Office of General Counsel. Copies of this Proposed Rulemaking can be obtained at www.dcregs.gov, or by contacting Karen Harris at the Office of the General Counsel, 1133 North Capitol Street, NE, Suite 210, Washington, DC 20002-7599 or via telephone at (202) 535-2835. All communications on this subject matter must refer to the above referenced title and must include the phrase “Comment to Proposed Rulemaking” in the subject line. There are two methods of submitting Public Comments:

1. Submission of comments by mail: Comments may be submitted by mail to the Office of the General Counsel, 1133 North Capitol Street, NE, Suite 210, Washington, DC 20002-7599.
2. Electronic Submission of comments: Comments may be submitted electronically by submitting comments to Karen Harris at: PublicationComments@dchousing.org.

3. No facsimile will be accepted.

Comments Due Date:



Advocates' Comments on DCHA Amendment to FY2014 MTW Plan
(HUD Rent Reform Demonstration)

Our general comments on the HUD Rent Reform Demonstration, including issues covered in the MTW Plan Amendment, are summarized in our letter. Below are specific comments about places where the MTW Plan Amendment would require revisions, per our comments.

Minimum Rent

As noted in our comments, we suggest that all references to minimum be changed from \$75 to \$25 or \$50 per month.

In the MTW Plan Amendment, there are several references to the TTP being set to the higher of 28% of gross annual income or the minimum rent. (Pages 3, 4, 5, 11) Another reference states that the family share will be the higher of 28% of gross annual income or the minimum rent. (Page 3) These statements are incomplete, because they do not account for households receiving a utility allowance. These references should be amended to address households that receive a utility allowance. As we understand DCHA's plans, those families receiving a utility allowance and affected by minimum rent will have to pay the minimum rent, but they also will receive a compensating utility allowance on their utility debit card. The net effect is that the TTP is unchanged.

Hardship Waiver Policy

In line with our comments, we suggest the following revisions to the MTW Plan Amendment's description of the Hardship Waiver Policy:

- Clarify that a risk of eviction may be demonstrated by providing a rent ledger showing an accruing balance, a notice from the landlord, a 30-day notice to vacate, or a summons and complaint or other proof acceptable to DCHA. (Pages 36, 37)
- Clarify that a risk of utility shut-off may be demonstrated by a shut-off notice, a bill from the utility company showing an accruing balance, a notice from the landlord, or other proof acceptable to DCHA. (Page 37)
- Add to the reasons for a hardship waiver (1) temporary or permanent disability of a household member; (2) illness of a household member; (3) loss of eligibility for a federal, state, or local assistance program; and (4) significant income loss because of other changed circumstances, including the loss of employment, reduction in work hours or pay, or loss of public benefits. (Pages 36, 37)
- Clarify that the disability, incapacitation or illness, or death of *any* household member may qualify the family for a hardship waiver (even if not a household member currently earning income). (Pages 36, 37)

- Note, as provided in the regulations, that decisions on hardship waiver requests will be made within 10 days. (Page 37)
- Clarify that the hardship waiver will be good for a period of 180 days, not 90 days. (Page 38)
- Clarify that any reduction in the TTP will be effective the first of the month following *submission* of the hardship waiver request. (Page 38)

Initial Certification and Retrospective Income

Our comments propose that DCHA revise the method for calculating the TTP at the initial certification, by eliminating the use of retrospective income and instead using current income. Alternatively, we suggest that DCHA increase the initial grace period and temporary TTP for qualifying families from 6 months to 12 months, or at the very least provide an automatic extension for an additional 6 months when the household income has not changed substantially. This change would require revisions to several portions of the MTW Plan Amendment. (Pages 4, 5)

Interim Recertification

The rent reform regulations and the MTW Plan Amendment differ on when a family will qualify for an interim recertification based on a drop in income. The rent reform regulations state the family will qualify when it “has a reduction of income of 10% or more from the retrospective income used to calculate their TTP.” 14 D.C.M.R. § 9114.3(a). Our understanding is that the comparison would be between *current* income and prior retrospective income. However, the MTW Plan Amendment states that the comparison would be between *current retrospective* income and prior retrospective income. (Page 11)

We believe an interim recertification should be triggered when *current* income falls below 10% of prior retrospective income. Because retrospective income involves an averaging over 12 months, a family could experience a substantial immediate drop in current income and still not have a drop in current retrospective income. For example, assume gross family income has been \$1,000 per month for 12 months, and then a loss of a job or reduction in work hours suddenly drops the family income to \$100 per month. Prior retrospective income is \$1,000. *Current* income is now 90% below prior retrospective income. However, *current retrospective* income is \$925, not quite a 10% drop. The family would have to wait an additional month before their *current retrospective* income would have fallen more than 10%. Where the income drop is not as severe but still substantial, the waiting period would be even longer. For example, a family that went from \$1,000 to \$500 per month, an immediate loss of 50%, would have to wait three months before their *current retrospective* income fell more than 10%.

We suggest that DCHA revise the MTW Plan Amendment to reflect that an interim recertification will compare *current* income to prior retrospective income, not *current retrospective* income.

Imputed Income

The MTW Plan Amendment states that any sanctioned portion of a household's TANF grant will be included as imputed income. (Page 5) Current regulations and policies do not always include the sanctioned portion of a household's TANF grant as imputed income. This statement should be revised to state "The gross income will include imputed income in the same manner as current calculations." This very statement can be found in another portion of the MTW Plan Amendment, and we believe it matches DCHA's intent. (Page 37)

Removal of Household Member

In our suggested revisions to the rent reform regulations, we proposed clarifying that when a household member is removed and an interim recertification is requested, DCHA will remove any income attributable to the former household member before performing its calculations. The MTW Plan Amendment should be revised to reflect this clarification. (Pages 6-7)

Planned Outreach

The MTW Plan Amendment discusses some steps that DCHA will take to let participants know about the rent reform demonstration and how it will affect them. We suggest two minor changes:

- Specify that at the initial certification, all participants will be informed of the availability of a hardship waiver, when they may qualify, and how to apply.
- Add that all DCHA staff will be trained to be proactive in offering the hardship waiver to participants at all contact points, including the recertification appointment itself, walk-in appointments, and telephone contacts with DCHA.
- Add that DCHA will ensure that staff are available at all contact points to help a participant with completing the hardship waiver application form.