



August 10, 2015

Laura Zeilinger
Director, Department of Human Services
64 New York Avenue, NE
Washington, DC 20002

Attention: Darrell Cason

Re: Family Re-Housing And Stabilization Program (FRSP) proposed regulations

Dear Ms. Zeilinger:

Thank you for the opportunity to provide comments to the Department of Human Services (DHS) regarding the regulations proposed for the Family Re-Housing and Stabilization Program (FRSP).

The current draft of the regulations is an improvement from prior versions. We appreciate that DHS has incorporated several changes that were previously suggested by civil legal service providers. In particular, the apparent shift towards a one-year expectation of financial assistance, as well as a more clearly defined process for requesting an extension of benefits, lessens the threat of a “cliff” that has been one of the most difficult aspects for participants in this program.

We still have concerns about the current proposed regulations. We submit to you the suggestions below, as well as a red-lined Word version of the regulations, which contains some recommendations for clarification as well as some substantive comments. The major substantive issues are as follows:

1. Additional detail is needed regarding the length of the initial subsidy period, criteria for evaluating requests for extension, and notice of extension approval or denial.

- a. **The expected length of the initial subsidy period is not defined** (§ 7803.5):
Although it appears that the program has moved towards a one-year initial subsidy period, it is still not clear whether that is the case for all participants or is left to the discretion of the provider. The regulations now require the provider to give a notice stating the initial length of the subsidy, but the regulations do not state what the standard length of time will be or, if it varies, how it will be determined. Both landlords and participants have voiced concern about signing a 12-month lease when a tenant has only a short-term subsidy. The regulations should make clear that tenants are approved for 12 months of participation at the outset.

- b. **Inadequate criteria for evaluating requests for extension** (§ 7805.10): The regulations provide a much-needed process for requesting an extension of the subsidy beyond 12 months. However, they do not provide sufficient detail regarding the criteria to be used in evaluating such requests. The regulations require the Department (or provider?) to consider “the totality of the circumstances,” but list only one factor specifically: that “length of participation in the program beyond eighteen (18) months may be a valid factor for denial of an extension.” Listing only one factor imparts significant importance to the 18-month mark, suggesting that it is a de facto time limit that outweighs all other considerations. We suggest removing the 18-month guidance. Alternatively, the section should also list other factors to be weighed in the totality of the circumstances analysis, including the participant’s progress towards the goals of the individualized plan, any unforeseen hardships faced by the family, and whether denial of an extension would put the family at imminent risk of return to homelessness.

- c. **Participants need to receive written notice if extension is approved** (§ 7805.10): The regulations currently require a written notice only if a participant’s request for extension is denied. Participants must also receive written notice if a request for an extension is approved. This is especially important for participants facing eviction at the end of their subsidy term, who need assurance for themselves and documentation for their landlord and the court about their status in the program.

- d. **Written notice must provide additional information** (§ 7805.10): The notice requirements regarding approvals and denials of requests for extension must comply with the HSRA and should be consistent with the program’s other notice requirements (see §§ 7803.5 (Notice of Eligibility Determination), 7803.6 (Notice of Denial of Eligibility), 7805.15 (Notice of Rental Assistance or Change in Rental Assistance), 7807.6 (Notice of Termination)).

If approved, the Notice of Extension should state:

- (a) The participant’s request for extension has been approved;

- (b) The reason or reasons why the extension was approved;

- (c) The period of additional time for which the subsidy will be provided, and if future extensions are conditioned upon certain factors, what those factors are;

- (d) Whether there is any change to the case management services, rent level, or other requirements of the participant;
- (e) The participant has the right to appeal the determination through a fair hearing and administrative review, including deadlines for requesting an appeal;
- (f) The FRSP participant has a right to a continuation of FRSP services pending the outcome of any fair hearing requested within fifteen days of receipt of written notice of termination

If denied, the Notice of Denial of Extension should state:

- (a) The participant's request for extension has been denied;
- (b) The end date of the participant's benefits under the program, which must be at least 30 days from when the notice is given to the participant;
- (c) The reason or reasons that the extension was denied, including the factual and legal basis for the denial of additional assistance;
- (d) The statute, regulation, or policy on which the denial is based;
- (e) The participant has the right to appeal the determination through a fair hearing and administrative review, including deadlines for requesting an appeal;
- (f) The FRSP participant has a right to a continuation of FRSP services pending the outcome of any fair hearing requested within fifteen days of receipt of written notice of termination;
- (g) The applicant is being referred to other programs and services that they may qualify for within the Continuum of Care.

2. The tenant rent contribution is too high, and the regulations contain no guidance as to how the percentage is set or when it is changed.

- a. **Household contribution standard is too high** (§ 7805.11): We continue to strongly object to the requirement that families pay over 30% of household income as rent. Paying 40% of income towards rent is extremely difficult for most low-income families; paying 60% is often impossible. This is particularly the case for families whose sole income is TANF or SSI. Such families simply cannot afford to pay 60%

of their income towards rent while also paying for food, utilities, household supplies, transportation, and other necessities. At the 60% rent level, this program is no longer assisting very low income families achieve housing stability, but is rather precipitating their return to homelessness. The regulation should set the rent at 30%, or at the highest 40%, of a household's income, preferably for all households, but at the very least for any household in which the household income is derived solely from TANF or Social Security.

- b. **Household contribution standard lacks clarity** (§ 7805.11): The regulations provide insufficient guidance regarding how the participant's portion of the rent is calculated (including how the cost of utilities is taken into account, and whether certain other expenses are deducted from the household income, as is done by HUD). The regulations also contain no information about how providers determine what percentage of a household's income (40%, 60%, or something in between) will be paid towards rent. Our observation is that providers vary widely in whether and when they increase household contribution to 60%, and participants' ability to pay a higher portion of their income toward rent is not necessarily taken into account. The rent percentage is increased with little or no explanation to the participant. Participants and providers need guidance in the regulations to avoid arbitrary decision making as well as to understand program expectations.
 - c. **Participants should have fair hearing rights for rent calculations** (§ 7805.15): In addition to the reconsideration process outlined in the regulations, participants should have fair hearing and administrative review rights for initial rent calculations and interim recertifications, and should be entitled to benefits pending the hearing for proposed increases in the tenant portion of the rent. Tenants must have recourse in situations where providers inaccurately calculate or arbitrarily increase their rent, or when providers fail to respond to requests for recertification.
3. **The regulations should contain a good-cause exception for tenant non-payment, and should specify the obligations of the program to timely pay the rental subsidy.**
- a. **Add that the program is responsible for timely paying the subsidized portion of the rent** (§ 7805.11). The regulations should state that tenants are not responsible for late fees or rent charges due to the program's late or non-payment of the subsidized portion of the rent. We have seen many cases in which tenants are sued for eviction due solely to the program's late or non-payment. (Beyond the purview of these regulations, we recommend that DHS/TCP begin entering into 3-party contracts with landlords to clarify each party's roles and responsibilities and to protect tenant from such lawsuits.)

- b. **Add good cause exception for tenant non-payment** (§ 7805.12): The regulations require that a participant must “have paid their share of the housing costs during the subsidy period on a timely basis” in order to demonstrate good faith participation in services. We suggest that a good cause exception be added to this section. Good cause would include withholding the tenant portion of the rent due to housing code violations in the participant’s apartment that the landlord has not addressed, consistent with D.C. rental housing law. In addition, tenants should be permitted and assisted by providers in relocating to another unit if a landlord refuses to address substantial housing code violations (see proposed language for 7806.7 in redline).

4. Parts of the new “Program Exits” section do not comply with the HSRA.

- a. **“Program Exits”** (§ 7807): The “Program Exits” section (formerly entitled “Termination of Family Re-Housing and Stabilization Assistance”) appears to create new categories of “exits” from the program, separate from termination. These lack the clear guidelines, processes, and appeal rights that apply to denials and terminations under the HSRA. The proposed regulations define “successful exits” in § 7807.10, but only allude to the existence of unsuccessful exits in § 7807.1 – situations in which a participant may be denied an extension of time in the program but is unable to sustain or locate affordable housing without FRSP assistance. To address this, the regulations should define what it means for a household to be able to independently sustain housing stability, as is referenced in the sections regarding eligibility (§ 7803.1(c)), requests for extension (§ 7805.9), and successful exit (§ 7807.10). As is addressed elsewhere in our comments, the regulations must also clearly state the evaluation criteria (§ 7805.10), notice requirements (§ 7805.10), and hearing rights (§ 7808.1) that apply to exits other than terminations.
- b. **HSRA limits some termination grounds to acts on provider’s premises** (§ 7807.2): We do not agree that the HSRA language restricting some terminations to behavior occurring “on the provider’s premises” can be lawfully interpreted by the agency as covering behavior occurring “in the unit subsidized by the FRSP.” The subsidized unit is properly the landlord or owner’s premises, not the provider’s premises, unless they are one and the same. The provider is either the organization that is providing social services to the participant or the District or District’s designee that is providing the rental subsidy. Either way, the provider’s premises will not be the same as the subsidized unit. The participant in FRSP will be held accountable for any unlawful behavior in an FRSP-subsidized unit by both criminal law and the Rental Housing Act eviction provisions. There is no need to bend the HSRA’s

narrow termination provisions to meet the agency's desire to incentivize lawful behavior in its housing programs.

- c. **Reasonable efforts to transfer must include other housing programs** (§ 7807.8): To be consistent with the HSRA, the “reasonable effort” to transfer a client prior to termination must also include consideration of whether transfer from FRSP to another housing program may be appropriate under the circumstances. *See* D.C. Code §§ 4-754.34 & 4-754.36(a). For example, it may be appropriate to transfer a participant who is having difficulty following program rules due to mental health to PSH rather than terminate.

5. The fair hearing section omits references.

- a. **Deadline for fair hearing requests** (§ 7808.1): This section, which provides the time period for requesting a hearing, should reference each section that provides hearing rights. It currently references § 7803.6 (Notice of Denial of Eligibility) and § 7807.5 (a typo?). It should reference § 7803.6, along with § 7803.5 (Notice of Eligibility Determination), § 7805.10 (Notice of Eligibility / Denial of Request for Extension of Subsidy), and § 7807.6 (Notice of Termination).
- b. **Right to continuation of services** (§ 7808.3): This section, which provides for continuation of benefits if a fair hearing is requested within 15 days, should also reference § 7805.10.

We would be happy to discuss these comments with you if you have any questions. Please contact Anna Purinton (202-661-5958; apurinton@legalaiddc.org) or Amber Harding (202-328-5503; amber@legalclinic.org). Thank you again for the opportunity to provide these comments.

Sincerely,

Anna Purinton
Rachel Rintelmann
Legal Aid Society of the District of Columbia

Amber Harding
Marta Beresin
Washington Legal Clinic for the Homeless

Samantha Beckett
D.C. Law Students in Court

DEPARTMENT OF HUMAN SERVICES

NOTICE OF THIRD EMERGENCY AND PROPOSED RULEMAKING

The Director of the District of Columbia (District) Department of Human Services (Department), pursuant to the authority set forth in Sections 7(e) and 31 of the Homeless Services Reform Act of 2005 (HSRA), effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code §§ 4-753.01(e) and 4-756.02 (2012 Repl.)), and pursuant to Mayor's Order 2006-20, dated February 13, 2006, and Mayor's Order 2007-80, dated April 2, 2007, hereby gives notice of the adoption of the following new Chapter 78 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations, entitled "Family Re-Housing and Stabilization Program", as an emergency rulemaking, to become effective immediately.

The purpose of the new chapter is to establish rules to administer the District of Columbia's Family Re-Housing and Stabilization Program (FRSP). FRSP will provide District residents who are experiencing homelessness or at imminent risk of experiencing homelessness with a range of services, tailored to the unique needs and strengths of the entire household, to assist them in achieving greater stability and economic security, including, but not limited to: individualized case management services, housing identification, connection to mainstream and community-based resources, time-limited rental subsidies, and utility assistance. Families participating in FRSP who also receive Temporary Assistance for Needy Families (TANF) assistance will be able to unify their services under their Individual Responsibility Plan and count the hours toward their work participation requirements by participating in a variety of employment-related services offered within FRSP, such as obtaining a General Education Development (GED) certificate, taking courses at the University of the District of Columbia, participating in work hours, and receiving a certification from the Department of Employment Services (DOES).

These rules were first published as emergency and proposed in the *D.C. Register* on July 27, 2012, at 59 DCR 8831 [EXPIRED]. Emergency rules were subsequently published on January 18, 2013, at 60 DCR 415 [EXPIRED]. A Notice of Second Emergency Rulemaking was published on May 31, 2013, at 60 DCR 7631 [EXPIRED]. The Department then published the Notice of Second Emergency and Proposed Rulemaking on June 27, 2014, at 61 DCR 6562 [EXPIRED]. A Notice of Third Emergency Rulemaking was published on November 14, 2014, at 61 DCR 11889 [EXPIRED]. Finally, on March 27, 2015, the Department published the Notice of Fourth Emergency Rulemaking at 62 DCR 3693. This emergency and proposed rulemaking supersedes the Second Proposed Rulemaking.

Emergency rulemaking action, pursuant to Section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2012 Repl.)), is necessary so as to allow the Department to continue to operate FRSP as the Department continues to review the comments received in response to the proposed rules, and to finalize the proposed rules. Therefore, taking emergency action under these circumstances will promote the immediate preservation of the health, safety, and welfare of District residents who are experiencing homelessness by permitting the Department to continue to support their

rapid return to permanent housing and working to ensure that the experience of homelessness with the District is rare, brief, and non-recurring.

These emergency rules were adopted on May 26, 2015, and went into effect at that time. The emergency rules shall expire on September 23, 2015, which is one hundred twenty (120) days after the adoption date of these emergency rules, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Further, and in accordance with Section 31 of the HSRA, these proposed rules will be submitted to the Council of the District of Columbia (Council) for a forty-five (45)-day review period, excluding Saturdays, Sundays, legal holidays, and days of Council recess. The proposed rules shall not become effective prior to the completion of the thirty (30)-day comment period and the forty-five (45)-day Council review period.

Add the following new Chapter 78, FAMILY RE-HOUSING AND STABILIZATION PROGRAM, to Title 29 DCMR, PUBLIC WELFARE, to read as follows:

CHAPTER 78 FAMILY RE-HOUSING AND STABILIZATION PROGRAM

7800 SCOPE

7800.1 The purpose of the Family Re-Housing and Stabilization Program (“FRSP” or “Program”) is to support District residents, who are experiencing homelessness or at imminent risk of experiencing homelessness, to achieve stability in permanent housing through individualized and time-limited assistance. FRSP offers a range of supports that are responsive to participant needs, including: individualized case management services, housing identification, connection to mainstream and community-based resources, and financial assistance.

7800.2 The provisions of this chapter describe the application process, eligibility criteria, assistance determination, description of assistance provided, and appeal procedures for the Program.

7800.3 Nothing in these rules shall be interpreted to mean that FRSP assistance is an entitlement. This Program shall be subject to annual appropriations and the availability of funds.

7800.4 The Department of Human Services (Department) may execute contracts, grants, and other agreements as necessary to carry out the Program.

7801 APPLICATION PROCESS

7801.1 Each FRSP application shall be in writing on a form provided by the Department and signed by the applicant, and submitted to the Eligibility Provider. An

authorized representative may apply on behalf of the applicant, if the applicant provides a written and signed statement stating why he or she cannot apply in person and the name and address of the person authorized to act on his or her behalf.

- 7801.2 If an applicant with a disability or the authorized representative of an applicant with a disability requests assistance to complete the FRSP application, the Provider shall assist such applicant or authorized representative with the application process to ensure that the applicant has an equal opportunity to submit an application.
- 7801.3 The Department shall provide FRSP application forms to the Eligibility Provider to use, and to disseminate to applicants, and the Eligibility Provider shall accept applications from each applicant who requests or is referred for FRSP assistance.
- 7801.4 At the time of application, the Eligibility Provider shall provide each applicant with a written FRSP notice explaining the program. Each applicant shall personally, or through an authorized representative, sign an FRSP notice acknowledgement form, acknowledging receipt of the FRSP notice. The FRSP notice shall contain a description of the Program, the Eligibility Provider and Service Provider's responsibilities, the applicant's rights and responsibilities, grievance procedure and the Program requirements, including that receipt of FRSP assistance is conditioned upon actively seeking housing and completing the steps necessary to lease and move into an FRSP-approved housing unit in a timely manner (approximately thirty (30) days from the date of the Notice of Eligibility), absent a good cause reason for delay. For purposes of this section, "good cause" shall include delays caused by actions or inactions of persons outside of the applicant's control.
- 7801.5 As part of the application process, each applicant, personally or through an authorized representative, shall sign an FRSP release form authorizing the Eligibility Provider to obtain or verify information necessary for processing the application.
- 7801.6 As part of the application process, each applicant shall provide the following information to the Eligibility Provider to determine if the applicant is eligible for the Program:
- (a) What circumstances brought about the applicant's experience of homelessness, or imminent risk of homelessness; and
 - (b) Documentation of the following:
 - (1) Household composition;

- (2) Employment status and employment history;
- (3) Income and financial assets history;
- (4) Household expenses;
- (5) Rental and other relevant housing history;
- (6) Facts and circumstances surrounding financial and other barriers to housing stability; and
- (7) Facts and circumstances surrounding work experience, education, or training that can contribute to the household's ability to achieve housing stability independent of the Program by the end of the FRSP period.

7801.7 The request for documentation under § 7801.6(b) may be waived if the applicant signs a declaration containing the necessary information listed in § 7801.6(b).

7801.8 If additional information is needed from the applicant to determine eligibility for the Program, the Eligibility Provider shall make the request, in writing, for additional information, which shall specify the information needed to complete the application. The written request shall also include information to assist the applicant with obtaining the required information and/or offer appropriate assistance in obtaining the required information. The application shall be considered complete when all required information is provided to the Eligibility Provider.

7801.9 The Eligibility Provider may use, among other things, documents, telephone conversations, personal and collateral interviews, reports, correspondence, and conferences to verify applicant information.

7801.10 If an applicant has not obtained and provided to the Eligibility Provider the required information for eligibility determination under § 7801 within thirty (30) days of the date of application, then the Eligibility Provider is responsible for making documented efforts to contact the applicant both by telephone and in writing upon the completion of the thirty (30) days of the date of application, to discuss if services are still needed and discuss any barriers that are delaying the requested documentation. If, at such time, contact with the applicant is made and services are still requested, the Eligibility Provider will take appropriate steps to assist the applicant in obtaining the required information. If, at such time, contact cannot be made, or the applicant no longer requests the services, an application may be considered abandoned.

7802 APPLICANT UNIT

7802.1 The applicant unit shall be composed of each individual who lives in the same household as the applicant and whose needs, assets, and income are combined to determine eligibility.

7802.2 The applicant unit shall include:

- (a) Persons related by full- or half- blood with legal responsibility for minor children in the household;
- (b) Persons related by legal adoption;
- (c) Persons related by marriage or domestic partnership, including stepchildren and unmarried parents of a common child who live together; and
- (d) Persons with a legal responsibility for an unrelated minor child or an unrelated adult with a disability.

7802.3 The applicant unit may include any person not included by § 7802.2, regardless of blood relationship, age, or marriage, whose history and statements reasonably demonstrate that the individuals intend to remain together as a family unit.

7802.4 A person temporarily away from home due to employment, school, hospitalization, or vacation, shall be considered to be living in the household. A minor child who is away at school is considered to be living in the household if he or she returns to the home on occasional weekends, holidays, school breaks, or during summer vacations.

7803 ELIGIBILITY CRITERIA

7803.1 An applicant shall be eligible to receive FRSP assistance if the applicant unit is a family, as defined in § 7899, that:

- (a) Is currently experiencing homelessness as defined by Section 2 of the HSRA (D.C. Official Code § 4-751.01(18)), or is at imminent risk of experiencing homelessness;
- (b) Is a resident of the District of Columbia as defined by Section 2 of the HSRA (D.C. Official Code § 4-751.01(32)); and

- (c) Demonstrates that there is a reasonable expectation of sustaining housing stability at the end of the FRSP assistance period.

7803.2

Relevant factors for determining whether there is a reasonable expectation that a household will sustain housing stability or be able to exit from FRSP assistance in less than twelve months include, but are not limited to:

- (a) Current income;
- (b) Expected future income;
- (c) Rental history;
- (d) Employment history;
- (e) Employment potential based on job skills, certifications, or participation in a training or employment program;
- (f) Previous receipt of emergency rental assistance, including Emergency Rental Assistance Program or Homelessness Prevention and Rapid Re-Housing Program assistance within the last eighteen (18) months, whether applying for the same or a different financial assistance;
- (g) Assessment on a uniform tool as selected by the Department, such as the Service Prioritization Decision Assistance Tool (SPDAT), that identifies Rapid Re-Housing as the appropriate housing assistance option based on the applicant's needs;
- (h) Identification by the District of Columbia Housing Authority (DCHA) or other subsidized housing provider, as a household that is reasonably likely to receive DCHA or other subsidized housing within approximately twelve (12) months;
- (i) Willingness to take steps that could reasonably lead to increased income in the household; and
- (j) Identification of and willingness to take steps that could reasonably lead to permanent housing stability in cohabitation with family, friends, or other appropriate and safe situations.

7803.3

The Eligibility Provider shall determine the eligibility in as short a time as feasible, but not later than ten (10) calendar days after receipt of a completed application by the Eligibility Provider. Delays caused by the following shall not count towards the ten (10)-day deadline:

- (a) The applicant's inability to supply information to document facts stated in the completed application needed to determine eligibility and type or amount of assistance;
- (b) The inability to contact the applicant through telephone, mail, or email;
- (c) Evidence of misrepresentation in the application;
- (d) Delay by a third party from whom the Eligibility Provider has requested information; or
- (e) Any other delay in receipt of information or documentation from the applicant that is necessary to complete the application.

7803.4 The Eligibility Provider shall create and maintain in the applicant's or participant's file detailed documentation of the Program's eligibility determination, including the assistance for which the applicant qualifies and subsequent case-management reviews.

7803.5 If an applicant is determined eligible for FRSP assistance pursuant to § 7803.1, the Eligibility Provider shall give to the applicant, personally or through an authorized representative, a written Notice of Eligibility Determination which shall state:

- (a) That the applicant was determined eligible;
- (b) The reason or reasons why the applicant was determined eligible, with specificity;
- (c) That receipt of FRSP assistance is conditioned upon selecting an FRSP-approved housing unit and completing steps to lease-up and move into the unit in a timely manner;
- (d) The initial length of time for which the subsidy will be provided; and, if extensions are conditioned upon certain factors, what those factors are;
- (e) An initial estimation of what services and supports as outlined in § 7805.2 will be provided to the applicant as part of FRSP participation;
- (f) That all FRSP participants must make a good faith effort to participate in case management services; and

- (g) That the FRSP participant has a right to appeal the eligibility determination through fair hearing and administrative review proceedings in accordance with § 7808, including the appropriate deadlines for requesting an appeal.

7803.6 If an applicant is determined ineligible for an initial application for FRSP assistance, the Eligibility Provider shall give to the applicant, personally or through an authorized representative, a written Notice of Denial of Eligibility which shall state:

- (a) That the applicant is being denied eligibility;
- (b) The reason or reasons for the denial, including the factual and legal basis for the denial;
- (c) The applicable statute, regulation, or policy pursuant to which the denial was made;
- (d) That the FRSP applicant has a right to appeal the denial through fair hearing and administrative review proceedings pursuant to § 7808, including the procedures and appropriate deadlines for requesting an appeal; and
- (e) That the applicant is being referred other programs and services that they may qualify for within the Continuum of Care.

7804 PRIORITY DETERMINATION

7804.1 Families residing in a Department-funded family hypothermia shelter, temporary shelter, transitional housing program, or determined to be at imminent risk of needing admission to shelter or supportive housing pursuant to 29 DCMR § 2508.1(a)(1), shall receive the first priority for the Program.

7804.2 Families residing in a non-Department funded family shelter or housing program within the Continuum of Care, or determined to be a Priority Two for shelter or supportive housing pursuant to 29 DCMR § 2508.1(a)(2), shall receive the second priority for the Program.

7804.3 Within each of the first and second priority groups, additional priority determinations may be made based on the following:

- (a) The applicant's prospective ability to achieve housing stability at the end of the FRSP assistance period, as demonstrated by income, documented work experience, completion of the Individual Responsibility Plan, the

identification of other stable housing opportunities, or other relevant factors;

- (b) The length of time the applicant has resided in their current program since the most recent placement;
- (c) The need to provide a reasonable accommodation based on a disability may be a reason to increase prioritization; and
- (d) Other relevant factors.

7805

RE-HOUSING AND STABILIZATION ASSISTANCE

7805.1 FRSP assistance supports District residents, who are experiencing homelessness or at imminent risk of experiencing homelessness, to achieve stability in permanent housing through individualized and time-limited assistance. FRSP offers a range of supports that are responsive to participant needs, including: individualized case management services, housing identification, connection to mainstream and community-based resources, and financial assistance in the form of a monthly rental subsidy. FRSP assistance shall be “needs-based,” meaning that the assistance provided shall be the necessary amount, as determined by the Eligibility Provider and the family, needed for the FRSP applicant to obtain housing and mitigate the likelihood of them returning to homelessness.

7805.2 FRSP assistance shall include the appropriate supports:

- (a) The assignment to a qualified Service Provider with the capacity to provide individualized case management services using a progressive engagement model based on the presenting needs of the family;
- (b) Development of an individualized plan to facilitate attainment of participant’s goals, including housing stability. For participants receiving Temporary Assistance for Needy Families (TANF) and who already have an Individual Responsibility Plan (“IRP”), the IRP should serve this purpose and can be modified and evaluated as necessary in collaboration with other organizations and entities that are also engaged with the participant;
- (c) Connection to other community resources and services that are responsive to the needs of the household (*e.g.*, behavioral health, primary health care, educational supports, food and nutrition resources);

- (d) Financial assistance in the form of a monthly rental subsidy if needed and identified in the individualized plan pursuant to paragraph (b) of this subsection;
- (e) Housing Identification assistance through which the Service Provider assists clients with:
 - (1) Identification of a unit independently and/or accessing a pool of available housing units to identify a unit that best fits the client's needs;
 - (2) Assistance in negotiating with landlords to reduce the rent or include utilities; and
 - (3) Scheduling a timely inspection of the unit;
- (f) Job placement and workforce development;
- (g) Documentation of activities that can be credited toward a participant's IRP, such as housing search, housing counseling services, obtaining a GED certification, University of the District of Columbia class credit, work hours, or certification with DOES or other barrier remediation activities specifically identified in the plan.

7805.3 Service Providers will have regular engagement with participants as dictated by the goals in the individualized plan or IRP, but no less than monthly, coordinate with other Service Providers, and will maintain current documentation on progress toward goals. This includes an assessment of progress made towards the completion of the individualized plan or IRP.

7805.4 The Eligibility Provider will conduct a formal review of services provided and the participant's participation in the Program after three (3), six (6), nine (9), and twelve (12) months of assistance. This review will include the following:

- (a) Review of participant's income change and approved budget plan;
- (b) Review of progress on the individualized plan or IRP and the applicant's approved budget plan;
- (c) Review of eligibility criteria to ensure that the participant's household remains eligible for the assistance;
- (d) Needs-based assessments, using a progressive engagement model, to determine if a more aggressive intervention is required; and

- (e) Review of participant's likely ability to sustain housing stability independently of the Program at the end of the FRSP assistance period.

7805.5 The Program shall not be obligated to provide a monetary amount for a requested service if a less costly alternative is available.

7805.6 Rental costs for the unit may not exceed the rent reasonableness standard determined by the DCHA. Eligibility Providers and participants shall attempt to identify housing units below market rent wherever possible.

7805.7 FRSP financial assistance may consist of a security deposit, move-in assistance, time-limited rental subsidy, and utility assistance, in accordance with the applicant's approved budget plan.

7805.8 The maximum FRSP payment for a security deposit shall be the actual amount of the deposit, which shall not exceed the cost of one (1) month's unsubsidized rent.

7805.9 Individualized plans or IRPs for each family shall aim for a targeted progression towards exit from the supports provided in twelve (12) months or less. A family is expected to plan for a reduction in financial assistance after the one (1) year lease term but may continue to receive case management assistance as needed to maintain housing stability and a rental subsidy if approved by DHS or its designee based on the criteria in § 7505.10. In the event that the Eligibility Provider determines at the three (3), six (6), nine (9), or twelve (12) month review that the participant will likely be unable to sustain housing stability independently of the Program at the end of the FRSP assistance period, the Eligibility Provider shall:

- (a) If funding is available, advise the participant that they may request an extension of assistance beyond twelve (12) months as provided in § 7505.10;

- (b) If the participant requests additional information and assistance in applying to other similar District-funded housing or rental assistance programs, assess the participant for eligibility in, and assist with applications to, the following programs, as appropriate:

- (1) The District of Columbia Housing Authority's (DCHA) Housing Choice Voucher Program's (HCVP) limited local preference for permanent supportive housing for chronically homeless individuals and families;

- (2) Other available DCHA public housing or housing voucher programs, including the Local Rent Supplement Program (LRSP); and
 - (3) Other District-funded housing or rental assistance programs.
 - (4) Targeted Affordable Housing?
- (c) Identify other affordable and subsidized rental housing programs, including but not limited to HUD-subsidized units; and, if the participant requests assistance with applying to these programs, assist the participant with the application process as necessary, and to the extent permitted by other housing programs; and
 - (d) Consider potential appropriate shared living arrangements that could work within the participant's budget.

7805.10

The Department or the Department's designee may consider requests for FRSP assistance extending past twelve (12) months, if funding is available. Extensions of subsidy beyond twelve (12) months must be requested in writing, and may be granted to participants who have made good faith efforts towards the achievement of goals set forth in their individualized plan or IRP, as observed by the Service Provider at the three (3), six (6), nine (9), and twelve (12) month reviews, but who cannot yet sustain housing stability independently of the program, and have not yet been approved for permanently affordable housing. When making a determination of whether to grant a participant an extension beyond twelve (12) months, the Department or Department's designee shall consider the totality of the circumstances. FRSP is not an entitlement and the program is not designed to be an indefinite bridge to long-term affordable housing; therefore, length of participation in the program beyond eighteen (18) months may be a valid factor for denial of an extension. Any such extensions of time shall be granted in increments not greater than six (6) months, with regular formal reviews as provided by § 7805.4 at least every three (3) months. In the event that a requested extension of assistance is denied, a participant shall be given thirty (30) days written notice prior to the final subsidy payment. Such notice shall explicitly set forth the reason for the denial of additional assistance, and shall inform the participant that:

- (a) The FRSP participant has a right to appeal the determination through a fair hearing and administrative review, including deadlines for requesting an appeal; and

- (b) The FRSP participant has a right to continuation of FRSP services pending the outcome of any fair hearing requested within fifteen (15) days of receipt of written notice of a termination.

7805.11 During the period of rental assistance, each household shall contribute a minimum of forty percent (40%) and a maximum of sixty percent (60%) of their adjusted annual income toward housing costs as determined in accordance with the DCHA Housing Choice Voucher Program regulations found at 14 DCMR § 6200. For this period, FRSP rental assistance shall be the difference between the cost of housing and the household contribution. Actual contribution will be determined in the participant's approved budget component of the Individualized plan or IRP. The Program [or Eligibility Provider] is responsible for paying the subsidized portion of the rent directly to the landlord, including any late fees or court costs that accrue due to the Program's [or Eligibility Provider's] late or non-payment.

7805.12 As part of demonstrating good faith participation in services, the participant household will demonstrate that they:

- (a) Have paid their share of the housing costs during the subsidy period on a timely basis, unless participant had good cause for not doing so, such as withholding rent due to housing code violations; and
- (b) Have demonstrated activity in achieving the goals identified in their Individualized plan or IRP.

7805.13 Households receiving FRSP assistance shall report to the Provider in writing within thirty (30) days any decrease in income of fifty dollars (\$50) or more or increase in income of one hundred dollars (\$100) or more.

7805.14 Upon receiving written notification from the household of a change in the household's monthly income, the Eligibility Provider shall determine if there is a need to recalculate the amount of the household's housing cost contribution, based on the following criteria:

- (a) If the participant reports a decrease in monthly income of fifty dollars (\$50) or more, the Eligibility Provider shall recalculate the household's contribution;
- (b) If the participant reports a decrease in monthly income of less than fifty dollars (\$50) the household may request that a recalculation be conducted;
- (c) If the recalculation pursuant to paragraphs (a) and (b) results in an increase in the amount of FRSP rental assistance, the change shall take effect the first day of the month or the next day that rent is due if different from the

first of the month, whichever is first, following completion of the calculation. The recalculation shall be completed within five (5) business days of receipt of written notice from the household of the decrease in household income or request a recalculation, and documentation necessary for the Eligibility Provider's recalculation;

- (d) If the household is reporting an increase in monthly income of one hundred dollars (\$100) or more, the Eligibility Provider shall conduct a recalculation;
- (e) If the recalculation made pursuant to paragraph (d) results in a decrease in the amount of FRSP rental assistance, the change shall take effect the first of the month, or on the day that rent is next due if different than the first of the month, whichever is first, following the month in which written notice of the change under § 7805.15 is provided to the household; and
- (f) If the next day rent is due is less than fifteen (15) calendar days from the date the notice is either hand delivered or postmarked, the change in the FRSP rental assistance shall be effective the second month (or the second date upon which rent is due) following the month in which written notice of the change per § 7805.15 is provided to the household.

7805.15

When an Eligibility Provider calculates the initial FRSP assistance or makes a change in FRSP assistance based upon a re-determination of eligibility or as a result of a reported change in income under § 7805.14, the Provider shall give to the participant household a written Notice of FRSP Rental Assistance or a Notice of Change in FRSP Rental Assistance, as appropriate. Each Notice shall state:

- (a) The basis for the rental assistance determination;
- (b) The statute, regulation, or policy under which the change was made;
- (c) The participant's current FRSP rental assistance and the household's current share of the housing costs;
- (d) If the rental assistance is changing, a computation of the new amount of FRSP rental assistance and the new amount of the household's share of the housing costs;
- (e) If the rental assistance is changing, the effective date of the new amount of rental assistance in accordance with § 7805.14(c), § 7805.14(e), or § 7805.14(f), whichever is applicable; and

- (f) The FRSP participant has a right to a reconsideration of the initial calculation and the recalculation by the Department or the Department's designee, at any time. Such requests for reconsideration of either the initial calculation or the recalculation by the Department or the Department's designee shall be made in writing to the Eligibility Provider

7805.16 A request for reconsideration in accordance with § 7805.15(f) shall be responded to by the Eligibility Provider within five (5) business days of receipt of the household's written request for a reconsideration. The five (5) business day timeframe may be tolled if the provider has requested documentation necessary to the review, and receipt of such documentation is pending.

7805.17 Notice required by § 7805.15 shall be either hand-delivered to an adult member of the participant household or mailed to the household by first class mail within twenty-four (24) hours of the Provider's calculation or recalculation of the household's rental assistance.

7805.18 Only in the rare circumstance where required by a vendor or by a District or federal agency, may the assistance payment be made in the form of cash. In all other cases, all FRSP assistance payments shall be in the form of non-cash direct vendor payments.

7806 UNIT SELECTION

7806.1 Participation in the FRSP is conditioned upon selecting a unit that passes the FRSP required housing inspection and meets the Rent Reasonableness Standard, determined by DCHA, except that the Department or the Department's designee may authorize selection of a housing unit that exceeds the maximum allowable rent for purposes of ensuring the program is readily accessible to and usable by large families and individuals with disabilities, in accordance with the HSRA, D.C. Official Code §§ 4-754.11(a)(2) and 4-754.21(11).

7806.2 A FRSP participant shall be required to work with their case manager to identify a unit independently and/or access the pool of available housing units to identify a unit that best fits their needs

7806.3 If the participant is unable to secure a housing unit in a timely manner, despite good faith efforts, he or she shall be offered at least one (1) unit from the available housing inventory to the extent that units are available in the housing inventory.

7806.4 Failure to accept a unit after having been offered or having identified two (2) units that were available and met the participant's stated needs, may be a basis for

termination from the Program pursuant to § 7807.1(f) and Section 22 of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.36(a)(2)(F)).

7806.5 FRSP assistance shall be provided only for housing units located within the District of Columbia. Any unit constructed before 1978 in which a child under the age of six (6) will be residing must comply with Section 302 of the Lead-Based Paint Poisoning Prevention Act, effective November 9, 1973 (Pub. L. 91-695; 42 U.S.C. § 4822), as amended, and implementing regulations at 24 C.F.R. part 35, subparts A, B, M, and R.

7806.6 Upon selection, successful inspection, and signing of a lease, the Service Provider shall ensure that the case manager's and Department's contact information is promptly provided to the landlord.

7806.7 The Service Provider shall assist a tenant in relocating to a different unit if, at any time during the participant's tenancy, the participant needs to move as a reasonable accommodation or as a result of domestic violence or if the unit has substantial housing code violations which the landlord fails to address after receiving notice, or which adversely impact the health or safety of the participant's household.

7807 PROGRAM EXITS

7807.1 Participants are considered to have exited the program when they are no longer receiving financial assistance or supportive services through a FRSP provider. Participants may exit because they no longer require FRSP supports, by program termination, or because they reached the length of time for which their participation was approved (inclusive of applicable program extension).

7807.2 An Eligibility Provider may terminate FRSP assistance pursuant to Section 22 of the HSRA (D.C. Official Code § 4-754.36), including terminating case management services and financial assistance, if a member of the household:

- (a) Possesses a weapon illegally on the provider's premises;
- (b) Possesses or sells illegal drugs on the provider's premises;
- (c) Assaults or batters any person on the provider's premises;
- (d) Endangers the safety of oneself or the safety of others on the provider's premises;
- (e) Intentionally or maliciously vandalizes or destroys or steals the property of any person on the provider's premises;

- (f) Does not accept an offer of appropriate permanent housing or supportive housing that better serves the household's needs after being offered two (2) appropriate permanent or supportive housing opportunities in accordance with Section 22(a)(2)(F) of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.36(a)(2)(F)); or,
- (g) Knowingly engages in repeated violations of an Eligibility Provider's or Service Provider's program rules.

7807.3 For purposes of § 7807.1(f), offers of appropriate permanent or supportive housing shall include being offered or having identified more than two (2) units that are available and meet the requirements of the Program and the applicant's stated needs and preferences, or any other supportive or permanent housing program for which the participant has been determined eligible, including but not limited to the Local Rent Supplement Program, Housing Choice Voucher Program (HCVP), or public housing.

7807.4 In the case of terminations pursuant to § 7807.1(f), the Eligibility Provider must have made reasonable and documented efforts to help the participant overcome obstacles to obtaining or maintaining permanent housing.

7807.5 The Eligibility Provider shall give written and oral notice to a FRSP participating household of their termination from services pursuant to this section at least thirty (30) days before the effective date of the termination.

7807.6 If a participant is terminated from FRSP services, the Eligibility Provider shall give to the participant, personally or through an authorized representative, a written Notice of Termination, which shall state:

- (a) The applicant is being terminated;
- (b) The effective date of the termination;
- (c) The reason or reasons for the termination, including the date or dates on which the basis or bases for the termination occurred;
- (d) The statute, regulation, or program rule(s) under which the termination is being made;
- (e) The FRSP participant has a right to appeal the termination through a fair hearing and administrative review, including deadlines for requesting an appeal; and

- (f) The FRSP participant has a right to continuation of FRSP services pending the outcome of any fair hearing requested within fifteen (15) days of receipt of written notice of a termination.

7807.7 Termination pursuant to this section refers to a termination of FRSP assistance including case management services and financial assistance only and does not provide the FRSP Providers or the Department with any authority to interfere with a participant's tenancy rights under the lease agreement as governed by Title 14 of the District of Columbia Municipal Regulations.

7807.8 For purposes of this section, the requirement set forth in Section 22 of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.36), which requires a Provider to first consider suspending the client in accordance with Section 21 of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.35) or to have made a reasonable effort, in light of the severity of the act or acts leading to the termination, to transfer the client in accordance with Section 20 of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.34), shall be interpreted to mean that the Provider shall have made a reasonable effort to provide the FRSP household with a transfer to another case manager, as a means of assisting the household to meet their budget plan and comply with the FRSP Provider's approved program rules, prior to taking steps to terminate FRSP assistance, if appropriate under the circumstances, and if there is reason to believe that the Provider could have foreseen that such a transfer could have been of assistance to the household in complying with the FRSP requirements.

7807.9 A FRSP participant may successfully transition from assistance at any time.

7807.10 Successful exit from FRSP includes the following:

- (a) Demonstrated ability to sustain housing independent of FRSP assistance; and
- (b) Relocation to another housing option that eliminates the need for FRSP financial assistance.

7808 FAIR HEARING AND ADMINISTRATIVE REVIEW

7808.1 An applicant or participating FRSP household shall have ninety (90) calendar days following the receipt of a written notice described in §§ 7803.6., 7803.5, 7805.10, and 7807.6 to request a fair hearing, in accordance with the hearing provisions of Section 26 of the HSRA, (D.C. Law 16-35; D.C. Official Code § 4-754.41 (2012 Repl.)), for the action that is the subject of the written notice.

7808.2 Upon receipt of a fair hearing request, the Department shall offer the appellant or his or her authorized representative an opportunity for an administrative review in accordance with Section 27 of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.42 (2012 Repl.)), except that if an eviction is imminent, the Department shall take all reasonable steps to provide an expedited administrative review to maximize resolution of the appeal in time to resolve the housing emergency and prevent the eviction.

7808.3 In accordance with Section 9 of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.11(18) (2012 Repl.)), any recipient who requests a fair hearing within fifteen (15) days of receipt of written notice of a termination pursuant to § 7807 or 7805.10 shall have the right to the continuation of FRSP services pending a final decision from the fair hearing proceedings.

7809 SUMMARY OF PROVIDER RESPONSIBILITIES

7809.1 An Eligibility Provider is responsible for the following:

- (a) Assisting FRSP applicants with the overall application process, including assisting applicants in obtaining required information;
- (b) Completing eligibility determinations in as short a time as possible, but no longer than ten (10) calendar days after receipt of a completed application;
- (c) Maintaining in the applicant's or participant's file the following detailed documentation:
 - (1) Assistance for which the applicant qualifies;
 - (2) Case-management reviews; and
 - (3) The applicant's or participant's individualized plan or IRP;
- (d) Conducting a formal review of services provided and client participation after 3, 6, 9, and 12 months of assistance; and
- (e) For applicants who are determined ineligible for FRSP assistance, the Provider will provide them with a referral or referrals to other programs and services within the Continuum of Care.

7809.2 A Service Provider is responsible for the following:

- (a) Providing individualized case management services using a progressive engagement model based on the presenting needs of everyone in the participant household;
- (b) Developing an individualized plan or IRP in collaboration with other organizations and entities that are also engaged with the participant;
- (c) Connecting FRSP participants to other community resources, and ongoing evaluation of the individualized plan or IRP and modification as needed;
- (d) Providing financial assistance in the form of a monthly rental subsidy if needed and identified in the individualized plan or IRP;
- (e) Assisting FRSP participants to identify a unit independently and/or access the pool of available housing units to identify a unit the best fits their needs;
- (f) Providing employment supports; and
- (g) Ensuring applicants receiving TANF receive credit for any client supports identified in the service plan, such as housing search and counseling.

7899 DEFINITIONS

7899.1 The terms and definitions in 29 DCMR § 2599 are incorporated by reference in this chapter.

7899.2 For the purposes of this chapter, the following additional terms shall have the meanings ascribed:

Approved Budget Plan – An estimate of costs, revenues, and resources over a specified period, reflecting a reading of future financial conditions and goals. A budget serves also as a: (1) plan of action for achieving quantified objectives, (2) standard for measuring performance, and (3) device for coping with foreseeable adverse situations.

Authorized representative – an individual who is at least eighteen (18) years of age, who is acting responsibly on behalf of the applicant, and has sufficient knowledge of the applicant’s circumstances to provide or obtain necessary information about the applicant, or a person who has legal authorization to act on behalf of the applicant.

Eligibility Provider – an organization that receives Family Re-Housing and Stabilization Program funds and is authorized to determine eligibility and administer Family Re-Housing and Stabilization Program services.

Family -- (A) A group of individuals with at least one minor or dependent child, regardless of blood relationship, age, or marriage, whose history and statements reasonably tend to demonstrate that they intend to remain together as a family unit; or (B) A pregnant woman in her third trimester.

Housing stability – the ability to pay housing costs with or without assistance from another source, including rent and utilities, or to secure other viable and secure housing options necessary to retain housing without Family Re-Housing and Stabilization Program assistance.

Individual Responsibility Plan – the self-sufficiency plan that the Family Re-Housing and Stabilization Program participant has entered into with the shelter, housing, Temporary Assistance for Needy Families (TANF), or other service provider that sets out the steps and goals necessary for the participant to achieve greater housing and economic self-sufficiency.

Minor – a child, including those by adoption, eighteen (18) years of age or younger.

Progressive Engagement – refers to a strategy of starting off offering a small amount of assistance initially, and, after reassessment, adding more assistance if needed to help each household reach stability. This strategy uses the lightest touch possible for a household to be successful, knowing more assistance can be added later if needed.

Rapid Re-Housing – is a supportive housing program that provides a homeless individual or family with financial assistance as a bridge to permanent housing, by providing some or all of a security deposit, first month's rent, short-term rental subsidy, and supportive services in order to help the recipient become self-sufficient. The District of Columbia's Family Re-Housing and Stabilization Program (FRSP) is a Rapid Re-Housing program.

Rental payment – a regular payment made by a tenant to an owner or landlord for the right to occupy or use property.

Security deposit – a sum of money paid in advance that is required by the owner or landlord for leasing property as security against the tenant's inability to fulfill the lease or security to cover damage to the rental premises.

Service Provider – an organization that receives Family Re-Housing and Stabilization Program funds and is authorized to deliver Family Re-Housing and Stabilization Program services.

Vendor – a provider of a service or product, including but not limited to landlords.

All persons who desire to comment on these proposed rules should submit their comments in writing to the Department of Human Services, 64 New York Avenue, N.E., 6th Floor, Washington, D.C. 20002, Attn: Darrell Cason, or by email to Darrell.cason3@dc.gov. All comments must be received by the Department of Human Services not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of these rules and related information may be obtained by writing to the above address, or by calling the Department of Human Services at (202) 671-4200.