

April 27, 2020

*Via electronic mail only*

Edward Kane  
Office of the General Counsel  
DC Housing Authority  
1133 North Capitol Street NE, Suite 210  
Washington, DC 20002-7599  
PublicationComments@dchousing.org

Re: Comments on proposed rulemaking: Violence Against Women Act

Dear Mr. Kane,

The undersigned organizations submit the attached comments on DCHA's proposed changes to its regulations implementing the Violence Against Women Reauthorization Act of 2013.

Please reach out to Amanda Korber at (202) 386-6692 or [akorber@legalaiddc.org](mailto:akorber@legalaiddc.org) if you have any questions about these comments. We would also welcome the opportunity to meet with you and discuss our comments in person.

Sincerely,

Bread for the City

Legal Aid Society of the District of Columbia

Washington Legal Clinic for the Homeless

## CHAPTER 49 -- PURPOSE AND SCOPE OF HCVP ADMINISTRATIVE PLAN

### **General Comments**

In general, we believe that the proper framework for dealing with family break ups following an incident of domestic violence is through removing the perpetrator from the household composition, rather than the termination process. However, these comments will address our concerns and suggestions with the process as DCHA has conceived of it.

Additionally, the term “victim” should be interchanged with “survivor” throughout these regulations. “Survivor” aptly denotes tenants who experienced, or are experiencing, the predicate acts of violence and seek to trigger these protections. “Survivor” is a more empowering and forward-looking term, and places emphasis on the fact that these individuals are fighting to protect themselves and their families. “Victim”, on the other hand, is disempowering and places emphasis on the past acts of violence.

### **4907.4**

We recommend that this regulation be moved to the section dealing with family break ups, as it appears to be out of place here. We also recommend DCHA remove the phrase “or other persons” from this paragraph. It is not clear why acts of domestic violence perpetrated against someone other than a family member would be relevant as to whether a voucher participant can be considered a remaining or eligible family member.

### **4907.6**

Similar to our comment above, we recommend DCHA remove the phrase “or other persons” from this paragraph. It is not clear why acts of domestic violence perpetrated against someone other than a family member would be relevant when making a determination about which family member retains voucher assistance pursuant to VAWA.

It is not clear what the language “paragraph (b) of this subsection” is referring to. There is no paragraph (b) in this subsection.

### **4907.12**

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

DCHA should be required to make a determination about who will continue to receive assistance in accordance with VAWA within fourteen days of receiving any requested documentation. Specifically, DCHA should add a subsection that mirrors the time frame in the new subsection added at 4907.17(d).

#### **4907.14**

First, we appreciate that DCHA accepted our recommendation to not require third party documentation in every instance when the agency has received conflicting documentation from two or more members of an assisted household.

Second, we remain concerned that DCHA is creating an entirely new termination procedure in VAWA cases (§ 8908) instead of simply modifying the time frames in the existing sections governing informal hearings (§ 8902) to account for the urgency in these types of cases. Other than the process perhaps needing to move more quickly, there is no reason why a participant being terminated pursuant to VAWA should have fewer or different protections than participants being terminated for other reasons.

Finally, DCHA's regulations should specify that survivors can add their abusers back onto their vouchers at any point in the future. Familial relationships, particularly those that involve domestic violence, are complicated and fluid. There are many reasons a survivor may ultimately decide to get back together with his or her abuser and DCHA's regulations must account for that reality.

#### **4907.17**

We are concerned that DCHA only gives survivors fourteen days to provide documentation. Survivors requesting an emergency transfer voucher have likely experienced recent trauma. Even under the best of circumstances fourteen days is not much time, but for survivors in particular -- who are likely interacting with multiple judicial, medical, and social support systems to keep themselves and their families safe -- it is impractical. This window should be increased to at least thirty days.

#### **4907.21**

We appreciate that DCHA is creating a process to resolve and evaluate situations when multiple family members make conflicting allegations of domestic violence against each other. However, we have some concerns with this process as described.

First, (a)(1) is not sufficient to provide family members with notice of their rights, and therefore does not satisfy due process requirements. Following an incident of domestic violence, it is likely that one or more family members are not living at the assisted address. DCHA must use all information available to it and make best efforts to notify all involved family members. For example, if DCHA has reason to believe one of the parties is incarcerated, or knows one of the parties has an attorney or other representative who could be

notified, the agency should make reasonable efforts to provide alternative notice. Additionally, if DCHA is convening a conflicting allegations panel, that means that two or more family members have been in contact with DCHA to make allegations of domestic violence. DCHA should be required, when collecting that information from family members, to ask about all the ways the family member can be contacted (mail, electronic mail, and phone).

Second, (a)(2) should specify exactly what the notice will say. For example, it should specify how the conflicting allegations panel is required to arrive at its decision (e.g. it will review a specific list of documents and then vote on the question of who retains assistance, with a simple majority making the final decision), what additional information the family members can provide (e.g. police reports, CPOs/TPOs, photographs, video footage, etc.), and what factors it will consider (e.g. who was the primary aggressor, any past history of abuse, etc.). Additionally, (a)(3) alludes to making a determination based on the factors enumerated in § 5317.6. However, § 5317.6 (b)(1)-(3) says that, absent a court finding, the DCHA will make its decision about who retains assistance based on “any incidence of domestic violence.” That is circular and unhelpful. DCHA is convening the panel precisely because an incident of domestic violence likely occurred, but there is a dispute about who the primary aggressor was. Both the family members and the members of the panel must know exactly what information is being considered and how the ultimate determination about who the primary aggressor was should be made.

Finally, this section should specify a time frame by which the family members need to get any additional documents and information to the panel, but consistent with 4907.14 and 4907.17 should not require third-party documentation, and also specify that the panel will make its determination within fourteen days of receiving that documentation.

## CHAPTER 53 -- REMOVING A HOUSEHOLD MEMBER

### **5317.7**

This section is unclear. It seems to say that DCHA will only determine that both family members can retain assistance if a final informal hearing decision, whether from a hearing officer or the Executive Director, requires it “in accordance with VAWA or other applicable laws.” This does not account for the times DCHA is required to make the determination that both family members can retain assistance prior to any informal hearing. Instead, this section should require that DCHA allow both family members to remain in the voucher program if (1) DCHA’s recommendation for termination is denied by the hearing officer, the Executive Director, or the DC Court of Appeals; (2) an exception under VAWA applies; or (3) an exception under another applicable law applies, for example, reasonable accommodation law.

### **5317.8**

Generally, we do not believe DCHA has authority to limit the types of remaining family members who can become heads of household when another family member is permanently absent. However, to the extent DCHA is using this regulation to permit a domestic violence survivor to become Head of Household if her abuser is permanently absent from a household,

the introduction to this subsection should specify "domestic violence" as a reason a person may be permanently absent.

## CHAPTER 61 -- PROTECTIONS FOR PUBLIC HOUSING APPLICANTS AND TENANTS UNDER THE VIOLENCE AGAINST WOMEN ACT

### **6127.13**

Please see our comments above on section 4907.21.

## CHAPTER 8902 -- DCHA DETERMINATION SUBJECT TO INFORMAL HEARING

### **8902.3**

DCHA should include a self-addressed stamped envelope to participants when it sends a Recommendation for Termination. Voucher assistance is too vital for a participant to lose just because they could not afford or otherwise get access to the envelope and/or the postage needed to request a hearing. For individuals or families that are struggling financially, who have limited mobility, or are just trying to juggle responsibilities that they find overwhelming, having a stamped, self-addressed envelope eliminates one potential barrier to timely requesting an informal hearing.

## CHAPTER 8908 -- INFORMAL HEARING PROCEDURES RELATED TO THE VIOLENCE AGAINST WOMEN ACT

Overall, we are concerned that DCHA is creating a special informal hearing procedure pertaining only to Recommendations for Termination in cases of alleged acts of domestic violence, dating violence, sexual assault, or stalking. This is unnecessary because § 8902 already provides that a participant can request an informal hearing to challenge DCHA decisions about “determinations of household and head of household status” and “termination or denial of assistance for any reason.” Additionally, although it may be beneficial to have an expedited process in cases of domestic violence, these draft regulations change the informal hearing process in other ways that have due process implications, which we will address below.

### **8908.2**

First, this section should specify that, with the exception of the thirty-day time limit to request a hearing, any Recommendation for Termination will include the information required by § 8902.3. DCHA must include in any Recommendation for Termination notice of DCHA’s decision to terminate assistance, when that termination will occur, the factual basis for DCHA’s decision, and the procedures for requesting a hearing.

Second, in addition to mailing the Recommendation for Termination to the participant’s last known address, DCHA should also send it to any email address it has on file, and call the

participant on any and all phone numbers it has for the participant. Additionally, if DCHA knows where the participant works (for example, from employer information made available through EIV or a participant's recertification documentation), or has reason to know the participant is in jail, DCHA must use those avenues to notify the participant of his or her impending termination. DCHA should always be making best efforts to actually notify a participant of potential termination from the program, but this is particularly true when there is a high likelihood that the participant is no longer living at the address DCHA has on file and DCHA is imposing an incredibly tight timeline on when any hearing will occur.

### **8908.3**

This section is confusing in multiple ways. First, it appears that DCHA will automatically send out a notice of an informal hearing regardless of whether one is requested. If that is the case, the regulations should plainly say that and specify that there is no need for the participant to send back the hearing request form to DCHA.

Second, it will likely be confusing for participants to receive a Recommendation for Termination and then, a few days later, a hearing notice. DCHA should send both of these documents in one mailing so it is clear to the participant what the hearing will be about, that their voucher assistance is on the line, and why it is very important they attend. Alternatively, the RFT could just include the hearing date on it.

Third, the timelines laid out in these regulations are too short and will result in many participants missing their informal hearings. As an initial matter, our organizations and our clients have had many problems over the years with DCHA not sending out letters remotely close to when the letters are dated and signed by an agency employee. This is always a problem, but it is particularly pernicious when the informal hearing date can be less than ten days from when the informal hearing letter is dated. Moreover, even if DCHA did timely send out the informal hearing notice, the timelines in this regulation would still be unworkable. Based on the way it is written, DCHA could mail out an informal hearing notice on day 1, that notice may get to the participant on day 2 or 3, and that participant could have a hearing on day 4. This is simply not enough time for the participant to seek out legal assistance, timely request documents from DCHA as is required, or otherwise prepare a defense. Instead, the notice should specify that the hearing will be held 20 days from the date the informal hearing notice is mailed to the participant. Though this is still a short timeframe, it will ensure participants have the opportunity to take time off of work if necessary or otherwise make themselves available, seek counsel, prepare for their hearings, and request documents from DCHA.

Finally, there is no provision in this section for what happens if a participant has good cause for missing a scheduled informal hearing. This is particularly important given the short time frames DCHA is proposing for these types of cases. DCHA must create a process to deal with this scenario, and allow participants to have good cause hearings. At a good cause hearing, a hearing officer can determine whether a participant had a good reason for missing any scheduled hearing.

## **8908.5**

This section puts impermissible restrictions on what the hearing officer can request and consider during the informal hearing. A participant must be allowed to offer evidence about, and the hearing officer may have to consider facts outside of the discrete issue that was the subject of the Recommendation for Termination if they are relevant to the determination of whether DCHA should have recommended the participant for termination. For example, participants may want to offer evidence about the past history of abuse between the parties to put the alleged incident in context or about their disability, how it relates to the incident of domestic violence, and why they should be granted a reasonable accommodation. Additionally, the hearing officer must be allowed to request additional information if he or she needs it to make a determination as to whether an incident of domestic violence occurred and/or if the participant should be terminated.

Finally, participants and/or their attorneys should be allowed to brief any legal issues, facts, or questions that are likely to or actually do arise during an informal hearing. This is true for any hearing, but it is particularly important when DCHA is setting such short timeframes for participants to seek counsel, gather evidence, and prepare for a hearing. In this scenario, DCHA must allow participants to offer briefs and other documents, either before or after the informal hearing, to assist the hearing officer in making his or her decision.