

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to section 549(g) of the Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.49(g)) (Act), and Mayor's Order 2006-50, dated April 13, 2006, hereby gives notice of his intent to take final rulemaking action, not less than thirty (30) days from the date of publication of this notice in the *D.C. Register* and no earlier than October 1, 2006, to amend section 1450 of Chapter 14 of Title 29 of the District of Columbia Municipal Regulations (DCMR). The purpose of the proposed rules is to increase the personal needs allowance (PNA) for eligible District residents who live in community residence facilities or Assisted Living Residences, to make the regulations consistent with more recent statutes, and to make minor technical changes to increase the readability of the regulations.

The Director proposes to effectuate this increase in the PNA to implement an increase in the SSI Optional State Supplement being made possible by the 2006 Budget Enhancement. This increase in the PNA will be the first increase since 1998. In addition, these proposed rules will address certain inconsistencies between the existing regulation in 29 DCMR 1450 and current statutes. Specifically, 29 DCMR 1450.1 currently contains a reference to the General Public Assistance (GPA) Program. The GPA Program was terminated by section 701(c) of the Fiscal Year 1998 Revised Budget Support Act of 1998, effective March 20, 1998 (D.C. Law 12-60; D.C. Official Code § 4-202.01a), and these proposed rules reflect that fact by deleting the reference to GPA. Also, 29 DCMR 1450.1 does not currently authorize PNAs for recipients of Supplemental Security Income (SSI) who live in Assisted Living Residences. Section 1401 of the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; 47 DCR 2647), amended section 549 of the Act (D.C. Official Code § 4-205.49 (2001)) to provide PNAs for these SSI recipients, and that amendment is now reflected in these proposed rules. In addition, 29 DCMR 1450.2 currently sets the PNA for residents of nursing homes at thirty dollars (\$30) per month. That amount is inconsistent with section 2(b)(1) of the Supplemental Security Income Payment Amendment Act of 1997, effective February 27, 1998 (D.C. Law 12-53; D.C. Official Code § 4-205.49(a)), which increased the amount to forty dollars (\$40) per month. In an effort to eliminate any possible confusion caused by the inconsistency between section 549(a) of the Act and the current version of 29 DCMR 1450.2, the proposed rules eliminate discussion of the PNA for eligible residents of nursing homes from section 1450.2. Any further increase to the PNA for eligible residents of nursing homes under section 549(a) of the Act (D.C. Official Code § 4-205.49(a)(2001)) will be effectuated by the Director through additional rulemaking.

Chapter 14 (Health-Care Assistance Reimbursement) of Title 29 (Public Welfare) (May 1987) is amended as follows:

Section 1450 is amended to read as follows:

1450 PERSONAL NEEDS ALLOWANCES

- 1450.1 The Director of the Department of Health shall allow each District of Columbia resident who is a recipient of Supplemental Security Income (SSI) and who lives in a community residence facility or Assisted Living Residence to retain a personal needs allowance for clothing and personal needs.
- 1450.2 Each individual entitled to a personal needs allowance pursuant to § 1450.1 shall retain the personal needs allowance from his or her monthly SSI benefit amount.
- 1450.3 The personal needs allowance in § 1450.1 shall be one hundred dollars (\$100) per month.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Ms. Corrie Kemp, Program Manager, Central Referral Bureau, District of Columbia Department of Health, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained free of charge by writing to the address listed above.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED RULEMAKING

The Interim Director of the Department of Human Services, pursuant to the authority set forth in sections 7, 28, 30 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, 4-755.01, 4-756.01 and 4-756.02 (2006 Supp.), section 2052 (b) (8) of the Fiscal Year 2007 Budget Support Emergency Act of 2006, effective August 8, 2006 (D.C. Act 16-477), and any similar succeeding legislation (BSA), and Mayor's Order [insert number], dated [insert date], hereby gives notice of intent to adopt the following new Chapter 75 of Title 29 of the District of Columbia Municipal Regulations, entitled "Emergency Rental Assistance Program", in not less fifteen (15) days from the date of publication of this notice in the *D.C. Register*. Pursuant to Mayor's Order [insert number], the Mayor delegated authority to the Department of Human Services to develop and implement an Emergency Rental Assistance Program (Program), pursuant to section 7 of HSRA, and section 2052(b)(8) of the BSA. The Program is developed pursuant to the HSRA which authorizes, among other things, crisis intervention services for purposes of preventing homelessness by enabling families at imminent risk of homelessness to remain in or access permanent housing. This Program is subject to funding and certification by the Chief Financial Officer of the availability of funds. Section 2052(b)(8) of the BSA provides appropriated funds for the Program for fiscal year 2007.

Pursuant to 1 DCMR section 1506(a) it is necessary to publish these rules for comment over a shortened period of fifteen (15) days in order to solicit public input while working concurrently to address the operational development of the Program, including, seeking applications for the award of a grant(s) to operate the Program in the community; training the awardees; and developing and implementing a tracking and oversight system. Due to the rapid increase in eviction proceedings, this expedited review period will enable District residents delinquent in their rental payments to apply for and receive assistance early in fiscal year 2007.

To further assist in this review the following overview, explaining the eligibility criteria, types and amounts of available emergency rental payments, administrative structure for the Program, and appeals process of the Program is provided.

Eligibility Criteria

We are proposing to limit emergency rental assistance to families with a minor child, an aged household member, or a person with disabilities. Given current pressure on the family shelter system and the limited financial resources, targeting this assistance to families and the aged or disabled will provide critical services to vulnerable populations while alleviating some pressure on the shelter system.

We are also proposing to limit eligibility to those with incomes at or below the Federal Poverty Line (FPL) for their household (HH) size (see Chart A). This will be based on income in the

month prior to seeking assistance. The District of Columbia has a large proportion of residents (approximately 100,000) who have less than poverty level income (see Chart B). Further, nearly 25% (13,701) of all families with children (57,774) have incomes of less than \$10,000 per year. This income distribution data demonstrates a need among families at the lowest end of the income spectrum. In addition, many families face emergencies due to temporary declines in their income. This program design will provide assistance to both chronically poor families and families that are temporarily in need of assistance. A program design which permits eligibility at levels that exceed the poverty line would decrease funds available for those who have greater financial need.

Chart A

	2006 Poverty Level	Monthly Equivalent
HH Size	100%	
1	\$9,800	\$817
2	\$13,200	\$1,100
3	\$16,600	\$1,383
4	\$20,000	\$1,667
5	\$23,400	\$1,950
6	\$26,800	\$2,233
7	\$30,200	\$2,517
8	\$33,600	\$2,800

Chart B**Ratio of Income in the Past 12 Months to Poverty Level**

	District of Columbia		
	Estimate	Lower Bound	Upper Bound
Total:	515,581	514,077	517,085
Under .50	52,220	44,169	60,271
.50 to .74	22,990	18,603	27,377
.75 to .99	22,315	17,384	27,246
1.00 to 1.24	19,159	14,289	24,029
1.25 to 1.49	19,676	15,236	24,116
1.50 to 1.74	18,323	14,840	21,806
1.75 to 1.84	8,346	5,449	11,243
1.85 to 1.99	9,293	6,529	12,057
2.00 to 2.99	61,349	54,674	68,024
3.00 to 3.99	56,078	49,812	62,344
4.00 to 4.99	49,650	43,624	55,676
5.00 and over	176,182	169,275	183,089

Source: U.S. Census Bureau, 2004 American Community Survey

Types and Amount of Emergency Rental Payment

This rule proposes to limit the types of assistance offered to payment of rental arrearages, security or damage deposit, and first month's rent. Assistance for utility arrearages, home mortgage arrearages, and cooperative or condominium fees will not be provided.

The rule proposes to limit the amount of the emergency rental payment to \$4,250, regardless of the number of months of the arrearage. A very limited exception would be permitted for large families or where the health of a family member would be seriously threatened if stable housing was not maintained. In these extraordinary situations the limit would be increased to \$6,000.

Based on information gathered regarding monthly rental charges in the non-subsidized low-income housing market, \$850 per month appears to be a sound average. The Department of Human Services specifically requests comments on this aspect of the rule and the factual basis of this assumption. Rental assistance payments would be limited to the actual amount of the arrearage, but establishing a maximum that is unrealistically low defeats the purpose of the program, as landlords generally do not permit a tenant to continue occupancy without fully satisfying the arrearage. Thus, if too low a maximum is established, the client is unable to resolve the emergency and cannot continue as a tenant. The following chart (Chart C) shows the number of clients that would receive rental assistance assuming various maximum payment levels.

Chart C

Max Monthly Payment	Max # of Months	Max Total Asst	Available Funding	# Served
\$600	5	\$3,000	\$7,000,000	2,333
\$650	5	\$3,250	\$7,000,000	2,154
\$700	5	\$3,500	\$7,000,000	2,000
\$750	5	\$3,750	\$7,000,000	1,867
\$800	5	\$4,000	\$7,000,000	1,750
\$850	5	\$4,250	\$7,000,000	1,647

Thus, it appears that selecting the \$4,250 as an absolute cap provides flexibility to offer assistance to those whose arrearages might otherwise exceed a lower payment cap.

Administrative Structure

The Department of Human Services is proposing to make multiple competitive grant awards to organizations that have demonstrated administrative capacity and could provide services through a network of locations. These organizations would be expected to provide case management services to all families for whom case management appears warranted. This approach facilitates the provision of case management services, ensures accountability and involves a diverse array of community organizations. Provision of emergency assistance is most effective when combined with a strong case management effort. Such efforts minimize recidivism and help connect residents in need of emergency assistance with other services such as financial planning, employment and other supports that facilitate self-reliance. The strong desire to couple emergency assistance payments with case management argues against a strict income maintenance approach to emergency assistance, such as was administered by the Department of Human Services in the past. As with all grants, the Department would retain responsibility for monitoring and assuring adherence to program eligibility criteria. The Department of Human Services plans to assist grantees in this area by developing a computerized tracking system to ensure accountability.

Appeal Process

The Department of Human Services established the appeal process consistent with the procedures set forth in the HSRA. However, given the nature of the landlord-tenant eviction proceedings, comment is requested on these and alternative appeal procedures including, but not limited to, expedited hearing procedures directly to the Department of Human Services or the Office of Administrative Hearings, which may require legislative amendment to the HSRA.

The Interim Director of the Department of Human Services will take final rulemaking action to adopt these proposed rules in not less than fifteen (15) days from the date of publication of this notice in the *D.C. Register*.

Add the following new Chapter 75 to Title 29 District of Columbia Municipal Regulations as follows:

CHAPTER 75 EMERGENCY RENTAL ASSISTANCE PROGRAM

7500 SCOPE

- 7500.1 The provisions of this chapter shall provide the application process, eligibility criteria, benefit and payment levels, and appeal procedures for the Emergency Rental Assistance Program (Program).
- 7500.2 Nothing in these rules shall be interpreted to mean that such assistance is an entitlement. This Program shall be subject to annual appropriations and the availability of funds.
- 7500.3 The Department of Human Services (Department) may execute contracts, grants, and agreements as necessary to carry out the Program.

7501 APPLICATION PROCESS

- 7501.1 Each application shall be in writing on a form prescribed by the Department and signed by the applicant under penalty of perjury. If the applicant is married and living with a spouse, both spouses shall sign the application as an applicant unit (hereinafter "applicant"). There shall be only one application for each household.
- 7501.2 An authorized representative may apply on behalf of the applicant, if the applicant provides a written and signed statement stating why the applicant cannot apply in person and the name and address of the person authorized to act on the applicant's behalf.
- 7501.3 The Department shall provide application forms and the provider of services shall accept applications from each applicant who requests assistance.
- 7501.4 At the time of application, each applicant shall be provided with a clear, concise, written notice containing the applicant's rights and responsibilities and the provider's responsibilities with respect to the Program.
- 7501.5 As a condition of eligibility of receipt of funds, all applicants must sign a document acknowledging receipt of the notice of applicant's rights and responsibilities and the provider's responsibilities.
- 7501.6 Each applicant, as a condition of eligibility, shall agree to participate in case management services designed to address the circumstances which led to the need for emergency rental assistance. Failure to agree to or cooperate in such case management may result in ineligibility.

- 7501.7 Each applicant shall cooperate fully in establishing his or her eligibility, the nature of the emergency, and the extent of the need. This shall include, but not be limited to, providing documentation or collateral proof of:
- (a) Household composition;
 - (b) Income and assets;
 - (c) Household expenses; and
 - (d) Facts and circumstances surrounding rental arrearages.
- 7501.8 The provider shall give to each applicant a written request specifying the information needed to complete the application and the provider shall discuss with the applicant how to obtain the information. The application is complete when all required information is furnished.
- 7501.9 The provider may use documents, telephone conversations, personal and collateral interviews, reports, correspondence, and conferences to verify applicant information.
- 7501.10 If the emergency is expected to occur in less than ten (10) business days following the date of application, the provider shall take all reasonable steps to process the application in an expedited manner in time to resolve the emergency, if the applicant meets all eligibility criteria and a delay in processing the application is not caused by the failure of the applicant to provide documentation necessary for making an eligibility determination.
- 7501.11 The provider shall complete the eligibility and assistance determination in as short a time as possible but not later than ten (10) business days after the date of a completed application. The provider shall not be responsible for delays caused by:
- (a) The applicant's failure to supply information to document facts stated in the completed application without which eligibility cannot be determined;
 - (b) The inability to contact the applicant;
 - (c) Evidence of misrepresentation in the application;
 - (d) Refusal of a landlord to accept payments;
 - (e) Delay by a third party from whom the provider has requested information and over whom the provider has no control; or

- (f) Any other delay in receipt of information or documentation necessary to complete the application over which the provider has no control.

7501.12 If an applicant is determined eligible for emergency rental assistance, the provider shall give to the applicant a Notice of Eligibility and Assistance Determination. This notice shall include, but need not be limited to:

- (a) The eligibility determination;
- (b) The amount of the emergency rental assistance for which the applicant unit has been determined eligible and the computation of assistance pursuant to section 7504;
- (c) Any requirement needed by a recipient to authorize the provider to proceed with the disbursement of the emergency rental assistance grant to the appropriate vendors as necessary to alleviate the emergency; and
- (d) Notice of the recipient's right to appeal the eligibility and assistance determination through an administrative review and a fair hearing and the steps the applicant must take to appeal the denial pursuant to sections 7511 and 7512, as well as the procedural rights the applicant will have during the appeals process.

7501.13 If an applicant is determined ineligible, the provider shall give to the applicant a clear, concise written statement of the reasons for the denial. Such written notice shall also inform the applicant of the right to appeal the denial through an administrative review and a fair hearing and the steps the applicant must take to appeal the denial pursuant to sections 7511 and 7512, as well as the procedural rights the applicant will have during the appeals process.

7501.14 An application shall be considered abandoned if the applicant has not obtained and provided to the provider the required information for eligibility and assistance determination, within sixty (60) days.

7502 APPLICANT UNIT

7502.1 The applicant unit shall be composed of each individual who lives in the same household and whose needs, assets, and income are combined to determine eligibility.

7502.2 The applicant unit shall include:

- (a) Persons related by full or half blood;
- (b) Persons related by legal adoption; or

- (c) Persons related by marriage, including stepchildren and unmarried parents of a common child who live together.

7502.3 A person temporarily away from home due to employment, hospitalization, vacation, or a visit 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 and during the summer vacations.

7502.4 Separate applicant units shall be established if the requested payment is the joint legal responsibility of non-related household members. Assistance may be authorized only for the applicant unit's prorated share of the amount necessary to resolve the crisis.

7502.5 The name of a non-household member on a rental lease shall have no effect on eligibility, except that:

- (a) The applicant shall document that he or she is responsible for the payment; and
- (b) Both the applicant and the landlord shall agree to change the lease to reflect only the applicant's name.

7503 ELIGIBILITY CRITERIA

7503.1 In order to be eligible for assistance under this program, each applicant shall meet the following criteria:

- (a) Be presented with an emergency as defined in section 7599;
- (b) Be part of a family unit with an emergency with at least one member who is:
 - (1) A minor child age eighteen (18) years or younger;
 - (2) Age sixty (60) years or older; or
 - (3) Disabled.
- (c) Demonstrate that he or she has no other available resources for resolving the emergency, including resources actually available from a community resource, but excluding those exempted in section 7503.12;
- (d) Meet the specific eligibility criteria for each type of benefit provided in section 7505; and

- (e) Demonstrate that the provision of emergency rental assistance services would alleviate the emergency within thirty (30) days. If the assistance does not entirely eliminate the emergency, the applicant shall document (demonstrate) that the additional funds needed are actually available from another source. Failure to demonstrate that the emergency can be resolved shall result in a denial of eligibility for emergency rental assistance.

7503.2 An applicant shall be living in the District of Columbia at the time of application.

7503.3 The applicant shall be considered to be living in the District if he or she:

- (a) Is maintaining a home in the District as his or her principal residence; or
- (b) Is homeless, physically present in the District, and not a resident of another state.

7503.4 An adult applicant shall be denied emergency rental assistance if the emergency is the result of his or her refusal without "good cause" to accept employment or training for employment.

7503.5 An applicant shall be considered to have refused employment or training if the applicant:

- (a) Voluntarily quit employment or a bona fide training program within three (3) months prior to application; or
- (b) Rejected an employment or a bona fide training program opportunity within the three (3) months prior to the application.

7503.6 "Good Cause" to refuse employment shall be limited to when the applicant can show, with reliable or credible information, that:

- (a) Wages are below the minimum wage;
- (b) The applicant is physically or mentally unable to perform the work or gain access to the worksite;
- (c) Working conditions violate health, safety, or worker's compensation regulations and present a substantial risk to health or safety;
- (d) The employer discriminated against the applicant based on race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income and place of residence or business in violation of D.C. Official Code § 2-1401.01 *et seq.* (D.C. Law 2-38, effective December 13, 1977);

- (e) The requirements of the job would be contrary to his or her religious beliefs; or
- (f) Child care, which is necessary for the adult applicant to accept work or training, is not available.

7503.7 The applicant unit's combined net income, as specified in section 7503.10, in the thirty (30) day period immediately preceding the date of application, and non-excluded assets, as specified in section 7503.14, on the date of application, must not exceed one hundred percent (100 %) of the Federal Poverty Level as defined by the U.S. Department of Health and Human Services for the specified household size.

7503.8 The following shall not be counted in calculating income available to the applicant unit in the budget month:

- (a) Discontinued income, unless actually available in the budget month;
- (b) Any income in-kind including, but not limited to, Food Stamps, Women, Infants, and Children (WIC), school lunches, homemaker services, and benefits received under the Older Americans Act;
- (c) Deductions from earnings which are limited to actual amounts deducted by the employer for federal income tax, D.C. Income Tax, Social Security, Civil Service Retirement, life insurance, health insurance and any other deduction which is mandatory. Garnishments from wages are not considered mandatory deductions and will be counted in the determination of available income;
- (d) Payments for children in foster care;
- (e) Vendor payments made by the federal or District governments on behalf of the applicant directly to a vendor, except that any Department administered Rental Vendor Payments made on behalf of a Temporary Aid for Needy Families (TANF) client will be counted as income;
- (f) Value of Low Income Energy Assistance;
- (g) Earnings of persons fourteen (14) years of age and under;
- (h) Earnings from the first eighty (80) hours of employment per month of students ages fifteen (15) years or older and enrolled in school;

- (i) Summer earnings of a student who was enrolled in school when school was dismissed for the summer vacation, but has not yet graduated from high school, regardless of the number of hours employed;
- (j) Work incentive payments, training stipends, or allowances to facilitate employment;
- (k) Income from any source which is used to pay court ordered child support in the budget month to another household; and
- (l) Expenses related to self-employment which may be reasonably associated with the cost of producing income, such that only net income from the self-employment is considered as available to the applicant.

7503.9 All income of an applicant unit that is not specifically exempted in section 7503.12 shall be considered in calculating the income of the applicant unit in the budget month.

7503.10 The following shall be considered in calculating the income of the applicant in the budget month:

- (a) The net amount of ongoing income received during the budget month including, but not limited to:
 - (1) Income from a boarder;
 - (2) Earned income;
 - (3) TANF grant;
 - (4) Interim Disability Assistance grant;
 - (5) General Assistance for Children grant;
 - (6) Child support payments received;
 - (7) Social Security retirement, survivors or disability insurance benefits;
 - (8) Alimony;
 - (9) Veterans Administration benefits;
 - (10) Worker's compensation benefits, unemployment benefits and other governmental unemployment benefits;

- (11) Payments from private sick and accident insurance plans;
 - (12) Pensions;
 - (13) Retirement benefits;
 - (14) Strike benefits; and
 - (15) Military allotments.
- (b) The value of a rental vendor payment made to a vendor under the TANF program on behalf of the applicant;
 - (c) The net amount of discontinued, sporadic, or lump sum income, if it is received in the budget month or has been received in an earlier month and is still available to the applicant;
 - (d) The net amount of any proceeds from lottery winnings, cash gifts, or loans, except that need-based educational loans are exempt; and
 - (e) The income of a recipient of Supplemental Security Income.

7503.11 The equity value of all assets, unless specifically exempt under section 7503.12, shall be added to the applicant's income to determine the total amount of resources available to the applicant in the budget month.

7503.12 The following resources or assets shall not be considered in calculating income available in the budget month:

- (a) The home and surrounding land in which the applicant lives. Surrounding land does not include adjoining lots separately taxed and zoned;
- (b) All household furnishings and all personal belongings;
- (c) The value of motor vehicles used for transportation;
- (d) Tools, machinery and other property used for employment or self-employment, whether or not in the home;
- (e) Taxi, truck or similar vehicle necessary for employment or self-employment; a vehicle necessary for transportation to and from an employment site is not in this category;
- (f) Cash or money in bank accounts that was obtained from a need-based loan made to an applicant for school related expenses;

- (g) Pre-paid burial plans or cemetery plots; and
- (h) Money on hand which is specifically earmarked for contribution towards the resolution of the crisis.

7503.13 The value of an asset jointly owned by the applicant and any person who is not a member of the applicant unit shall be prorated according to the number of owners, unless the applicant can demonstrate a different division based on legal ownership.

7503.14 The following assets and resources shall be considered income available to the applicant in the budget month:

- (a) The equity in all real property except the home and surrounding land in which the applicant lives;
- (b) The equity in any interest in recreational vehicles, including, but not limited to, boats, campers, trailers, motorcycles not exempted under section 7503.14(c), snowmobiles, or aircraft;
- (c) The equity of any interest in machinery, livestock, or other property or items that are not used for employment or self-employment;
- (d) The loan value available to the applicant in insurance plans or the cash or loan value available to the applicant pursuant to an agreement in an escrow or trust fund;
- (e) The cash value of an Individual Retirement Account or another deferred compensation plan, or pension funds that have been distributed from a plan and are actually available to an applicant;
- (f) The actual value of cash including, but not limited to, a checking account, a savings account, a certificate of deposit, stocks, and bonds;
- (g) The actual cash value of a non-exempt asset that was converted to cash in the thirty (30) days prior to the date of application; and
- (h) The equity value of non-exempt assets which are sold, transferred, or traded for less than fair market value within the twelve (12) months prior to the date of application, when there is reason to believe that the action was taken for the purpose of becoming eligible for Emergency Rental Assistance.

7504 COMPUTATION OF PAYMENT

7504.1 The amount of assistance an eligible applicant may receive is based on the following factors:

- (a) The amount necessary to resolve the emergency;
- (b) The applicant unit's existing liquid assets;
- (c) The applicant unit's income expected to be received in the thirty (30) days following the date of application;
- (d) The applicant unit's anticipated expenses for basic necessities and fixed monthly payments in the thirty (30) days following the date of application;
- (e) The willingness of the landlord to accept partial payment from the provider, and the remainder from the applicant within thirty (30) days after the first payment; and
- (f) The maximum allowable payment as provided in sections 7505 and 7506.

7504.2 The following sequential calculation shall be used to determine the amount of emergency rental assistance:

- (a) The applicant unit's income certain to be received within thirty (30) days following the date of application shall be determined. If there is a live Writ of Restitution or the landlord will not accept partial payment, only the income certain to be received until the expected occurrence of the emergency shall be considered;
- (b) The applicant unit's anticipated expenses for basic necessities and fixed monthly expenses in the thirty (30) days following the date of application shall be determined;
- (c) The anticipated expenses shall be subtracted from the anticipated income; and
- (d) Any surplus resulting from the calculation in paragraph (c) shall be added to any liquid assets to determine the applicant's contribution;
- (e) The applicant's contribution shall be subtracted from the amount necessary to resolve the emergency.

7504.3 The emergency rental assistance payment shall be equal to the amount computed under section 7504.2, subject to the maximum limits for emergency rental assistance as stated in these rules.

7505 TYPES OF EMERGENCY RENTAL ASSISTANCE

- 7505.1 Emergency rental assistance shall be available for the categories of assistance specified in sections 7506.1 through 7506.4 and sections 7507 and 7508, if:
- (a) The applicant has met all eligibility criteria specified in section 7503; and
 - (b) Provision of one (1) or more of the available categories of assistance will substantially, if not entirely alleviate the emergency during the thirty (30) day period immediately following the authorization of payment. If the permissible emergency rental assistance payment does not entirely alleviate the emergency, the applicant shall provide reliable, convincing information that the remaining necessary amount is actually available from another source or that the landlord will accept a partial payment or longer-term repayment plan, which is within the applicant's financial means to execute.
- 7505.2 The Program shall not be obligated to provide a monetary amount for a requested service if a less costly alternative is available.
- 7505.3 Emergency rental assistance benefits may be, at the provider's discretion, in the form of cash, coupons, in-kind benefits, or direct vendor payments.

7506 EMERGENCY ASSISTANCE—RENT ARREARAGES

- 7506.1 Assistance may be authorized to pay a rent arrearage, late fee and associated court fees if each of the following conditions are met:
- (a) Eviction is imminent and documented by a Landlord and Tenant Court summons or referral, Writ of Restitution, Notice to Vacate, or correspondence from the landlord or his or her agent documenting that the applicant is a tenant and has a current rent arrearage of at least 30 days past due;
 - (b) The arrearage must be that of the applicant. If the lease or rental agreement is not in the applicant's name, he or she must provide documentation that he or she is responsible for the arrearage. Both the applicant and the landlord must agree to change the lease to the applicant's name;
 - (c) Arrearage for any period caused by a rent strike may be paid only if any escrow money is first applied to the arrearage and the applicant agrees to resume regular payment of rent;

- (d) The arrearage that will be paid with Emergency Rental Assistance funds may not exceed five (5) months; and
- (e) The total assistance payment (including rent arrearage, late fee and any associated court fees) may not exceed four thousand two hundred fifty dollars (\$4,250.00).

7506.2 Notwithstanding the requirements in section 7506.1, certain requirements may be waived with respect to the total maximum payment and the number of months of the arrearage which may be paid for with emergency rental assistance funds, if extraordinary circumstances exist.

7506.3 These requirements may be waived up to the maximums specified in section 7506.4, if one (1) or more of the following mitigating factors is determined to exist:

- (a) The household consists of seven (7) or more members and reasonable alternatives to the existing housing arrangement are not available;
- (b) A member of the household has a physical or mental disability, a medically documented incapacity or extended illness to the extent that loss of existing housing would pose a serious threat to the health or safety of the family member;

7506.4 If the requirements specified in section 7506.3 are met:

- (a) The total maximum emergency rental assistance payment may be increased from four thousand two hundred fifty dollars (\$4,250) to six thousand dollars (\$6,000); and
- (b) The arrearage that may be paid with emergency rental assistance funds may exceed five (5) months, if the total amount does not exceed the total maximum amount specified in paragraph (a) of this subsection.

7507 EMERGENCY ASSISTANCE – SECURITY OR DAMAGE DEPOSIT

7507.1 Assistance may be authorized for a security or damage deposit if:

- (a) The landlord does not waive the deposit; and
- (b) The applicant and the landlord sign an agreement which provides that the deposit, less any amount for damages, will be returned to the provider, rather than to the applicant, when the applicant ceases to reside at the dwelling for which the deposit was made

- 7507.2 A security or damage deposit shall only be authorized if one of the following circumstances is present:
- (a) The applicant unit will become homeless if assistance is not provided; or
 - (b) The purpose of the assistance is to reunite a child less than eighteen (18) years of age with his or her family or prevent separation from his or her family. Prevention of family separation shall be broadly interpreted to include situations where the family is currently homeless or are residents of a family shelter facility, a family is forced to move to another dwelling due to overcrowded conditions, the condemned nature of the current housing, or the forced sale of the currently dwelling, and there are no other means, other than through the provision of this assistance, whereby new housing could be secured.

7507.3 The maximum emergency assistance payment for a security or damage deposit shall be the actual amount of the deposit, which may not exceed more than the cost of one (1) month's unsubsidized rent, as specified by the landlord up to a maximum amount of eight hundred fifty dollars (\$850).

7507.4 The security or damage deposit payment shall be made directly to the landlord.

7507.5 Where the emergency was a result of eviction or displacement from a residence in the District of Columbia, assistance under sections 7507 and 7508 may be used for relocating to another jurisdiction within the greater Washington area as defined by the boundaries of the District of Columbia and its contiguous counties in the states of Maryland and Virginia.

7508 EMERGENCY ASSISTANCE – FIRST MONTH'S RENT

- 7508.1 Assistance may be authorized for the first month's rent if the applicant is:
- (a) Eligible for a security deposit payment as specified in section 7507;
 - (b) The first month's rent shall be paid in conjunction with the security deposit in order for the applicant to assume tenancy, and the applicant has no other means of paying for the first month's rent at the time it is required;
 - (c) In a household which includes a child under eighteen (18) years of age and one (1) of the mitigating factors specified in section 7506.3 is present; or
 - (d) The payment for the first month's rent is the actual cost up to a maximum of eight hundred fifty dollars (\$850.00), unless the applicant meets the requirements of the waiver in section 7506.2, in which case the maximum payment shall not be more than allowed by section 7506.4.

7509 MULTIPLE REQUESTS FOR ASSISTANCE

7509.1 Assistance payments under the Program shall be made only once in any twelve (12) month period from the date of application.

7510 RIGHT TO A FAIR HEARING—NOTIFICATION OF RIGHT

7510.1 Each applicant who is aggrieved by any action or inaction of the provider related to receipt of benefits under this program shall be entitled to a fair hearing in accordance with the provision of D.C. Official Code section 4-210.01.

7510.2 The applicant shall have the right to request a fair hearing by giving a clear expression, oral or written, in person or by telephone, that he or she wants an opportunity to present the case to a higher authority.

7510.3 The request for a fair hearing shall be accepted by any staff member of the provider who is involved in the eligibility determination process.

7510.4 At the election of the applicant, he or she may also file his or her request for a fair hearing directly with the Office of Administrative Hearings, established pursuant to D.C. Official Code section 2-1831.02.

7510.5 To request a fair hearing in writing, the applicant, or his or her authorized representative, may:

- (a) Fill out a hearing request form at the provider's service center, or at the Office of Administrative Hearings;
- (b) Send a fair hearing request form to the provider or the Office of Administrative Hearings; or
- (c) Send a letter to the provider or the Office of Administrative Hearings.

7510.6 Fair hearing request forms shall be available at the Office of Administrative Hearings and at all provider services centers that are responsible for processing emergency rental assistance applications.

7510.7 The applicant shall have fifteen (15) calendar days following the receipt of the notice described in section 7501.12 or section 7501.13, to request a fair hearing.

7510.8 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 D.C. Official Code § 4-210.07 and section 7511 of these rules.

7510.9 All fair hearings shall be conducted in the following manner:

- (a) In accordance with the Administrative Procedure Act (D.C. Official Code § 2-501 *et seq.*); and
- (b) In accordance with the following additional requirements:
 - (1) The hearing shall be held within a reasonable time following the receipt of the request for a fair hearing. However, such time shall not exceed fifteen (15) calendar days following the receipt of the request for a fair hearing;
 - (2) If the appellant fails to appear, the Administrative Law Judge designated to conduct the hearing may enter a default decision in favor of the party present. The default decision may be set aside only for good cause shown, and upon equitable terms and conditions; and
 - (3) The Administrative Law Judge shall issue a final decision within fifteen (15) calendar days following the completion of the hearing.

7510.10 Material and documents filed with the Office of Administrative Hearings during the fair hearing proceedings shall be maintained in compliance with D.C. Official Code § 2-1831.13(d), the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191; 110 Stat. 1936), and any other District or federal law pertaining to confidentiality of records.

7511 RIGHT TO AN ADMINISTRATIVE REVIEW

7511.1 The purpose of the administrative review shall be to enable the Department to ascertain the legal validity of the decision that is the subject of the fair hearing request, and, if possible, to achieve an informal resolution of the appeal and shall be held in accordance with D.C. Official Code § 4-210.07.

7512 JUDICIAL REDRESS

7512.1 Any applicant who is dissatisfied with a final order issued by the Office of Administrative Hearings may seek redress by filing, in the District of Columbia Court of Appeals, a written petition for review within thirty (30) business days following the receipt of the notice of the final decision.

7512.2 The applicant shall be informed in writing of his or her right to appeal an adverse final decision of the Office of Administrative Hearings to the District of Columbia Court of Appeals.

7599

DEFINITIONS

The following terms shall have the meaning ascribed:

Aged Household Member – A member of the applicant unit who is 60 years of age or older.

Applicant – The individual who is applying for emergency assistance for his or her own needs or the needs of those with whom he or she lives, and those persons described in § 7502 of these rules.

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 circumstances of the applicant to provide or obtain necessary information about the applicant, or a person who has legal authorization to act on behalf of the applicant.

Budget Month – The thirty (30) day period immediately prior to the day of application.

Department – The District of Columbia Department of Human Services or its designated agent.

Director – The Director of the Department of Human Services.

Disabled Household Member – A member of the applicant unit who is disabled, as documented by medical evidence provided by a qualified professional or by participation in a program which conditions its eligibility on the documentation of disability.

Emergency – A situation in which immediate action is necessary to avoid homelessness or eviction, to re-establish a home, or prevent displacement from a home.

Equity – Current market value of property less any lien indebtedness on the property and less than reasonable expenses necessary to liquidate the property.

Income from a Boarder – Any money paid to the applicant by a person living in the same household as the applicant, but who is not related to the applicant.

Joint Legal Responsibility – The individual household members are named on the deed (as tenants in common or joint tenants), or rental lease.

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

SSI – The Supplemental Security Income for the Aged, Blind, and Disabled cash assistance program authorized by Title XVI of the Social Security Act of 1935, as amended (42 U.S.C. §§ 1381 to 1383f).

Provider – An organization that receives Emergency Rental Assistance Program funds and is authorized to administer the Emergency Rental Assistance 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 (also Damage 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 failure to fulfill the lease or security to cover damage to the rental premises.

TANF – Temporary Assistance for Needy Families.

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

Verification – Documentation or collateral proof used to confirm the validity of an applicant's circumstances.

Comments on these proposed rules should be submitted, in writing, to Kate Jesberg, Interim Director, D.C. Department of Human Services, 64 New York Avenue, N.E. Washington, D.C. 20001, within fifteen (15) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed rules are available from the above address.

D.C. OFFICE OF PERSONNEL

NOTICE OF PROPOSED RULEMAKING

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title VIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-608.01 *et seq.*) (2001), hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the following proposed rules. These rules would amend Chapter 8, Career Service, of Title 6 of the District of Columbia Municipal Regulations (DCMR), for the main purpose of amending the time-in-grade requirements in section 838 of the chapter. In addition, the following changes are being made to the chapter: (1) amendment to section 812.2 of the chapter on the conditions under which an employee in a Career Appointment (Permanent) shall be converted to a Career Appointment (Probationary) and complete a new probationary period; (2) amendment to section 813 of the chapter on the requirements for probationary periods in the Career Service, to clarify the conditions under which an employee who once satisfactorily completed a probationary period shall be required to complete another probationary period, and make other changes to the section; (3) amendment to section 814 of the chapter on termination during probationary period, to delete the reference to managerial probationary periods and modify the language concerning probationer appeal rights; (4) amendment to section 815 of the chapter on the requirements for supervisory and managerial probationary periods in the Career Service, to delete all references to managerial probationary periods. The reason for this change is that managers which were previously appointed to the Career Service, are now appointed to the Management Supervisory Service or Excepted Service, serve at-will, and are no longer required to complete probationary periods of any kind, and make modifications to the section; (5) amendment to section 824.1 of the chapter concerning temporary appointments, to specify that "When-Actually-Employed" (WAE) appointments are covered under section 824 of the chapter; (6) rescission of section 825 of the chapter, *Employment of Annuitants*; and (7) amendment to section 899, *Definitions*, to add definitions for the terms "break in service," "supervisor," and "When-Actually-Employed (WAE) appointment." Upon adoption, these rules will amend Chapter 8, Career Service, of Title 6 of the DCMR, published at 30 DCR 2555 (May 27, 1983) and amended at 30 DCR 4608 (September 9, 1983), 31 DCR 2715 (June 1, 1984), 32 DCR 1857 (April 5, 1985), 32 DCR 2473 (May 3, 1985), 32 DCR 2953 (May 24, 1985) (errata), 33 DCR 4299 (July 18, 1986), 35 DCR 1087 (February 19, 1988), 36 DCR 6069 (August 25, 1989), 37 DCR 3952 (June 15, 1990), 37 DCR 7117 (November 9, 1990), 42 DCR 3520 (July 7, 1995), 45 DCR 451 (January 23, 1998), 45 DCR 1641 (March 20, 1998), 47 DCR 2419 (April 7, 2000), 48 DCR 8973 (September 28, 2001), 49 DCR 1859 (March 1, 2002), 49 DCR 6842 (July 19, 2002), 49 DCR 8368 (August 30, 2002), 49 DCR 9298 (October 11, 2002) (Errata), 51 DCR 9706 (October 15, 2004), and 51 DCR 10410 (November 12, 2004).

CHAPTER 8

CAREER SERVICE

Chapter 8 of the D.C. Personnel Regulations is amended as follows:

Section 812.2 is amended to read as follows:

- 812.2 Subject to section 833.2 of this chapter, a Career Appointment (Permanent) shall be converted to a Career Appointment (Probational), and required to complete a new probationary period, when one (1) of the following occurs:
- (a) The employee applies for and is appointed from a register to a uniformed position in the Metropolitan Police Department or the Fire and Emergency Medical Services Department, or to any other position for which a formal suitability determination procedure (including a background investigation) has been established pursuant to law, Chapter 4 of these regulations, or any other regulation or procedure; or
 - (b) Any of the criteria listed in section 813.5 of this chapter is met.

Section 813 is amended as follows:

813 PROBATIONARY PERIOD

A new section 813 is added to read as follows:

- 813.1 An agency shall utilize the probationary period as fully as possible to determine the employee's suitability and qualifications as demonstrated by the employee's knowledge, skills, and abilities as well as his or her conduct.

Sections 813.1 through 813.3 are renumbered as 813.2 through 813.4, respectively, and amended to read as follows:

- 813.2 An employee who is appointed to a Career Appointment (Probational), including initial appointment with the District government in a supervisory position, shall be required to serve a probationary period of one (1) year, except in the case of an individual appointed on or after the effective date of this provision to an entry-level police officer position, who shall be required to serve a probationary period of eighteen (18) months.
- 813.3 A person who is transferred under this chapter, or promoted, or reassigned under this chapter before he or she completes probation, shall be required to complete the remaining portion of the probationary period in the new position.
- 813.4 Except when the appointment is effected with a break in service of one (1) workday or more, or as specified in sections 812.2 (a) of this chapter or section 813.5 of this section, an employee who once satisfactorily completed a probationary period in the Career Service shall not be required to serve another probationary period.

A new section 813.5 is added to read as follows:

- 813.5 An employee who once satisfactorily completed a probationary period in the Career Service shall be required to serve another probationary period when the employee:
- (a) Is appointed as a result of open competition to a position with a positive educational requirement from a position with no positive educational requirement or a different educational requirement;
 - (b) Is appointed as a result of open competition to a position with licensure, certification, or other such requirement, in addition to a positive educational requirement, from a position without such requirements; or
 - (c) Is appointed as a result of open competition to a position in a different line of work, as determined by the appropriate personnel authority based on the employee's actual duties and responsibilities.

Sections 813.4 through 813.9 are renumbered as 813.6 through 813.11, respectively, and amended to read as follows:

- 813.6 The probationary period required by section 813.2 of this section shall be extended for an equal amount of workdays in each of the following circumstances:
- (a) For each workday that the employee is placed in a non-pay status for any reason; and
 - (b) In the case of an entry-level police officer serving an eighteen-month (18-month) probationary period, for each workday that the employee is not performing the full range of the police duties of the position to which assigned, including, but not limited to, periods of sick leave or a non-contact status.
- 813.7 The extension of the probationary period under section 813.6 of this section shall be for an equitable period of time in increments of full workdays.
- 813.8 For an individual serving an eighteen-month (18-month) probationary period, the extension of the probationary period as provided for in section 813.6 (b) of this section may not exceed an additional eighteen (18) months.
- 813.9 Service credit toward completion of the probationary period shall be given for the following periods of absence:
- (a) Absence on leave with pay during which an employee is carried on the rolls, except as provided in section 813.6 (b) of this section;
 - (b) Absence in a nonpay status while on the rolls because of compensable injury or military duty; and
 - (c) Absence following separation, suspension, or furlough during the probationary period, when any of the foregoing is found upon timely appeal or

administrative determination to have been unjustified or unwarranted, and the employee is restored retroactively as of the effective date of the original action.

- 813.10 When a decision has been made to terminate an employee during the probationary period and the employee has been so notified in accordance with section 814.2 of this chapter, and an action taken by the employee results in a stay, the period during which the effective date of such action is stayed shall not be credited toward completion of the probationary period.
- 813.11 Prior service in the Career Service under a term, temporary, or TAPER appointment and in the Excepted Service under a special appointment pursuant to section 904 (2) of the CMPA (D.C. Official Code § 1-609.04 (2)) (2001), shall be creditable toward completion of the probationary period under this section if:
- (a) It was rendered immediately preceding a Career Appointment (Permanent) or a Career Appointment (Probational) or a conversion; and
 - (b) It was in the same competitive level, as provided in Chapter 24 of these regulations.

Section 813.10 is deleted.

Section 813.11 is renumbered as 813.12:

- 813.12 Satisfactory completion of the probationary period is a prerequisite to continued employment in the Career Service.

Section 814 is amended as follows:

814 TERMINATION DURING PROBATIONARY PERIOD

Section 814.1 is amended to read as follows:

- 814.1 Except for an employee serving a supervisory or managerial probationary period under section 815 of this chapter, an agency shall terminate an employee during the probationary period whenever his or her work performance or conduct fails to demonstrate his or her suitability and qualifications for continued employment.
- 814.2 An employee being terminated during the probationary period shall be notified in writing of the termination and its effective date.

Section 814.3 is amended to read as follows:

- 814.3 A termination during a probationary period is not appealable or grievable. However, a probationer alleging that his or her termination resulted from a violation of public policy, the whistleblower protection law, or District of Columbia or federal anti-discrimination laws, may file action under any such laws, as appropriate.

Section 815 is amended as follows:

The heading of the section is changed from "Probationary Period for Appointees to Supervisory and Managerial Positions" to "Probationary Period for Appointees to Supervisory Positions:"

815 PROBATIONARY PERIOD FOR APPOINTEES TO SUPERVISORY POSITIONS

Section 815.1 is amended to read as follows:

815.1 A Career Service employee shall be required to serve a one-year (1-year) supervisory probationary period upon initial appointment, promotion, reassignment, or demotion from a non-supervisory to a supervisory position. This requirement shall not apply to temporary, term, or TAPER appointments.

A new section 815.2 is added to read as follows:

815.2 The provisions of this section shall not apply to an employee whose initial appointment with the District government is a Career Appointment (Probational) to a supervisory position. Such an employee is covered under the provisions of sections 812.2, 813, and 814 of this chapter.

Section 815.2 is renumbered as 815.3 and amended to read as follows:

815.2 Agencies shall ensure that new supervisors receive training appropriate to the position being filled for the purpose of developing, maintaining, and enhancing their supervisory skills.

Section 815.3 is deleted.

Sections 815.4 through 815.6 are amended to read as follows:

815.4 An employee who is promoted, reassigned, demoted, or transferred to another Career Service supervisory or managerial position while serving a probationary period under this section shall have the service completed in the former position credited toward completion of the probationary period in the new position.

815.5 An employee shall complete the one-year (1-year) probationary period required after initial assignment to a supervisory position in the Career Service before progressing to a higher grade level, unless the personnel authority determines that an exception is warranted when the employee's performance and experience indicate a high probability of success in the higher grade position.

815.6 Satisfactory completion of the supervisory probationary period prescribed in this section shall be a prerequisite to continued service in the position.

A new section 815.7 is added to read as follows:

815.7 If after a full and fair evaluation of the employee's performance during the supervisory probationary period, supervisory deficiencies are revealed and a determination is made by the immediate supervisor that the employee is not suited to continue to occupy the supervisory position, action shall be initiated prior to the end of the supervisory probationary period to return the employee to a non-supervisory position in accordance with sections 815.8 or 815.9 of this section.

Sections 815.7 and 815.8 are renumbered as 815.8 and 815.9, respectively, and amended to read as follows:

815.8 Except as provided in section 815.9 of this section, an employee who does not satisfactorily complete the supervisory probationary period requirement under this section shall be entitled to a non-supervisory position in his or her employing agency of no lower grade than the employee left to accept the supervisory position, and at the step the employee would have attained, but for the supervisory appointment.

815.9 An employee who is demoted to a lower grade supervisory position voluntarily or involuntarily, and who, for reasons of performance, does not satisfactorily complete the supervisory probationary period, shall be entitled to be assigned to a non-supervisory position in his or her employing agency, at the same grade and pay as the supervisory position to which the employee has been demoted.

Section 815.9 is deleted.

Sections 815.10 through 815.11 are amended to read as follows:

815.10 The agency shall notify the affected employee, in writing, of any action taken under sections 815.8 or 815.9 of this section, of the effective date of the action, and that the action is not appealable or grievable.

815.11 Nothing in this section shall prohibit an agency from taking action against an employee for reasons unrelated to supervisory performance.

815.12 An action taken under sections 815.8 or 815.9 of this section shall not be subject to the provisions of Chapters 16 or 24 of these regulations.

Section 815.13 is deleted.

Section 824.1 is amended to read as follows:

824.1 A personnel authority may develop procedures to effect temporary time-limited appointments in the Career Service, including "When-Actually-Employed" (WAE) appointments, also known as "intermittent" appointments, to meet an administrative need, such as to fill a temporary position or to fill a continuing position for a temporary period of time.

Section 825, Employment of Annuitants, is rescinded.

The heading of section 838 is changed from "Time-In-Grade Requirements for District Service Schedule" to "Time-In-Grade Requirements for Positions under Career Service Salary Schedules (Union and Non-Union);" and the section amended as follows:

838 TIME-IN-GRADE REQUIREMENTS FOR POSITIONS UNDER CAREER SERVICE SALARY SCHEDULES (UNION AND NON-UNION)

Sections 838.1 through 838.5 are amended to read as follows:

- 838.1 This section explains time-in-grade requirements and restrictions for promotions and appointments to higher grade positions; and reinstatements to higher grade positions when such reinstatements are made within one (1) year after separation from nontemporary appointments in the Career Service.
- 838.2 The purpose of the time-in-grade restrictions is to prevent excessively rapid promotions in competitive appointments, and protect competitive principles. Additionally, time-in-grade restrictions provide budgetary control on promotion rates.
- 838.3 The time-in-grade restrictions in this section shall not apply to employees occupying Wage Service positions.
- 838.4 The time-in-grade restrictions in this section shall be applied in conjunction with the restriction in section 833.1 of this chapter on position changes to a different line of work within three (3) months after placement.
- 838.5 Except as specified in sections 838.6 and 838.7 of this section, a Career Service employee shall not advance in grade by promotion to a position under a Career Service Salary Schedule unless the employee meets the following minimum time-in-grade requirements:
- (a) For an employee at grade levels CS-12 or above, only after he or she has served one (1) year at the next lower grade;
 - (b) For an employee at grade levels CS-6 through CS-11, only after he or she has served:
 - (1) One (1) year in a position two (2) grades lower, when the position to which he or she is advanced is in a line of work properly classified at two-grade (2-grade) intervals; or
 - (2) One (1) year at the next lower grade, when the position to which he or she is advanced is in a line of work properly classified at one-grade (1-grade) intervals; and
 - (c) An employee may be advanced to a position at grade levels CS-5 or below which is not more than two (2) grades above the lowest grade he or she held

within the preceding year under a nontemporary appointment without regard to time in grade.

New sections 838.6 through 838.9 are added to read as follows:

- 838.6 A Career Service employee who applies for a vacant position competitively who does not meet the time-in-grade requirements in section 838.5 of this section, but who meets the qualifications requirements for the position based on experience or education, if ranked among the best qualified candidates and within reach for selection, may be certified to the selecting official after he or she has served a minimum of six (6) months at the lower grade position.
- 838.7 An employee certified to the selecting official under the conditions described in section 838.6 of this section shall not be eligible to advance more than two (2) grade levels at a time.
- 838.8 A waiver of the time-in-grade requirements in section 838.5 of this section shall be required for any Career Service employee competitively selected to a higher grade position after being certified to the selecting official under the conditions described in section 838.6 of this section.
- 838.9 If selected for the higher grade position, an employee who was granted a waiver of the time-in-grade requirements shall be required to complete one (1) year of service at the position before he or she meets the requirements for advancement to the next grade level.

Sections 838.7 and 838.8 are renumbered as 838.10 and 838.11, respectively, and amended to read as follows:

- 838.10 In applying the time-in-grade requirements of this section and crediting prior service and experience towards meeting time-in-grade, an employee will receive credit for:
- (a) Prior District or federal government service under an appointment at the same level as or a higher level than the employee's current appointment;
 - (b) As appropriate, any specialized experience with the military, state or local governments, or with the private sector; and
 - (c) As appropriate, college or university education.
- 838.11 The personnel authority shall develop procedures for the granting of waivers of the time-in-grade requirements, and the circumstances and conditions for crediting prior service towards meeting time-in-grade.

A new section 838.12 is added to read as follows:

- 838.12 (a) The waiver of time-in-grade provisions in section 838.6 of this section shall not apply to career ladder promotions within the Career Service.
- (b) A career ladder exists when employees occupying a group of similar positions are hired at less than full performance level and are all given grade-building experience such that each may be promoted as he or she qualifies and demonstrates the ability to perform at the next higher grade level, and where there is sufficient work at the full performance level for all employees who qualify and who are performing the work at a given time.

Section 899, Definitions, is amended to add the definitions of the terms "break in service," "supervisor," and "When-actually-employed (WAE) appointment:"

Break in service – a period of one (1) workday or more between separation and reemployment that may cause a loss of rights or privileges.

Supervisor – at grade levels CS-10 and below, a position that accomplishes work through the direction of other people and meets at least the minimum requirements for coverage in accordance with the U.S. Office of Personnel Management Supervisory Grade Evaluation Guide, or other appropriate classification standards adopted by the D.C. Office of Personnel. Those directed may be subordinate District service employees, whether full-time, part-time, intermittent, or temporary; non-District service workers; unpaid volunteers; student trainees, or others. Supervisors exercise delegated authorities such as described in Factor 3 – Supervisory and Managerial Authority Exercised, in the Supervisory Grade Evaluation Guide. A first level supervisor personally directs subordinates without the use of other subordinate supervisors. A "full assistant" shares fully with a higher-level supervisor in all phases of work direction, contractor oversight, and delegated authority over the subordinate staff.

When-actually-employed appointment – temporary appointment under which the employee serves on an intermittent basis, that is, non full-time without a prescheduled regular tour of duty. This type of temporary appointment is also referred to as either "intermittent appointment," or as "intermittent service."

Comments on these proposed regulations should be submitted, in writing, to Ms. Lisa R. Marin, SPHR, Director of Personnel, 441 4th Street, N.W., Suite 300S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed regulations are available from the above address.

WASHINGTON CONVENTION CENTER AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Directors of the Washington Convention Center Authority ("Authority"), pursuant to section 203 of the Washington Convention Center Authority Act of 1994, D.C. Law 10-188, D.C. Code § 10-1201.03, hereby gives notice of its intent to adopt the following amendment to Chapter 3 of Title 19 of the District of Columbia Municipal Regulations, in not less than thirty (30) days from the date of publication of this notice in the District of Columbia Register.

This proposed rulemaking would and simplify the Authority's procurement process by providing for a sole source procurement of goods, services or construction in the event such goods, services or construction are determined to be an integral part of a transaction involving the purchase of real property.

**CHAPTER 3 WASHINGTON CONVENTION CENTER AUTHORITY:
PROCUREMENT RULES**

308 SOLE SOURCE PROCUREMENT

308.1 The CCO shall take all reasonable steps to avoid using sole source procurements.

308.2 The CCO may procure goods, services, or construction on a sole source basis without following the procedures set forth in sections 304, 305 and 306 if the CCO:

- (a) makes a written determination that the minimum needs of the Authority can only be met by such goods, services or construction and that the proposed sole source is the only source capable of providing them; or
- (b) makes a written determination that such goods, services or construction are an integral part of a transaction by the Authority to acquire real property.

308.3 The CCO's written determination shall include the following:

- (a) For a determination under subsection 308.2(a):

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- (i) a description of the Authority's requirement, including the estimated cost;
 - (ii) an explanation of the unique nature of the procurement and of the contractor's unique qualifications;
 - (iii) a determination that the costs to the Authority will be fair and reasonable; and
 - (iv) a description of the market survey conducted and list of potential sources contacted, or an explanation for why such description or list was not possible.
- (b) For a determination under subsection 308.2(b):
- (i) a description of the goods, services or construction which are integral to the real property transaction;
 - (ii) the estimated cost to the Authority of the real estate and the integral goods, services or construction; and
 - (iii) a determination that the costs to the Authority of the integral goods, services or construction will be fair and reasonable.

308.4 The CCO shall include all applicable standard contract clauses in any procurement made under this section.

Any person desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the District of Columbia Register. Comments should be filed with the General Manager, Washington Convention Center Authority, 801 Mount Vernon Place, N.W., Washington, DC 20001. Copies of this Notice of Proposed Rulemaking may be obtained by writing to the above address.