

## DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AND 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 Congressional Review Emergency Act of 2006, effective October 23, 2006 (D.C. Act 16-499), and any similar succeeding legislation (BSA), Mayor's Order 2006-20, dated February 13, 2006 and Mayor's Order 2006-115, dated August 30, 2006, hereby gives notice of the adoption of the following new Chapter 75 of Title 29 of the District of Columbia Municipal Regulations, entitled "Emergency Rental Assistance Program" ("ERAP" or "Program") as emergency and proposed rulemaking.

The District published proposed rules for the ERAP on Friday, September 1, 2006. Public comments were received during the 15-day comment period authorized by the proposed rulemaking. The Department has revised the original proposed rulemaking to reflect the comments received and because the revisions represent substantial alterations, the Department is republishing the ERAP rules as a proposed rulemaking as required by section 303(f) of the District of Columbia Administrative Procedure Act, as added by section 4 of the District of Columbia Documents Act, effective March 6, 1979, D.C. Law 2-153, D.C. Official Code § 2-553(f) (2006 Supp.). In addition, these rules were submitted to the Council and are awaiting Council approval or expiration of the Council period of review, as required by section 31 of the HSRA.

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)), is necessary for the immediate preservation of the health, safety and welfare of District residents by preventing evictions of some of the most vulnerable families and individuals in the District. It is essential that the Department be able to begin the program at the earliest possible time in order to stabilize eligible families and individuals in existing housing and to stem the number of our neediest households seeking emergency shelter prior to the advent of winter weather. The emergency rulemaking is adopted and becomes effective upon publication in the *D.C. Register*. The emergency rulemaking shall expire within 120 days from its effective date or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The Department also gives notice of its intent to take final rulemaking action to adopt these regulations in not less than fifteen (15) days from the date of publication of this notice in the *D. C. Register*.

The Program is developed pursuant to the HSRA which authorizes, among other things, crisis intervention services for purposes of preventing homelessness by enabling families and

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individuals who are elderly or have disabilities and who are 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.

All comments received were reviewed and considered during the development of the final rulemaking contained in this notice. The Department wishes to thank all of the commenters for their thoughtful and detailed comments on the proposed rules. The Department found the commenters' recommendations and accompanying analyses very helpful. As we implement the program, we look forward to additional input from clients, providers, and advocates, based on actual experience with the program. The Department is open to revising these rules in the future as informed by experience, changes in funding availability, and other relevant information. We look forward to working with our partners in the community-clients, providers and advocates-to make this program as effective and beneficial as possible.

#### Preamble to Final Rulemaking

The Department received a total of thirteen comment letters; one of which had five signatories but will be considered a single comment letter for the purposes of this preamble. Eleven of the thirteen comment letters received were from non-profit service providers; two were from advocacy organizations. This preamble discusses changes made from the proposed rules as a result of those comments. The preamble also addresses other concerns of commenters where changes were not made.

#### Income Eligibility

The proposed rule would cap income eligibility at 100% of the Federal Poverty Level (FPL). The Department's purpose was to address the District's large population at the lowest end of the income spectrum, which data shows comprises the vast majority of those seeking emergency shelter in the District. The Department received ten comments on the income eligibility cap. Nine commenters proposed the Department increase the income eligibility to two hundred percent (200%) of the FPL. One commenter proposed expanding it to two hundred and fifty percent (250%) of the FPL.

The final rule will raise the income cap to one hundred twenty five percent (125%) of the FPL. The Department is mindful that households with incomes between one hundred twenty five percent (125%) and two hundred and fifty percent (250%) of the FPL can also face serious and urgent housing crises that could be assisted by the ERAP. The program, however, received significantly less funding in FY 2007 than the advocates recommended would be needed to address the overall need. In addition, analysis of families seeking emergency shelter through the District's homeless shelter system during the first eight months of 2006 reveals that 91% percent had incomes below one hundred percent (100%) of the FPL. In order to ensure that ERAP funds are available to stabilize these families and, we hope, divert them from entering the homeless shelter system, the Department continues to believe that the income eligibility cap must remain fairly low. That being said, the Department is open to revisiting this issue based on program data of applicants, additional data from the homeless shelter system, and the availability of funding.

### Case Management

It was not the Department's intent in the proposed rule to condition eligibility for all applicants on agreement to participate in case management. The Department received eleven comments on the case management requirement. The commenters argued that case management would only be necessary where the applicant cannot demonstrate that they have the resources available to cover future expenses and that mandatory case management would be unnecessarily expensive.

The final rule will clarify that case management will only be required when the provider determines that the circumstances that led to the need for emergency assistance are unresolved. The clarifying language can be found in sections 7501.6 and 7503.2.

### Benefit Cap and Maximum Monthly Amount

The proposed rule would cap the total emergency assistance arrearage payment at four thousand two hundred fifty dollars (\$4,250). The Department received nine comments arguing that the total payment should be capped at a much lower amount: four commenters argued for a cap of \$1,500; two urged a cap of \$2,500; and four proposed varying the cap based on family size (one of whom also argued for the \$1,500 cap). Finally, many of those who commented on this issue noted that the fair market rent of a studio apartment in the District is \$948 and argued, therefore, the Department should not impose a maximum allowable amount per month of arrearage.

The final rule will keep the total emergency assistance arrearage payment cap at four thousand two hundred fifty dollars (\$4,250). In addition, the final rule does not contain a maximum allowed benefit per month of arrearage, but does limit to five (5) the number of months of arrearage that will be allowed. The reasons for retaining the total arrearage assistance cap at four thousand two hundred fifty dollars (\$4,250) are as follows. First, the Department is acutely aware that fair market rents in the District have risen sharply in the past few years. In order for the program to realistically address the problem of households in serious danger of eviction for rent arrearages, the Department believes that it must be able to address an arrearage of more than two months. Often evictions decrease in winter months, but arrearages may be accruing. To limit the program to the equivalent of one or two months rent, which would be the result of decreasing the cap to \$1,500-\$2,500, could make ineligible the very households at greatest risk—those who are at imminent risk of eviction because of multiple months of rental arrearages. Second, having a cap does not mean that every applicant will either need or qualify for the maximum benefit. As such, the total number of households that can be served should considerably exceed the number that would be served if everyone got the maximum benefit. Third, the cap may be waived up to \$6,000 for applicants with either a family size of seven or more members or for families with a member whose health would be seriously affected by a disruption of housing. The Department continues to feel that this approach, which takes into account larger family size but does not try to predict how the rental scale will increase based on family size, allows an increased benefit for the larger than average family but does not lock the program into specific rental ranges by number of family members. Finally, the Department is willing to revisit the cap issue based on information about program applicants and benefits.

### Security Deposit and First Month's Rent

The proposed rule limited the emergency assistance benefit for both the security deposit and first month's rent to eight hundred fifty dollars (\$850). The Department received one comment recommending elimination of the security deposit benefit and five comments recommending that there be no limit placed on the amount available for first month's rent. The commenters' consensus concern was that the eight hundred fifty dollar (\$850) cap was below the cost of even an average efficiency apartment in the District, which they state is about nine hundred fifty dollars (\$950) and commenters urged the Department to eliminate the cap.

The final rule will increase the cap for the emergency assistance benefit for both the security deposit and first month's rent to nine hundred dollars (\$900) each. The Department wants to point out, however, that the actual cost of the housing obtained by an applicant may exceed nine hundred dollars (\$900), even though the benefit is capped at that amount. While fair market rents in the District have increased rapidly, the Department anticipates that this level of benefit, combined with the applicant's contribution as determined by section 7504, should be sufficient in most cases. The Department is willing to revisit this issue based on program applicant data.

### Eligible populations

The proposed rule would limit benefits for emergency rental assistance to households in which at least one person was a minor child eighteen (18) years or younger; a person age sixty (60) years or older; or a person with a disability. The Department received nine (9) comments urging expansion of the program to all types of households. While the Department would like to be able to serve all households in need of emergency rental assistance, the limited amount of funding provided for the program requires the Department to limit the program to those with the greatest need and vulnerability. Some commenters argue that expanding the eligibility for the program would allow the program to distribute all the funds rapidly, and the program could then simply stop taking applications. In order to ensure that program resources remain available throughout the year, particularly at the end of the winter season when evictions historically spike, the Department remains committed to a more measured approach that will make those households that have the greatest vulnerability a priority. Again, should the Council fully fund the ERAP, the Department can revisit the population eligibility issues.

### Eligible uses

The proposed rules would limit the scope of the benefit to rental arrearages or security deposit and/or first month's rent. The Department received eight comments recommending that the Department expand the eligible uses of the emergency rental assistance program as follows: five recommended expanding to both utilities and mortgage assistance, and three recommended expanding the program to utilities only.

The final rule will remain limited to rental arrearages and security deposit and/or first month's rent as originally proposed. The Department's reasoning is again a simple matter of utilizing limited resources for the most critical need for which the funds were appropriated. In addition, for FY 2007, the LIHEAP program received over fifteen million (\$15M) in federal and District

funding. As such, the Department believes it is most prudent to not dilute funds appropriated for rental arrearages to prevent eviction to other uses that independently receive more funding than the ERAP.

#### Application processing timeframe

The proposed rule would require the provider to complete the eligibility and assistance determination no later than ten (10) *business* days after the date of a completed application. The Department received nine comments recommending that providers be required to make eligibility determinations *and* payments within ten *calendar* days.

The final rule will require the provider to complete the eligibility and assistance determination within ten (10) *calendar* days after the date of a completed application. This will shorten the required response time by the providers, but still allow a reasonable window within which providers can operate. The Department appreciates that timeliness is of the essence. As such, the rules will continue to require that the provider complete its determination *in as short a time as possible* for all applications and to take all reasonable steps to process the application in time to resolve the emergency, if the emergency is expected to occur in less than 10 calendar days. The Department will track turnaround and response time by providers and can review this requirement based on actual performance.

#### Exclusion for voluntary unemployment or non-participation in training

The proposed rule would make an applicant ineligible if the emergency is the result of his or her refusal without "good cause" to accept employment or training for employment. The Department received eight comments urging the Department to reconsider this provision entirely or to expand the definition of good cause to be more comprehensive.

The final rule will keep the provision that an applicant is ineligible if the emergency is a result of his or her refusal without "good cause" to accept employment or training; however, the definition of "good cause" has been expanded, see section 7503.7, and will also allow for any situation of a similar nature that is outside of the applicant's control. The Department does not anticipate that providers will use this provision much, if at all, but such a provision is standard in public benefit programs and needs to be available in the rare case where it is necessary.

#### Eligibility for Security Deposit and First Month's Rent

The proposed rule would make any applicant unit that meets the general eligibility requirements for emergency rental assistance eligible for security deposit and/or first month's rent if that applicant unit was homeless or will become homeless absent assistance, or if the purpose of the assistance is to reunite or prevent family separation, as broadly interpreted by these rules. The Department received three comments asserting that individuals who are over 60 years of age or who have a disability are not eligible for the security deposit and first month's rent benefit.

The Department believes this is a misinterpretation of the proposed rules, and the final rule remains as proposed. Please note, that section 7507.1(a) and (b) provides that to be eligible

*either (a) or (b) must apply, not both. As such, elderly individuals or individuals with disabilities would not be excluded, as long as they meet the requirement that they are or would become homeless absent assistance.*

#### Application Assistance for Persons with Disabilities

One commenter expressed concern that the application process could be too burdensome for some persons with disabilities, and recommended that the Department amend the rules to provide assistance with the application process for persons with disabilities. The Department has added a new section 7501.9 that will require the provider to assist a person with disabilities with the application process, if requested, in order to ensure that all applicants have an equal opportunity to apply for the program.

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").
- 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 and a release form authorizing the provider to obtain or verify information necessary to processing the application.
- 7501.6 If, pursuant to 7503.2, the provider determines that case management is necessary to ensure that the applicant addresses the circumstances which led to the need for emergency rental assistance, the applicant, as a condition of eligibility, shall agree to participate in such case management. 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 If requested by an applicant with a disability, or the authorized representative of an applicant with a disability, the provider shall assist such applicant or authorized representative with any aspect of the application process necessary to ensure that the applicant with a disability has an equal opportunity to submit an application.
- 7501.10 The provider may use documents, telephone conversations, personal and collateral interviews, reports, correspondence, and conferences to verify applicant information.
- 7501.11 The provider shall complete the eligibility and assistance determination in as short a time as possible but not later than ten (10) calendar 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 the emergency is expected to occur in less than ten (10) calendar 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 or assistance determination.

7501.13 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) A clear statement of the eligibility determination;
- (b) A clear and detailed statement of 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 from the 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) A clear and complete statement of the client's right to appeal the eligibility or assistance determination through fair hearing and administrative review proceedings pursuant to section 7510, including the appropriate deadlines for instituting the appeal and the procedural rights the applicant will have during the appeals process.

7501.14 If an applicant is determined ineligible, the provider shall give to the applicant a Notice of Denial of Eligibility. This notice shall include, but need not be limited to:

- (a) A clear statement of the denial of eligibility;
- (b) A clear and detailed statement of the factual basis for the denial;
- (c) A reference to the regulation or policy pursuant to which denial was made; and
- (d) A clear and complete statement of the client's right to appeal the determination or denial through fair hearing and administrative review proceedings pursuant to section 7510, including the appropriate deadlines for instituting the appeal and the procedural rights the applicant will have during the appeals process.

7501.15 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;
- (c) Persons related by marriage, including stepchildren and unmarried parents of a common child who live together; or
- (d) Persons with legal responsibility for an unrelated minor child, or an unrelated adult with a disability.

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 An applicant unit may be comprised of a single individual, if that individual meets one or more of the eligibility criteria in section 7503.1(b), as well as other eligibility criteria.

7502.5 Separate applicant units shall be established, but processed concurrently, 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.

7502.6 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 an applicant 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) A person with a disability.
- (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 7503.13; and
- (d) Demonstrate that the provision of emergency rental assistance services will substantially, if not entirely, alleviate the emergency during the thirty (30) day period immediately following the authorization of payment. If the permissible assistance payment does not entirely eliminate 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. 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 agree to and participate in case management services, if the provider determines that the circumstances leading to the emergency remain unresolved. Failure to agree to or cooperate in such case management may result in ineligibility.
- 7503.3 An applicant shall be living in the District of Columbia at the time of application.
- 7503.4 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.
- 7503.5 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.
- 7503.6 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.
- 7503.7 "Good Cause" reasons for voluntarily quitting a job or not participating in an employment training program include circumstances beyond the individual's control, such as, but not limited to, the following, 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, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income or 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;
- (f) There existed a household emergency (including domestic violence);
- (g) The resignation is recognized by the employer as retirement;
- (h) Child care, which is necessary for the adult applicant to accept work or training, is not available; or
- (i) The applicant could not maintain work or participate in a training program because it was necessary for the applicant to take care of a family member who is either ill or has a disability.

7503.8 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 7503.15, on the date of application, must not exceed one hundred and twenty-five percent (125%) of the monthly Federal Poverty Level as defined by the U.S. Department of Health and Human Services for the specified household size.

7503.9 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 Program (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 secondary 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.

7503.10 All income of an applicant unit that is not specifically exempted in section 7503.9 shall be considered in calculating the income of the applicant unit in the budget month.

7503.11 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.

7503.12 The equity value of all assets, unless specifically exempt under section 7503.13, shall be added to the applicant's income to determine the total amount of resources available to the applicant in the budget month.

7503.13 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;

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- (e) Taxi, truck or similar vehicle necessary for employment or self-employment;
- (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.

7503.14 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.

7503.15 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, except for child support payments the income for which is excluded under section 7503.9(k), 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 applicable maximum allowable payment as provided in these rules.

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;
- (d) Any surplus resulting from the calculation in paragraph (c) shall be added to any liquid assets to determine the applicant's contribution; and

- (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 applicable maximum limits for emergency rental assistance as stated in these rules.

**7505 EMERGENCY RENTAL ASSISTANCE PAYMENT**

7505.1 Emergency rental assistance shall be available for the categories of assistance specified in sections 7506, 7507 and 7508.

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 The provider shall make payment of the assistance benefit directly to the vendor.

7505.4 Only in those rare circumstances where payment is required by the landlord or other controlling government authority, including but not limited to a court or federal marshals, to be in cash may the emergency rental assistance benefit be in the form of cash. In all other cases, the emergency rental assistance benefit shall be in the form of non-cash 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).

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 The requirements in section 7506.1 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; or
- (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 A security or damage deposit shall only be authorized if the landlord does not waive the deposit and one of the following circumstances is present:

- (a) The applicant unit is or 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.

- 7507.2 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 nine hundred dollars (\$900).
- 7507.3 Any applicant coming directly from a transitional housing program that requires an escrow account for purposes of obtaining permanent housing, shall demonstrate why they do not have sufficient resources available for security deposit and first month's rent.
- 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; and
  - (b) The first month's rent must 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.
- 7508.2 The maximum emergency assistance payment for first month's rent under this section shall not exceed the lesser of either the actual amount of one (1) month's unsubsidized rent, as specified by the landlord, or nine hundred dollars (\$900).

**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 AND ADMINISTRATIVE REVIEW**

- 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 hearing provisions of section 26 of the Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35, D.C. Official Code § 4-754.41).

7510.2 The applicant shall have ninety (90) calendar days following the receipt of the notice described in section 7501.13 or section 7501.14, to request a fair hearing.

7510.3 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 Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35, D.C. Official Code § 4-754.42), except that if 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 emergency and prevent the eviction.

## 7599 DEFINITIONS

The following terms shall have the meaning ascribed:

**Applicant Unit** – 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 section 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.

**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 reasonable expenses necessary to liquidate the property.

**Household Member with a Disability** – 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.

**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 Brian L. Wilbon, 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.