

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 3(a) of the Preventive Health Services Amendments Act of 1985 ("Act"), effective February 21, 1986, D.C. Law 6-83, D.C. Official Code § 7-131(a) and Mayor's Order 98-141, dated August 20, 1998, hereby gives notice of the adoption, on an emergency basis, of an amendment to Chapter 2 of Title 22 of the District of Columbia Municipal Regulations (DCMR) (Public Health and Medicine)(August 1986). This emergency rule repeals a requirement instituted by emergency rulemaking that required health care providers to limit distribution of influenza vaccine during the 2004 to 2005 influenza season to only those persons in high risk categories. Emergency action to restrict access to the vaccine is no longer necessary because most of the individuals in high risk categories have received the vaccine. To ensure that healthy individuals are not unnecessarily exposed to the influenza virus the emergency restriction is repealed. Emergency action is now necessary to protect healthy residents from the influenza virus by making the vaccine generally available without restriction.

The emergency rulemaking was adopted on December 20, 2004, and became effective immediately on the date of adoption. The emergency rules will expire February 11, 2005.

Chapter 2 of Title 22 DCMR is amended by repealing sections 219 and 220, which were added by emergency rulemaking on October 14, 2004.

DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Board of Commissioners of District of Columbia Housing Authority ("DCHA") hereby gives notice of the adoption on an emergency basis of a new chapter of Title 14 DCMR, "Chapter 83: Rent and Housing Assistance Payments." The chapter governs the Rent and Housing Assistance Payments to owners in the DCHA's Housing Choice Voucher Program.

The emergency adoption of these regulations will allow DCHA to move ahead with critical efficiency measures as well as critically needed provisions so that Housing Choice Voucher Program landlord requests for rent increases can go ahead and be processed with increases capped at the Annual Adjustment Factor set by HUD.

The Board of Commissioners of the DCHA also gives notice of intent to take final rulemaking action to adopt these amendments in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The emergency rule takes effect on publication in the D.C. Register and will expire on May 20, 2005, or upon publication of a Notice of Final Rulemaking in the Register, whichever occurs first.

Amendment: Chapter 83, Rent and Housing Assistance Payments, a new chapter in Title 14 of the DCMR, is to read as follows:

CHAPTER 83
RENT AND HOUSING ASSISTANCE PAYMENTS

8300 PAYMENT STANDARD AMOUNT

8300.1 Fair Market Rents. HUD publishes annually the fair market rents for each market area in the United States.

(a) DCHA uses the fair market rent published by HUD annually for the Washington, D.C. Metropolitan Statistical Area.

(b) The Fair Market Rent (FMR) is set by HUD for the District at the 50th percentile rent to provide a broad range of housing opportunities throughout the District in order to assist in achieving deconcentration objectives.

8300.2 Payment Standard Schedule. The Payment Standard schedule is used to calculate the monthly housing assistance payment to a participant household.

- (a) After publication by HUD of the Fair Market Rent, DCHA annually adopts, by resolution of the Board of Commissioners, the Payment Standard Schedule for the upcoming year for each unit size.
- (b) The Commission may set the Payment Standard amount for each size of unit at any level between 90 percent and 110 percent of the Fair Market Rent, or up to 120 percent as permitted under § 8300.2(d) below.
- (c) Within the basic range for Payment Standards as specified in § 8300.2(b) above, a separate payment standard may be set for a designated part of the FMR area.
- (d) Exception Payment Standards between 110 percent and 120 percent may be approved by the HUD Field Office for an exception area for all size units, or all units of particular sizes in an exception area.

8300.3 HUD Discretion. Payment Standard Schedules are subject to review by HUD and HUD, at its discretion may modify payment standard amounts for any unit size on the DCHA Payment Standard Schedule.

8301 REASONABLE RENT TO OWNER

8301.1 Lease Approval. DCHA may not approve a lease unless it determines that the initial gross rent does not exceed the LESSER of

- (a) The reasonable rent as determined by DCHA; and
- (b) The maximum of the participant's applicable payment standard amount.

8301.2 When Determinations Required. DCHA is required to make a determination of rent reasonableness upon any of the following eventualities:

- (a) At initial lease up, or lease up upon transfer;
- (b) Before any increase in rent to Owner is approved;
- (c) If sixty (60) days before the contract anniversary date there is a 5% decrease in the published FMR for the unit size as compared to the previous FMR;
- (d) At the election of DCHA;
- (e) At the discretion of the US Department of Housing and Urban Development.

8301.3 Reasonable Rent Determination. The reasonable rent determination is undertaken on a case-by-case basis. At any time a rent determination is undertaken in

accordance with § 8301.2 above, the following process is used for determining whether the gross rent proposed to be charged by the Owner is reasonable.

- (a) DCHA when determining reasonable rent always considers items (1) through (9) and may consider items (10) and (11) at its option as follows:
 - (1) Square Feet
 - (2) Number of Bedrooms
 - (3) Maintenance Services provided by the lease
 - (4) Location
 - (5) Unit Type
 - (6) Quality
 - (7) Date Built
 - (8) Amenities included in the lease
 - (9) Utilities if provided by Owner
 - (10) Number of Bathrooms
 - (11) Housing Services provided by the lease
- (b) DCHA maintains an automated database which includes data on comparable unassisted units for use by staff in making rent reasonableness determinations.
- (c) DCHA does not establish minimum base rent amounts by size or type of unit.
- (d) DCHA shall use at least two comparable unassisted units for each rent determination with all comparables based on the rent that the unit would command if leased in the current market within the last twelve (12) months. All secondary market rental units are subject to rent control in the District of Columbia and comparables are comprised of these unassisted units that are not federally subsidized.
- (e) The data for other unassisted units may be gathered from newspapers, realtors, professional associations, inquiries of owners, market surveys, and other available sources.

- (f) The market areas for rent reasonableness are indicated by census tract, within the District of Columbia and the determination of reasonable rent is made by comparable rents on similar units within the same or nearby census tracts.

8301.4 Owner Information. The Owner shall provide DCHA with information if requested on rents charged by the owner for other units owned by the Owner either at the same premises or elsewhere.

8301.5 Owner Certification. Acceptance of each monthly housing assistance payment is a certification by the Owner that the gross rent to the owner is not more than rent charged by the owner for comparable unassisted units in the premises for multi-unit premises, or in the same market area for single unit premises.

8302 HOUSING ASSISTANCE PAYMENTS FOR ASSISTED HOUSEHOLDS

8302.1 Payment Standard for the Participant Household. The Payment Standard, except in the case of enhanced vouchers, is set for each Household to be the LOWER of:

- (a) The payment standards for the household unit size as set under § 8300 above;
OR
- (b) The payment standard amount for the size of the dwelling unit rented by the household.

8302.2 Amount of Monthly Assistance Payment. DCHA shall pay a monthly assistance payment to the Owner on behalf of a participating Household that is equal to the LOWER of:

- (a) The payment standard for the Household as determined under § 8302.1 above, minus the Total Tenant Payment, that being the portion of the rent to be paid by the Household based on their adjusted family income; OR
- (b) The gross rent, that being the rent paid to the Owner plus any allowance for tenant-paid utilities, minus the Total Tenant Payment.

8302.3 Decreases in Payment Standards During the HAP Contract. If the amount on the Payment Standard Schedule for the Unit Size decreases during the term of the HAP contract, DCHA shall determine the Total Tenant Payment for the household as follows:

- (a) At the second annual reexamination of the Household following the effective date of the decrease in the Payment Standard Schedule amount, DCHA shall redetermine the Total Tenant Payment, using the lower Payment Standard.

- (b) DCHA shall determine whether the housing assistance payment (HAP) amount using the prior (higher Payment Standard), or the amount using the decreased Payment Standard provides a lower or higher amount (a higher amount being possible due to changes in household or unit size during the preceding examination period as required under § 8302.5 below).
- (c) If the HAP under § 8302.3(b) above is lower, the decrease in the amount shall be deferred until the next regular reexamination date.
- (d) If the HAP Amount is subsequently increased before the implementation of the decrease, then the provisions governing increases in § 8302.4 below shall apply.

8302.4 Increases in Payment Standards during the HAP Contract. If the amount on the Payment Standard Schedule for the Unit Size increases during the term of a HAP contract, then:

- (a) The increased Payment Standard shall be used as provided under § 8302.1 above, to calculate the monthly housing assistance payment; and
- (b) The increase shall go in to effect as of the first annual reexamination on or after the effective date of the increase in the Payment Standard.

8302.5 Changes in Family Size. Irrespective of any change in the Payment Standard, any increase or decrease in household size during the HAP contract term shall be used to determine the payment standard amount for the household beginning at the first annual reexamination following the change in household size.

8303 FAMILY SHARE OF RENT

8303.1 Family Share of Payment. The family share is calculated by subtracting the amount of the housing assistance payment from the gross rent. The family shall pay the difference between the maximum housing assistance payment and the rent due to the Owner.

8303.2 Limits on DCHA Payments. DCHA may not use housing assistance payments, or any other program funds, including administrative fee reserves, to pay any part of the family share.

8303.3 Maximum Family Share of Rent. DCHA may only approve a tenancy for a unit if:

- (a) For the initial occupancy period (usually one year), if the gross rent, as determined to be reasonable by DCHA, does not result in the maximum Family Share exceeding 40% of the household's adjusted monthly income;

- (b) After initial occupancy, there is no limit (other than rent reasonableness determinations) on the gross rent and percent of adjusted monthly income that a participating household may elect to pay as the Family Share.

8303.4 Other Fees and Charges. Leases or separate agreements providing for additional fees and charges are subject to the following requirements:

- (a) Additional fees and charges shall NOT be approved if:
 - (1) The cost of meals or supportive services is included in the rent to the Owner, with such costs being included in the calculation of reasonable rent;
 - (2) Non-payment of such charges is grounds for termination of the lease;
 - (3) Inclusion of any extra fees or charges are for items that are customarily included in rent in the District of Columbia;
 - (4) Fees or charges are included for items provided at no additional cost to unsubsidized tenants in the premises.
- (b) DCHA is not liable for unpaid charges for any additional items whether set forth in the lease or covered by separate agreements;
- (c) If the tenant and owner have come to an agreement on the amount of charges for a specific item that is not prohibited under (a) above, and so long as those charges are reasonable and not a substitute for higher rent, they shall be allowed. Costs for seasonal items can be spread out over 12 months.
- (d) Copies of all separate agreements shall be provided to DCHA.

8303.5 Negotiating Rent. Negotiations over the gross rent to the Owner are conducted between the Owner and the Household. DCHA may assist the Household in the negotiations at the request of the Household.

8303.6 Total Tenant Payment is equal to the highest of:

- (a) 10% of family's monthly income;
- (b) 30% of family's adjusted monthly income; plus any rent above the payment standard;
- (c) Minimum rent; or
- (d) If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the family's actual

housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of those payments which is so designated.

8304 RENT INCREASES TO OWNER

8304.1 Written Request Required. Owners may request a rent increase no later than 90 days prior to any family annual reexamination date. The request shall be in writing.

8304.2 Amount of Rent Adjustment. Rent to the Owner may be adjusted either up or down. Subject to compliance with § 8304.1 above, the adjusted rent to an Owner who has submitted a written request shall be the LESSER of:

- (a) The current rent multiplied by the applicable annual adjustment factor published by HUD as in effect 60 days before the HAP anniversary date; OR
- (b) The reasonable rent as most recently determined (or redetermined) by DCHA; OR
- (c) The amount requested by the Owner.

8304.3 Prerequisites to a Rent Increase. The rent may not be increased on the family annual reexamination date unless:

- (a) The Owner has requested a specific increase amount at least 90 days before the family annual reexamination date; AND
- (b) The request is made in writing on DCHA provided forms for each unit for which an increase is being requested; and
- (c) In the preceding year, the Owner has complied with all requirements of the HAP contract, including compliance with the Housing Quality Standards.

8304.4 Timing of any Increases to Rent. Housing Assistance Payment increases, if approved by DCHA, shall be effective as of the first day of the first month commencing on or after the Participant's annual reexamination (anniversary) date.

All persons desiring to comment on the subject matter of this rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with the Office of the General Counsel, DCHA, 1133 North Capitol Street, NE, Suite 210, Washington, DC 20002-7599. Copies of these rules may be obtained from DCHA at that same address.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, DC 20005

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

**FORMAL CASE NO. 712, IN THE MATTER OF THE INVESTIGATION OF
THE PUBLIC SERVICE COMMISSION'S RULES OF PRACTICE AND
PROCEDURE**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to § 2-505 of the District of Columbia Code,¹ of its intent to adopt the following amendments to Chapter 13 of Title 15 District of Columbia Municipal Regulations, "Rules Implementing the Public Utilities Reimbursement Fee Act of 1980," ("Chapter 13") on an emergency basis. Chapter 13 contains the Commission's regulations governing the reimbursable budgets of the Commission and the Office of the People's Counsel ("People's Counsel"). The amendments establish rules for the assessment of competitive electric suppliers and competitive local exchange carriers.

2. This emergency action will ensure that all competitive electric suppliers and competitive local exchange carriers ("CLECs") have notice of the formula under which they will be assessed for the Commission's and OPC's operating budgets, pursuant to D.C. Code § 34-912(b)(2) (2001 Ed.). This emergency action is necessary to preserve and continue the operations of the Commission and the People's Counsel through the collection of a portion of their respective budgets through assessments. Approval of this action on an emergency basis also will help preserve the public interest by permitting the People's Counsel to continue its representation of the District's ratepayers and the Commission to continue its vital public health and safety role of ensuring just and reasonable utility service and rates within the District. These emergency amendments were adopted on January 11, 2005, and will become effective upon publication in the *D.C. Register*.

3. The Commission also gives notice of its intent to take final rulemaking action to adopt these amendments in not less than 30 days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*. The emergency rules will expire 120 days from the date of publication, or upon publication of the Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

4. Currently, Section 1301.1 reads:

1301.1 Each public utility will be assessed a fraction of the reimbursable budgets of the Commission and of People's Counsel equal to the ratio of that utility's calendar year gross revenues to the sum of the calendar year gross

¹ D.C. Code, 2001 Ed. § 2-505.

revenues of all public utilities. Calendar year gross revenues are those revenues earned during the preceding calendar year by each public utility from utility operations in the District that are regulated by the Commission.

The proposed amended Section 1301.1 shall read:

1301.1 Each public utility, competitive electric supplier, and competitive local exchange carrier ("CLEC") shall be assessed a fraction of the reimbursable budgets of the Commission and of People's Counsel equal to the ratio of that utility's, competitive electric supplier's, or CLEC's calendar year gross revenues to the sum of the calendar year gross revenues of all public utilities, competitive electric suppliers, and CLECs. Calendar year gross revenues are those revenues earned during the preceding calendar year by each public utility, competitive electric supplier, and CLEC from operations in the District that are regulated by the Commission.

5. Currently, Section 1301.2 reads:

1301.2 For purposes of this chapter, the Commission shall use the most recent revenue figure submitted by the following:

- (a) An electric power company in its Annual Report (Federal Energy Regulatory Commission Form No. 1);
- (b) A gas company in its Annual Report (Federal Energy Regulatory Commission Form No. 2); and
- (c) A telephone company in its monthly report for the month of December (Form S.N. 155).

The proposed amended Section 1301.2 shall read:

1301.2 By April 15th of each year, each utility, competitive electric supplier, and CLEC shall file its gross jurisdictional revenue figures for the preceding calendar year ending December 31st.

6. Currently, Section 1302.1 reads:

1302.1 Not later than thirty (30) days following the start of each fiscal year, the Commission shall publish the following information in the *District of Columbia Register*:

- (a) The net reimbursable budgets for the Commission and People's Counsel for that fiscal year;

- (b) The preceding calendar year gross revenues of each public utility; and
- (c) The estimated reimbursement to be assessed to each public utility for that fiscal year under § 1301 and the fraction used to calculate the same.

The proposed amended Section 1302.1 shall read:

1302.1 Not later than thirty (30) days following Congressional approval of the budgets of the Commission and People's Counsel, the Commission shall publish the following information in the *District of Columbia Register*:

- (a) **The net reimbursable budgets for the Commission and People's Counsel for that fiscal year; and**
- (b) **The total of the gross revenues of each public utility, competitive electric supplier, and CLEC for the preceding calendar year.**

7. Currently Section 1303.1 reads:

1303.1 During each fiscal quarter, the Commission shall separately send each public utility a "Statement of Reimbursement Due" which shall include a separate invoice for the Commission and the People's Counsel for approximately one fourth of that utility's reimbursement (as determined under § 1301), including applicable adjustments made to the reimbursable budgets from time to time, as set forth in § 1305.

The proposed amended Section 1303.1 shall read:

1303.1 By August 31st of each year, the Commission shall separately send each public utility, competitive electric supplier, and CLEC separate Orders of Assessment for the Commission and the People's Counsel.

8. Currently, Section 1304.1 reads:

1304.1 Each public utility shall be required to reimburse a fraction of any supplemental appropriation received by People's Counsel or the Commission during the fiscal year (excluding appropriations for security regulation by the Commission) according to the formula under § 1301. The Commission shall incorporate the supplemental reimbursements in the two (2) subsequent quarterly invoices, except that if only one (1) quarter

remains in that fiscal year, the entire supplemental reimbursement shall be incorporated in the fourth (4th) quarter invoice.

The proposed amended Section 1304.1 shall read:

1304.1 Each public utility, competitive electric supplier, and CLEC shall be required to reimburse a fraction of any supplemental appropriation received by People's Counsel or the Commission during the fiscal year according to the formula under § 1301.

9. Currently, Section 1305.1 reads:

1305.1 A percentage equal to four and ninety eight hundredths of a percent (4.98%) of the total fiscal year 1980 expenditures by the People's Counsel and by the Commission (except amounts spent by the Commission for security regulation) attributable to the eighteen (18) day period beginning September 13, 1980 (the effective date of the Act) and ending September 30, 1980, shall be assess to the regulated utilities according to the formula under § 1301. The assessments shall be included in the invoice for the second quarter of fiscal year 1981.

Section 1305.1 shall be deleted.

10. Currently, Section 1306.1 reads:

1306.1 If total obligations of the Commission and the People's Counsel are less than ninety-five percent (95%) of total appropriations as determined by the Office of the Deputy Mayor for Financial Management, the Deputy Mayor for Financial Management shall cause the difference to be refunded to the public utilities according to the formula under § 1301, within one hundred fifty (150) days following the end of the fiscal year.

The proposed amended Section 1306.1 shall read:

1306.1 If total obligations of the Commission and the People's Counsel are less than ninety-five percent (95%) of total appropriations as determined by the Office of the Deputy Mayor for Financial Management, the Deputy Mayor for Financial Management shall cause the difference to be refunded to the public utilities, competitive electric suppliers, and CLECs according to the formula under § 1301, within one hundred fifty (150) days following the end of the fiscal year.

11. Currently, Section 1399.1 reads:

1399.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

Act – the Public Utilities Reimbursement Fee Act of 1980, D.C. Law 3-88 (codified at D.C. Code § 43-612 (1981 Ed.)), effective September 13, 1980.

Commission – the Public Service Commission of the District of Columbia.

People's Counsel – the People's Counsel of the Government of the District of Columbia.

District – the District of Columbia.

Public Utility – any public utility, as defined under D.C. Code § 43-203 (1981 Ed.), other than a common carrier.

Security Regulation – the responsibilities of the Commission under the District of Columbia Securities Act, approved August 30, 1964 (78 Stat. 620, D.C. Code §§2-2401 through 2-2418 (1981)).

The proposed amended 1399.1 shall read:

1399.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

Act – the Public Utilities Reimbursement Fee Act of 1980, D.C. Law 3-88 (codified at D.C. Code § 34-912 (2001 Ed.)).

Commission – the Public Service Commission of the District of Columbia.

Competitive Electric Supplier – a person, including an aggregator, broker or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges, or markets electricity for sale to customers. The term excludes the following:

- a) Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to occupants of the building for use by the occupants;**
- b) (i) Any person who purchases electricity for its own use or for the use of its subsidiaries or affiliates; or**
(ii) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, and who does not:
 - (I) Take title to electricity;**

- (II) Market electric services to the individually-metered tenants of his or her building; or**
- (III) Engage in the resale of electric services to others;**
- c) Property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property; and**
- d) A consolidator.**

Competitive Local Exchange Carrier (CLEC) – any provider of telecommunications service that was not an incumbent local exchange carrier on January 31, 1996.

District – the District of Columbia.

People's Counsel – the People's Counsel of the Government of the District of Columbia.

Public Utility – any public utility, as defined under D.C. Code § 34-214 (2001 Ed.), other than a common carrier.

12. Comments on the proposed amendments to Chapter 13 must be made in writing to Christine D. Brooks, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington, DC 20005. All comments must be received within 20 days of the date of publication of this NOPR in the *D.C. Register*. Commenters who advocate a change from the current assessment formula or collection method must provide fully detailed alternatives, and include in their proposals any statutory revisions that would be necessary to effectuate their proposals. Persons wishing to file reply comments may do so no later than 30 days of the date of publication of this NOPR in the *D.C. Register*. Once the comment and reply periods have expired, the Commission will take final rulemaking action.