



Via Email: bdonald@dchousing.org, lbonds@dchousing.org, rmjoseph@dchousing.org,
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June 16, 2023

Brenda Donald
Executive Director
c/o Lorry Bonds, General Counsel
Rachel Joseph, Chief Operating Officer
DC Housing Authority
1133 N. Capitol Street NE, Suite 201
Washington, DC 20002

**Re: Comments to Proposed Rulemaking Amending Title 14: Housing Choice
Voucher Program Administrative Plan**

Dear Director Donald:

As you know, Disability Rights DC at University Legal Services (DRDC) is the designated protection and advocacy agency that represents DC residents with disabilities to promote their civil rights to equal access to programs, services and facilities. We, along with AARP Foundation Litigation and Terris, Pravlik, & Millian LLP, are class counsel in *Brown v. District of Columbia*. *Brown* is a class action under Title II of the ADA and Section 504 of the Rehabilitation Act on behalf of DC residents in nursing facilities who seek transition assistance from the DC government to move back to the community with the Medicaid long-term care services they need.¹ This letter is to express serious concerns about DCHA's proposed regulations amending Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR), published in the DC Register on May 19, 2023 and effective immediately on April 12, 2023.²

DCHA's Proposed Rulemaking Does Not Support *Olmstead* Implementation

The proposed regulations do not reflect a commitment by DCHA to further the integration of individuals with disabilities. From 2018 to 2020, even while the waiting list was closed, 30.6% of individuals (or 41 people) in nursing facilities who had transitioned to the community from nursing facilities moved to subsidized housing with a voucher. DCHA's

¹ DRDC is also plaintiffs' counsel and plaintiff in *LR v. District of Columbia*, a class action lawsuit under Title II of the ADA and the Medicaid statute on behalf of DC youth with significant mental and behavioral health challenges seeking intensive community-based services to prevent institutionalization.

² DRDC incorporates by reference its comments submitted on June 2, 2023, concerning DCHA's proposed ACOP regulations for public housing.

Housing Choice Voucher Program Administrative Plan is also vitally important to accomplishing the goals of the integration mandate of Title II of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, and the Supreme Court decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999). *See also* 28 C.F.R. § 35.130(d).

DCHA’s statement of local objectives in Section 4901.2 is too narrow in its focus on responding to special local housing concerns involving only the de-institutionalization of individuals with mental health disabilities. The integration mandate under the ADA³ applies to all people with disabilities. 28 C.F.R. § 35.130(d); *Olmstead*, 527 U.S. at 592. Moreover, the District’s *Olmstead* plan, which DCHA is a partner in the plan’s development, has housing as its first priority for all disability populations not just those with mental health disabilities.⁴ Although the de-institutionalization of individuals with mental health disabilities is important, DHCA should not set policy that short-changes other disability populations such as nursing facility residents. In 2019, the District was awarded 69 Section 811 vouchers for project-based housing for people with disabilities; yet none of those vouchers went to people in nursing facilities who required long-term care services. DCHA should align this Section with federal law and the *Olmstead* decision to reference the de-institutionalization of all District residents with disabilities.

Because people with disabilities have a right to live in the community instead of institutions and are able to do so with DC Medicaid long-term care services, it is very troubling that DCHA has defined the family in Sections 5107.3(d) and 5400.10 as: “[i]f a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member. . .” Sections 5107.3(d), 5400.10, and 5400.11 are also inconsistent with Title II of the ADA, Section 504, and *Olmstead* because people in nursing facilities have a right to not be unnecessarily confined in institutions like nursing facilities or hospitals. The individual with the disability, not a “medical professional” or “the family” as indicated in Sections 5107.3(d) and 5400.11, has a right to decide if they wish to continue to reside in a nursing facility or otherwise oppose community placement. For the reasons described in DRDC’s comments dated June 2, 2023, the concept of a “permanent basis” is inappropriate to be included in these regulations because the family member may decide to leave the nursing facility at any time, including a later date.

Moreover, an individual in a nursing facility or other institution may be absent from their subsidized housing unit for longer than 120⁵ consecutive days and are not “permanently absent” from the program as reflected in Sections 5107.3 and 5400.5. This 120-day limitation does not

³ “[T]he courts have tended to construe section 504 [of the Rehabilitation Act] in pari materia with Title II of the ADA . . . reasoning that these statutory provisions are similar in substance and consequently cases interpreting either are applicable and interchangeable.” *American Council of the Blind v. Paulson*, 525 F.3d 1256, 1261 n.2 (D.C. Cir. 2008) (cleaned up); *see also Radaszewski ex rel. Radaszewski v. Maram*, 383 F.3d 599, 607 (7th Cir. 2004) (“[i]n view of the similarities between the relevant provisions of the ADA and the Rehabilitation Act and their implementing regulations, courts construe them in a consistent manner”); *Randolph v. Rodgers*, 170 F.3d 850, 858 (8th Cir. 1999) (holding that cases interpreting either the ADA or Rehabilitation Act are “applicable and interchangeable”).

⁴ Government of the District of Columbia Office of Disability Rights, *DC-One Community for All: Olmstead Community Integration Plan*, Calendar Years 2021-2024, at 10-19, available at <https://odr.dc.gov/page/olmstead>.

⁵ DCHA should not impose more burdensome requirements on public housing residents, which under the proposed Sections 6201.41 and 6501.6(a) are generally considered permanently absent after 60 consecutive days.

allow the individual enough time to transition back home with the home and community services they need. DCHA should adopt in these regulations flexible rules for individuals who are temporarily absent from subsidized housing due to medical reasons or institutionalization. This should include allowing the voucher holder extended absences of a minimum of 180 days or longer for extenuating circumstances consistent with the HUD Handbook for Multifamily Housing Programs.⁶ DCHA should include examples in the regulations of extenuating circumstances, which should include that the participant needs additional time to complete discharge planning to transition back home and/or navigate the housing process to return to their unit. Affirmatively addressing these effects of institutionalization of people with disabilities, which are known to DCHA, should be part of DCHA's reasonable accommodations process. Relatedly, DCHA must make clear in these regulations that applicants on the waiting list will not be removed from the waiting list because they currently are residents in a nursing facility or other institution. While we understand that DCHA will not count the individual as a family member for purposes of an annual income determination⁷ while they are temporarily in the facility, DCHA must remove and/or revise these provisions accordingly to allow nursing facility residents to maintain their status as family members and to allow them to move back into subsidized housing with a voucher consistent with their rights under federal law.

DCHA's guest policies, which present unnecessary barriers to people with disabilities to access needed personal care services and fully enjoy their housing, are purportedly based on generalized safety concerns. Contrary to DCHA's assertions, these policies do not reflect fairness to DCHA residents. Specifically, DRDC is concerned by Sections 5108.5, 5108.6 and 5108.7, which states that participants must provide a written request and verification for a live-in aide and seek "continued approval" for the live-in aide at each reexamination. Per HUD guidance⁸, DCHA must accept these reasonable accommodations requests orally or in writing. DCHA should revise Section 5108.6 to standardize the process consistent with the public housing regulations in Section 6201.53, which says that DCHA will obtain verification of the disability-related need for a live-in aide if necessary and allow reliable third-party verification from an individual who knows the needs of the individual. Section 5108.7's requirement for biennial or triennial DCHA re-verification of the need is extremely burdensome and often unnecessary, including for those individuals with permanent disabilities like paralysis or where the ongoing disability-related need is otherwise known or obvious. Section 5105.3 should be revised to allow live-in aides and the other family members to live in the unit pending DCHA's approval. As described in prior comments, live-in aides are necessary for the individual to avoid unnecessary institutionalization and to maintain their health and safety. Like the public housing regulations, DCHA also includes the broad categories in which it can disapprove a live-in aide under Section 5108.9, including vague references to a criminal history and unpaid debts to DCHA. DCHA should include specific criteria that are legitimately related to the safety or security of the family or other tenants. DCHA must remove or revise these provisions accordingly.

⁶ HUD Handbook 4350.3, Occupancy Requirements of Federally Subsidized Multifamily Housing Programs (2013), part 6-21 (B)2. House Rules, available at <https://www.hud.gov/sites/documents/43503HSGH.PDF>.

⁷ It's important to note that individuals in nursing facilities only receive a monthly Personal Needs Allowance for institutionalized residents, which increased to \$100 effective February 1, 2023. 42 C.F.R. § 435.832(c)(1).

⁸ U.S. Department of Justice, Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations under the Fair Housing Act, May 17, 2004, at 10, available at https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf.

We are seriously concerned with DCHA’s decision to remove all local preferences as reflected in Sections 5202.8 and 5202.9, including those local preferences for nursing facility residents. This is inconsistent with DCHA’s obligation to affirmatively further fair housing by supporting *Olmstead* implementation by engaging in activities that will benefit individuals transitioning from institutions or at serious risk of institutionalization. In the Statement of HUD on the role of housing in accomplishing the goals of *Olmstead*, which is applicable to DCHA⁹:

HUD encourages public housing agencies and other HUD-assisted housing providers to work with state and local governments to provide integrated, affordable and accessible housing options for individuals with disabilities who are transitioning from, or at serious risk of entering, institutions or other segregated settings. For example, public housing agencies, pursuant to PIH Notice 2012-31, and other recipients of HUD assistance may offer *certain preferences that will enable individuals with disabilities to transition from institutions more quickly* or enable an individual at serious risk of institutionalization to remain in integrated, affordable housing in the community. . . Preferences that target individuals with specific disabilities or diagnoses may be authorized in connection with remedial actions undertaken pursuant to Department of Justice enforcement, *Olmstead*-related settlements or litigation, and state and local governments’ voluntary, documented affirmative *Olmstead* planning and implementation efforts.”

Id. at 7 (emphasis added). Consistent with HUD guidance, we urge DCHA to revise the regulations to maintain the homeless, disability, and other selection preferences for the HCVP waiting list for nursing facility residents and other populations. DCHA should also implement other disability preferences for individuals with disabilities transitioning from institutions and in the community. This will promote individuals with disabilities to transition more quickly from institutions to the community.¹⁰ Previously, individuals in nursing facilities would have the *highest* local selection HCVP waiting list preference because those individuals would be considered homelessness under DC Mun. Regs. Title 14 § 7605.1. Specifically, DCHA would go down its waitlist to select applicants who have selected the homeless preference based on date time of application. DCHA would not apply additional tiering to the category of homelessness for this local preference when going through the waitlist; the priority was the same regardless of how the individual experiences homelessness (e.g., on the street, in a shelter, in a nursing facility, etc.). DCHA also failed to follow the proper procedures before it changed the current preference system in place. At a minimum, DCHA should develop procedures to maintain these local preferences after it obtains public comment.

HUD guidance¹¹ also encourages affirmative marketing to individuals transitioning from

⁹ U.S. Department of Housing & Urban Development, Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*, available at <https://www.hud.gov/sites/documents/OLMSTEADGUIDNC060413.PDF>.

¹⁰ It is not sufficient that DCHA only selects people with disabilities for HCV assistance from the special purpose vouchers DCHA administers with targeted funding after assignment from DC government agencies (e.g. Non-Elderly Disabled and Mainstream Vouchers) as outlined in Sections 5202.5, 5202.6, 10102.88.

¹¹ U.S. Department of Housing & Urban Development, Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*, at 10, available at

institutional care about the availability of affordable housing. DCHA should amend its regulations to specifically describe how it will engage in affirmative marketing and outreach activities, including to nursing facility residents and other people with disabilities in other institutions and in the community about the reopening of the HCVP waiting list. But Sections 5201.14, 5201.16, and 5201.17 are very vague about what outreach DCHA will provide to ensure that DCHA has enough applicants on the waiting list and to assure that DCHA is affirmatively furthering fair housing and complying with the Fair Housing Act. The details that are provided in 5201.17 do not reflect meaningful outreach that will reach people isolated in facilities (e.g. press releases, flyers to other agencies, developing unspecified partnerships with organizations that serve people with disabilities). DCHA should revise the regulations to include texting, robocalls, mobile door-to-door outreach, among other strategies. This is critical to ensure the District is reaching the individuals with disabilities impacted by isolation in institutions and other barriers to access.

Section 10102.90¹² concerning NED vouchers is also vague about how DCHA will “ensure that individuals living in eligible institutions are aware when DCHA opens its waiting list by reaching out to social service agencies, nursing homes, intermediate care facilities and specialized institutions in the local service area.” DCHA should revise this Section to make clear how it will provide outreach to facility administrators, social service agencies, and to the residents in those facilities so the residents are aware when DCHA opens its waiting list. It is essential that DCHA revises this Section to state that it will also contact residents in nursing facilities and other institutions because communication with a nursing facility social worker or other facility administrator does not ensure that the resident with a disability will be made aware by facility staff that the waiting list will reopen. Additionally, DCHA should also revise Sections 5001.33 and 10102.94¹³ to indicate that DCHA will update the list of accessible units at least annually.

Although we support the inclusion of language in Sections 10102.98 and 10102.99 that acknowledge in setting an initial search term of 180 calendar days for NED vouchers that “HUD has encouraged PHAs with NED vouchers to be generous in establishing reasonable initial search terms and subsequent extensions for families with a disabled person,” DCHA should make clear in Sections 5001.8 (examples of reasonable accommodations) and 10102.100 that

<https://www.hud.gov/sites/documents/OLMSTEADGUIDNC060413.PDF>; See also U.S. Department of Housing & Urban Development, Office of Fair Housing and Equal Opportunity (FHEO) Guidance on Compliance with Title VI of the Civil Rights Act in Marketing and Application Processing at Subsidized Multifamily Properties, April 21, 2022, available at

<https://www.hud.gov/sites/dfiles/FHEO/documents/HUD%20Title%20VI%20Guidance%20Multifamily%20Marketing%20and%20Application%20Processing.pdf>.

¹² Section 10102 is a new section titled “Veterans Affairs Supportive Housing (VASH) Program.” However, this Section also includes DCHA’s proposed regulations regarding Mainstream (10102.57-10102.73) and NED vouchers (10102.74-10102.105), which is confusing. DCHA should separate all special purpose voucher sections into their own independent sections. DCHA should also provide the public an opportunity to comment on these new regulations before they go into effect.

¹³ In Section 10102.95, we appreciate the inclusion of information about Disability Rights DC at University Legal Services, the District’s protection and advocacy agency. However, to avoid misleading the public, DCHA should clarify that that the protection and advocacy agency in DC does not provide housing counseling services and that there is a separate program within University Legal Services that provides housing counseling services. Additionally, DCHA should clarify that University Legal Services does not provide funding for moving expenses or security deposits. Please see our website for more information: <https://www.uls-dc.org/>.

DCHA will grant time extension(s) as a reasonable accommodation for any families with disabilities, including those with NED vouchers, to find an accessible unit or a unit that otherwise meets their needs.

Chapter 50, Sections 5000, 5001, 5002: Fair Housing Policies and Policies Related to Persons with Disabilities

DCHA's position seems to be that it must act only in response to an affirmative request for reasonable accommodation. That is not correct. Section 5001.8 should also make clear that in addition to modifications to accommodate the needs of persons with disabilities, DCHA also has an affirmative obligation to provide reasonable modifications in policies, practices, and/or procedures when the modifications are necessary to avoid discrimination on the basis of disability under Section 504 of the Rehabilitation Act and the ADA. 24 C.F.R. Part 8; 28 C.F.R. § 35.130(b)(7); *see also* 24 C.F.R. § 100.203. As HUD has outlined in guidance¹⁴, this affirmative obligation includes affirmatively providing program access under Section 504 and to affirmatively further fair housing by taking meaningful actions to address access barriers, end disability discrimination, and promote integration and reduce segregation. Another way in which DCHA must act without an affirmative request for an accommodation is if DCHA already has reason to believe the accommodation is necessary or if the need for the accommodation is obvious.¹⁵

DCHA must conform the definition of "disability" in Section 5000.9(d) to the definition of a disability under federal law and the DC Human Rights Act, including that the definition includes individuals being regarded as having a disability. D.C. Code § 2-1401.02(5A). While DCHA can encourage in Section 5000.12 individuals to file a housing discrimination complaint or grievance with DCHA using its internal procedures, it must not be required. If a participant decides to report discriminatory conduct of an owner despite the risk of retaliation, Sections 5000.13(a) and 5000.15 should make clear that DCHA will obtain that participant's consent before sending a notice to the owner and DCHA will take steps to protect the participant from any retaliatory conduct. 5000.15 should also state that DCHA's notice will provide participants and applicants with information that they may file a housing discrimination complaint with HUD (under the Fair Housing Act and Section 504), DC OHR (under the DCHRA), and/or the DOJ (under the ADA, Section 504, and the Fair Housing Act) and the timelines of each agency for filing those complaints. Section 5001.4 should explicitly state the title of the contact at DCHA for requests for reasonable accommodations such as the ADA/504 coordinator and provide an email as well as their phone number, including a secondary point of contact if the ADA/504 coordinator is not available or unresponsive. DCHA should incorporate language in Section 5001.7 from the language in HUD's prior guidance in Notice 2010-26 (HA) regarding DCHA's obligation to provide any other reasonable accommodation up to the point that would not result in an undue financial or administrative burden and/or constitute a fundamental alteration of the

¹⁴ U.S. Department of Housing & Urban Development, Reasonable Accommodations and Modifications, available at https://www.hud.gov/program_offices/fair_housing_equal_opp/reasonable_accommodations_and_modifications.

¹⁵ *See* U.S. Department of Housing & Urban Development, Section 504 Frequently Asked Questions, Question: Is a federally-assisted housing provider obligated to provide an accommodation to a tenant or applicant if s/he has not requested it?, available at https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/sect504faq#_Reasonable_Accommodati on.

program.¹⁶ Additionally, Section 5001.23 should be revised to make clear that DCHA will engage in a meaningful interactive process and give primary consideration to the accommodation requested by the person with the disability who is most familiar with what would be effective to meet their needs.¹⁷

The definition of reasonable accommodation in Section 5001.6 should conform with the definition of a reasonable accommodation in the joint HUD and DOJ guidance on reasonable accommodations under the Fair Housing Act.¹⁸ Section 5001.8(d) should maintain some of the language in DC Mun. Regs. Title 14 § 7403.3(j), which says that an example of a reasonable accommodation is providing time extensions of vouchers for location of a unit with the necessary accessible features or otherwise appropriate for the family. DCHA should clarify that it will not impose limits on providing extensions so that the family may locate with their voucher an accessible and appropriate unit to meet their needs. For consistency with the comments we proposed for Section 6103.7, Sections 5001.8 and 5001.28 should describe that any materials provided to people with visual disabilities will be available in alternative formats such as braille, large text, audio formats, and screen readable supported formats. The regulations should also be revised to include that any materials will also be provided in formats that are easily understood and use plain language.

DCHA should revise these regulations to state that it will inform the individual with the disability that it will provide reasonable accommodations within a *reasonable* time and details on how it will do so. We also urge DCHA to include language in Section 5001.21 or elsewhere that DCHA will specifically state: (1) the projected, reasonable timeline for provision of the accommodation; (2) that DCHA will notify the applicant or resident in writing of the projected, reasonable timeline for implementation of the accommodation; (3) that DCHA will routinely update the applicant or resident of the status of their accommodation or the reason(s) for any delay in provision.

Section 5001.29 does not fully incorporate the effective communication requirements in 24 C.F.R. § 8.6, which includes an obligation to furnish auxiliary aids and services such as *qualified* sign language interpreters due to disability and their communication preferences. For example, DCHA must clarify in the regulations that video remote interpreting services will also be available to provide effective communication and immediate access to qualified ASL interpretation services.¹⁹ The proposed regulations also indicate DCHA will rely on outdated technology like TTY (text telephone) in Section 5001.27. The FCC has adopted rules to acknowledge that TTY is outdated and unreliable. The adopted rules facilitate the transition from

¹⁶ U.S. Department of Housing & Urban Development, NOTICE PIH 2010-26 (HA), July 26, 2010, at 6, available at https://www.hud.gov/sites/documents/DOC_8993.PDF.

¹⁷ U.S. Department of Housing & Urban Development, Section 504 Frequently Asked Questions, *Question: May a federally-assisted housing provider suggest an alternative to the accommodation requested by an applicant or tenant?*, available at https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/sect504faq# Reasonable_Accommodati on.

¹⁸ U.S. Department of Justice, Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations under the Fair Housing Act, May 17, 2004, at 6, available at https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf.

¹⁹ See also U.S. Federal Communications Commission, Disability Rights Office, Telecommunications Relay Services, available at <https://www.fcc.gov/trs>.

TTY technology to real-time text (RTT) communication for people who are deaf or have other hearing disabilities.²⁰ DCHA should clarify in these regulations that it will provide access to RTT communication.

Chapter 52, Section 5200: The Application Process

The application process needs to address the unique challenges of institutionalization and the general digital divide people with disabilities and low-income residents face. People in institutions do not have *any* access or reliable access to the internet and mail services. Accordingly, Section 5200.6 should allow applicants to also return completed applications in-person and obtain time-stamped confirmation of submission. DCHA should also state in the regulations that it will provide written confirmation that their application is complete and if applicable written confirmation about the specific areas of the application that still need to be completed. Section 5200.14 should state that DCHA will provide written notification that the applicant was placed on the waiting list.

Chapter 52, Sections 5201 and 5202: Managing the Waiting List, Removal of Applicants from the List, and Selection for HCV Assistance

Consistent with HUD guidance²¹, DCHA should provide more advanced 60-day notice prior to reopening the waiting list than the at least 10-day notice in Section 5201.12. As discussed above, DCHA should do outreach to individuals in institutions and other unhoused individuals about the reopening of the waiting list. DCHA should also remove any erroneous references in the proposed regulations, such as in Section 5201.16(c), that suggest that outreach efforts that “prefer” people with disabilities or other protected classes should be avoided in compliance with the “fair housing requirements.” That is not correct.

As we discussed on May 10, 2023, some *Brown* class members and other DRDC clients with mobility disabilities in the community have been waiting at least a decade, but many longer, for DCHA to provide affordable, UFAS accessible housing. DRDC is seriously concerned with how DCHA is changing its regulations to purge the waiting list. Specifically, Sections 5201.19, 5201.23, 5201.25, require that a family on the waiting list must inform DCHA immediately of any changes and that DCHA will remove from the waiting list without notice any applicant if they do not respond to DCHA outreach to update the waiting list within thirty (15) business days. As with the proposed procedures for the public housing program, these changes will disproportionately impact DC residents with disabilities in institutions who were on the waiting list before it closed in 2013 as well as new applicants in institutions who seek to transition back to the community. DCHA should not require such a short timeline of immediately. If DCHA declines to make this change, at a minimum it should explain what is meant by immediately²² for individuals to inform DCHA of changes. Individuals with disabilities in institutions and in the

²⁰ U.S. Federal Communications Commission, *Real-Time Text*, available at <https://www.fcc.gov/real-time-text>.

²¹ U.S. Department of Housing & Urban Development, Office of Fair Housing and Equal Opportunity (FHEO) Guidance on Compliance with Title VI of the Civil Rights Act in Marketing and Application Processing at Subsidized Multifamily Properties, at 4, April 21, 2022, available at <https://www.hud.gov/sites/dfiles/FHEO/documents/HUD%20Title%20VI%20Guidance%20Multifamily%20Marketing%20and%20Application%20Processing.pdf>.

²² DCHA in its proposed ACOP regulations provides the applicant 10 days to inform DCHA of changes. Although this timeframe is also punitive, DCHA should not impose stricter requirements for different categories of applicants.

community will need flexible timelines to update their information and need assistance to respond to DCHA to update their contact information and to submit documents needed to determine eligibility. DCHA should change this policy for everyone and should not require each applicant with a disability to request an accommodation because DCHA knows (or should know) that this disability-related barrier exists and as described above and below HUD has advised DCHA in its *Olmstead* guidance of these challenges. Section 5201.19 should also be revised to allow applicants to respond to DCHA with updates via mail, telephone, and in-person because of the digital divide for people with disabilities and low-income residents.

These proposed regulations also do not provide enough flexibility for institutionalized waiting list applicants and other applicants to gather the identification documents they need to demonstrate eligibility, respond to DCHA's outreach, and arrange attendance to the application interview. Section 5202.16 does not take into account the known reasonable accommodation needs of institutionalized applicants and others with disabilities in the application process. Section 5202.26 only provides ten (10) business days from the date of the eligibility interview (and an additional ten (10) business day-extension) for the applicant to respond with eligibility documentation. HUD recommends that reasonable accommodations in the application and admissions process of PHAs include extending limited application periods and permitting flexible application procedures.²³ We urge DCHA to amend the regulations to adopt more flexible procedures and timelines. People with disabilities who are in institutions need transition assistance to obtain the ID and income documentation to verify eligibility. Ten (10) or twenty (20) business days is not enough time to get the help they need to obtain that documentation. Accordingly, we also urge DCHA to continue utilizing an "inactive" status for any applicants who do not respond to DCHA's outreach within timelines.

We support DCHA's proposed regulations creating a process for families who contact DCHA after the deadline to be restored to its prior place on the waiting list. However, we urge DCHA clarify in Section 5201.28 that DCHA must²⁴ reinstate any family for failure to respond to DCHA outreach if the lack of response was due to DCHA error, or to circumstances beyond the family's control. DCHA should also revise the regulations to describe that reinstatement to the waiting list for lack of response is also an example of a reasonable accommodation for applicants with disabilities. DRDC is also concerned that DCHA will not offer notice or an informal hearing to a family that is removed from the waiting list for failure to respond to DCHA's outreach under Section 5201.25. For the reasons outlined above, we urge DCHA to provide an opportunity for an informal hearing when a resident is removed from the waiting list for failure to respond.

Chapter 53: Briefings and Voucher Issuance

Sections 5300.3, 5300.12, 5300.13 and 5300.5 do not reflect an accessible briefing and voucher issuance process. As described above, many applicants on the waiting list do not have *any* access or reliable access to the internet, including those applicants in institutions. Even with internet access, many people with disabilities and other applicants do not have email. DCHA

²³ U.S. Department of Housing & Urban Development, Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*, at 10-11, available at <https://www.hud.gov/sites/documents/OLMSTEADGUIDNC060413.PDF>.

²⁴ The current proposed regulations state that DCHA may reinstate.

must employ multi-modal methods to notify applicants about briefings beyond electronically and should offer in-person briefings to all applicants as reflected in Section 5300.20. DCHA should revise the regulations to make clear that it will notify all applicants electronically and via first-class mail and will work with its sister agencies like the DC Department of Aging and Community Living to notify residents who are isolated in facilities about briefings and other DCHA notifications.

Appropriate Language About People with Disabilities

DCHA must replace the term “mental retardation” with “intellectual disability” in Sections 5100.5 (definition of “physical or mental impairment”) and 5002.17(b). The term “mental retardation” is no longer an acceptable way to describe an individual with intellectual disabilities as recognized by Congress, federal and state government agencies, and various public and private organizations. DCHA must remove this inappropriate language in these regulations and other policies. Similarly, DCHA should replace in Sections 5100.5, 5301.6, 5301.8, 19902 (definition of “handicap” and “individual with handicaps”) the language “individual with handicaps” or any language that references “handicaps” with language that centers the person with the disability, such as “individual with disabilities” or “person with a disability” where appropriate.

Please let me know if you would like to discuss these comments in more detail. I look forward to your comprehensive written response to these comments and the comments DRDC submitted on June 2, 2023.

Sincerely,



Lyndsay Niles
Managing Attorney

cc: Robert White, Chairperson, Committee on Housing
Angela Fowlkes, Chief of Staff, Committee on Housing