



MURIEL BOWSER
MAYOR

April 23, 2024

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council of the District of Columbia, pursuant to section 31 of the Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code § 4-756.02), is the “Flexible Rent Subsidy Pilot Program Rules Approval Resolution of 2024”.

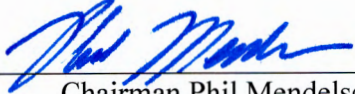
The resolution would approve rules that establish requirements and procedures for the District’s Flexible Rent Subsidy Pilot Program (“DC Flex Program”), which is a time-limited financial assistance pilot program that provides up to a five (5)-year benefit to eligible households to support their ability to pay monthly rental expenses, especially during periods of income volatility, to promote long-term housing stability. Among other changes, these updated rules authorize the Department to operate the DC Flex Program for adult-only households in addition to the family households (adults with dependent children) that are authorized under the existing rules. The updated rules also further expand eligibility by reducing the minimum age for a Program applicant from twenty-one (21) to eighteen (18) years.

I urge the Council to take prompt and favorable action on this proposed resolution.

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser", written over the printed name.

Muriel Bowser
Enclosures


Chairman Phil Mendelson
at the request of the Mayor

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To approve proposed rules to implement the Flexible Rent Subsidy Pilot Program.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Flexible Rent Subsidy Pilot Program Rules Approval Resolution of 2024”.

Sec. 2. Pursuant to section 31 of the Homeless Services Reform Act of 2005, effective October 21, 2005 (D.C. Law 16-35; D.C. Official Code § 4-756.02), the Council approves the proposed final rules of the Director of the Department of Human Services to amend Chapter 79 (Flexible Rent Subsidy Pilot Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations, regarding the implementation of the Flexible Rent Subsidy Pilot Program, which were transmitted to the Council by the Mayor on -----.

Sec. 3. Transmittal.

The Council shall transmit a copy of this resolution, upon its adoption, to the Mayor, the Director of the Department of Human Services, and the Administrator of the Office of Documents and Administrative Issuances.

Sec. 4. Fiscal impact statement.

32 The Council adopts the fiscal impact statement in the committee report as the fiscal
33 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
34 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

35 Sec. 5. Effective date.

36 This resolution shall take effect immediately.

DISTRICT OF COLUMBIA DEPARTMENT OF HUMAN SERVICES

NOTICE OF FINAL RULEMAKING

The Director of the Department of Human Services (“Department”), pursuant to the authority set forth in Sections 31 and 31c of the Homeless Services Reform Act of 2005 (“HSRA” or “Act”), effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code §§ 4-756.02 and 4-756.05), and Mayor’s Order 2006-20, dated February 13, 2006, gives notice of the adoption of the following amendments to Chapter 79 (Flexible Rent Subsidy Pilot Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations.

The purpose of these rules is to update the existing Chapter 79, which contains rules for the Flexible Rent Subsidy Pilot Program (“DC Flex Program”), which is a time-limited financial assistance pilot program that provides up to a five (5)-year benefit to eligible households to support their ability to pay monthly rental expenses, especially during periods of income volatility, to promote long-term housing stability. Among other changes, these updated rules authorize the Department to operate the DC Flex Program for adult-only households in addition to the family households (adults with dependent children) that are authorized under the existing rules. The updated rules also further expand eligibility by reducing the minimum age for a Program applicant from twenty-one (21) to eighteen (18) years.

These rules were first published as emergency and proposed rules in the *District of Columbia Register* on August 11, 2023, at 70 DCR 11018. The Department Director adopted the emergency rules on August 1, 2023, and they became effective on that date. These rules are identical to the emergency and proposed rulemaking, in response to which the District received no public comments.

Further, in accordance with Section 31 of the HSRA (D.C. Official Code § 4-756.02), the proposed final rules were submitted to the Council for a forty-five (45) day period of review and were deemed approved on December __, 2023, pursuant to PR 25-____.

On December __, 2023, the Department Director adopted these rules as final, and the rules shall become effective upon publication of this notice in the *District of Columbia Register*.

Chapter 79, FLEXIBLE RENT SUBSIDY PILOT PROGRAM, of Title 29, PUBLIC WELFARE, of the DCMR, is amended as follows:

Section 7900, SCOPE, is amended as follows:

Subsections 7900.1, 7900.2, and 7900.3 are amended to read as follows:

7900.1 The purpose of the Flexible Rent Subsidy Pilot Program, which subsequently shall be referred to as the DC Flex Program (and “Program” throughout this rule), is to support households that are at risk of experiencing homelessness to achieve stability

in permanent housing. The Program provides time limited financial assistance for up to a five (5) year period to each enrolled head of household in the instances where there is a gap between the total monthly rent expenses and the household's funds available for rent. The time limited financial assistance is payable only to the households, with the exception noted in § 7905.11(b).

7900.2 The Department shall be responsible for the implementation of this chapter, which shall apply to all time-limited financial assistance provided through the Department pursuant to the Program.

7900.3 The Pilot Program shall operate through September 30, 2026.

Section 7901, ELIGIBILITY CRITERIA, is amended to read as follows:

7901 ELIGIBILITY CRITERIA

7901.1 Only one person who is eighteen (18) years old or older at the time of application per household is eligible to enroll his or her household in the Program. This person shall be considered the head of household.

7901.2 A household may be a family household, comprising one or more adults with dependent children, or it may be an individual adult household, comprising one person who is eighteen (18) years old or older.

7901.3 To determine family household composition, the Department shall consider individuals who live in the same physical housing unit as the applying head of household, including:

- (a) Persons related by blood or legal adoption with legal responsibility for minor children in the household;
- (b) Persons related by marriage or domestic partnership (as defined by section 2(4) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(4)), including stepchildren and unmarried parents of a common child who live together;
- (c) Persons with a legal responsibility for an unrelated minor child or an unrelated adult with a disability; and
- (d) Any person not included by § 7901.2(a)-(c), regardless of blood relationship, age, or marriage, whose history and statements reasonably demonstrate that the individuals intend to remain together in the same household.

7901.4 An otherwise eligible person temporarily away from the housing unit due to employment, school, hospitalization, incarceration, legal proceedings or vacation 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 housing unit on occasional weekends, holidays, school breaks, or during summer vacations.

7901.5 To establish initial eligibility for the Program, a household must:

- (a) Reside in the District of Columbia, as defined by section 2(32) of the Act (D.C. Official Code § 4-751.01(32)), at the time of application;
- (b) Demonstrate risk of homelessness as evidenced by:
 - (1) Previous application for or participation in at least one government-funded emergency or temporary housing or rental assistance program administered by the District, including the Emergency Rental Assistance Program, the Homelessness Prevention Program, the Family Re-Housing and Stabilization Program, or other rapid re-housing program, within the last 48 months; and
 - (2) Having a total annual income less than or equal to forty percent (40 %) of the Median Family Income for the District, which is a periodic calculation provided by the United States Department of Housing and Urban Development; and
- (c) Be headed by a person that is eighteen (18) years old or older at the time of application;
- (d) Either:
 - (1) Have a current, valid lease agreement for a rental unit in the District, or
 - (2) For an individual participating in a work bed shelter program, commit to executing a valid lease agreement for a rental unit in the District within sixty (60) days of accepting the conditional offer described in § 7903.9; and
- (e) For a family participant, have physical custody of one or more minor or dependent children.

7901.6 The applicant may be enrolled in a government-funded rental assistance program administered by the District at the time of application. However, if selected for the Program, no household member may be enrolled in both the Program and another

on-going District or federal government-funded rental assistance program at the same time. Participation in the Program shall not preclude receipt of shelter or rental assistance after participation in the Program has ended.

Section 7902, HOUSEHOLD OUTREACH, is amended as follows:

Subsections 7902.1, 7902.2, and 7902.3 are amended to read as follows:

- 7902.1 The Department will conduct outreach to households with an estimated high likelihood of meeting the eligibility criteria listed in § 7901, to inform these households about the Program and to determine potentially eligible households' interest in Program enrollment. When the number of eligible households is expected to exceed available funding in a given year, the Department may identify a priority population and target outreach to that population.
- 7902.2 Households that the Department informs about the Program shall be identified by the Department through administrative data contained in applications completed by households seeking or enrolled in government-funded housing or government-funded emergency rental assistance programs administered by the District.
- 7902.3 The Department shall conduct outreach via the US Postal Service, telephone, email, SMS text messages, or other communication means determined by the Department.

Section 7903, APPLICATION AND SELECTION PROCESS, is amended as follows:

Subsection 7903.3 is amended to read as follows:

- 7903.3 The Director of the Department shall determine the number of applications that will be accepted for the Program, which is contingent on available funding. If at any point the Department receives additional funding for the program, the Department may reopen the application process at that time for new applications.

Subsection 7903.8 is amended to read as follows:

- 7903.8 After the lottery is completed, the Department will offer available Program slots to households selected by the lottery. The Department will notify selected households via the US Postal Service, telephone, email or another communication mode determined by the Department. These Program slots shall be conditional, and shall be official only after the household responds to the Department's notice of the conditional offer and successfully completes the Program eligibility process described in § 7904. If a household fails to respond within the given timeframe, or after verification the household does not meet eligibility requirements for the Program, an additional household will be selected based on the method described in § 7903.10, until all slots have been filled.

Subsection 7903.12 is amended to read as follows:

- 7903.12 Any household that submits an application for Program enrollment but is not enrolled as a result of the processes described in § 7903.5 – 7903.10 will receive oral notice, as well as written notice via the U.S. Postal Service. Written notice shall be one or more of the notices listed in § 7903.11, which shall, as applicable, include:
- (a) A clear statement of the client’s application status, eligibility status, or termination from the Program;
 - (b) A clear and detailed statement of the factual basis for the action described in the notice, including the date or dates of relevant events;
 - (c) A reference to the statute or regulation pursuant to which the denial is being implemented;
 - (d) A clear and complete statement of the client’s right to appeal the action through fair hearing and administrative review proceedings pursuant to § 7910, including the appropriate deadlines for instituting the appeal or reconsideration; and
 - (e) A statement of the client’s right, if any, to continuation of assistance pending the outcome of any appeal, pursuant to § 7910.3.

Section 7904, ELIGIBILITY VERIFICATION AND PROGRAM ENROLLMENT, is amended as follows:

Subsection 7904.2 is amended to read as follows:

- 7904.2 The Department may verify eligibility criteria by obtaining relevant information from government-funded emergency or temporary housing or rental assistance programs administered by the District. Documentation that the Department shall use to verify eligibility for the Program may include:
- (a) Birth certificates;
 - (b) A District- or federal-issued identification described in section 2(32)(A)(iii)(III) or (VII) of the Act (D.C. Official Code § 4-751.01(32)(A)(iii)(III) and (VII));
 - (c) Child custody reports;

- (d) Copy of a current, valid lease agreement specifying the landlord's name and contact information, and the head of household's name;
- (e) Pay stubs for the most immediate past two (2) months prior to Program application;
- (f) Benefit statements from any District or federal income support programs in which the household is participating; and
- (g) Earned Income Tax Credit filing for most immediate tax-year prior to Program application.

Subsection 7904.9 is amended to read as follows:

7904.9 If a household successfully completes the application and eligibility verification processes described in § 7903 and this section, the Department shall give to the applicant, directly or through an authorized representative, a written notice entitled "DC Flex Program: Notice of Enrollment in the Program", as listed in § 7903.11(d), which shall state:

- (a) That the applicant is determined eligible and is enrolled in the Program;
- (c) That receipt of Program assistance is conditioned upon the head of household's participation in all required Program activities as may be described in the Program Rules established in accordance with section 18 of the Act (D.C. Official Code § 4-754.32);
- (d) The length of time for which the Program's subsidy will be provided, per the applicant's successful compliance with the Program recertification criteria set forth in § 7906; and
- (e) Name and contact information for the Provider.

Subsection 7904.11 is amended to read as follows:

7904.11 At the discretion of the Director, a household may receive an extension on the timeline described in the application and eligibility verification process requirements described in § 7903.9, § 7903.10 or § 7904.7, for demonstrated good cause. For the purposes of this subsection, "good cause" means:

- (a) Serious illness or injury of household member or immediate family member;
- (b) Death of household member or immediate family member;

- (c) Incarceration or detention of household member; or
- (d) Other crisis, emergency, or unavoidable circumstances that prevented the timely completion of the eligibility verification process.

Section 7905, PROGRAM ADMINISTRATION, is amended as follows:

Subsection 7905.1 is amended to read as follows:

7905.1 The Department shall issue a competitive grant solicitation to select a Provider for the Program.

Subsection 7905.3 is amended to read as follows:

7905.3 The percentage of the annual allotment dedicated for the Provider's allowable administrative fees shall be used to pay for costs that are associated with the general operation of its program and that cannot be attributed to any one enrolled household. These administrative fees may include:

- (a) Staff salaries and fringe benefits;
- (b) Overhead expenses, which may include, but are not limited to, supplies and IT equipment;
- (c) Local travel by the Provider's staff for duties associated with program administration/oversight; and
- (d) Other expenses agreed upon by the Department and Provider, consistent with District and federal law.

Subsection 7905.8 through 7905.12 are amended to read as follows:

7905.8 The Provider will receive eight thousand four hundred dollars (\$8,400) per year for each family household and seven thousand two hundred dollars (\$7,200) per year for each adult-only household enrolled in the Program. A year shall be defined as a twelve (12) month cycle, with the first month of the year dependent on the household's enrollment in the program. Based on the availability of funds, the Department reserves the right to adjust, by rule, the amount of funding provided to each enrolled household.

7905.9 Upon a household's enrollment into the Program, the Provider shall transfer the full annual benefit into an escrow account it has established and will solely administer on behalf of that head of household. The Provider shall then transfer funds from

the escrow account into the household's checking account each month so that funds available to the household equal the total cost for one month's rent amount, per terms of the household's lease.

- 7905.10 Each month, the head of household may access the full amount available in the checking account (if needed), or a lesser amount needed to bridge any gap between their monthly income available for rent and their actual monthly rent expenses. A head of household may choose not to use any of the available funds. Any amount not used in one month rolls over and is available for future use throughout the year.
- 7905.11 If a household meets the Program Recertification requirements described in § 7906, does not owe rental arrears on their unit, and has Program funds remaining at the end of the Program year, the household may apply the remaining funds for use in the next annual Program year cycle.
- 7905.12 If the household has funds remaining, in either the escrow account administered on behalf of the household or the household's checking account or both, at the end of the Program participation period, even after paying any rent due for the upcoming month, and does not owe rental arrears on their unit, the remaining funds shall return to the Program.

Subsection 7905.16 and 7905.17 are amended to read as follows:

- 7905.16 The landlord must have a business license and the household's unit must be appropriately registered with the District of Columbia.
- 7905.17 The household's rental unit may be subject to required inspections as part of the requirement to be legally licensed and registered in the District.

Section 7906, RECERTIFICATION REQUIREMENTS, is amended as follows:

Subsection 7906.1 is amended to read as follows:

- 7906.1 An enrolled household is eligible to receive up to five (5) years of assistance under the DC Flex Program. To remain eligible for the Program, each enrolled household shall complete a recertification process annually.

Subsection 7906.3 is amended to read as follows:

- 7906.3 Additionally, the household shall meet the following to remain eligible for the Program:
- (a) Has a total annual income less than or equal to the recertification income limit, based on the United States Department of Housing and Urban

Development's Median Family Income Limits for the Washington DC Metropolitan Region, to be published by DHS not less than annually. The recertification limit shall not be less than forty percent (40%) of Family Median Income;

- (b) Is headed by a person who is eighteen (18) years old or older;
- (c) Is headed by a person who is currently employed or was employed within thirty (30) days before recertification;
- (d) Is current on their rent at recertification;
- (e) Has physical custody of at least one minor or dependent child, if the household is enrolled in as a family; and
- (f) Has not accessed any non-Program source of emergency, temporary, or permanent government-funded rental assistance:
 - (1) Before exhausting its annual allotment of Program funds and any remaining Program funds from the previous year; or
 - (2) More than once during the previous year.

Subsection 7906.5 is amended to read as follows:

7906.5 A household that does not meet the recertification requirements set forth in this section shall no longer be eligible for the Program. If the Department determines that a household is no longer eligible for the Program, the Provider shall provide oral and written notice of program exit to the household pursuant to section 22b of the Act (D.C. Official Code § 4-754.36b) at least thirty (30) days before the effective date of the program exit. This notice will specify the recertification requirements the household did not meet during its recertification assessment.

Section 7907, RELOCATION, is amended to read as follows:

7907 RELOCATION

7907.1 At any point during the Program, a household may choose to relocate to a new unit within the District of Columbia that better meets the household's needs. The household shall be responsible for updating the Provider and providing appropriate documentation of the new lease agreement. The Provider shall not approve the payment of funds to a new landlord until it has received appropriate documentation of the new lease.

7907.2 Relocation to a new unit has no effect on a household's maximum of five (5) years of Program assistance.

Section 7908, TERMINATION FROM PROGRAM, is amended as follows:

The section heading is amended to read as follows:

7908 TERMINATION AND PROGRAM EXIT

Subsection 7908.1 is amended to read as follows:

7908.1 Prior to a household's program exit upon receiving five (5) years of assistance, a household may also be terminated from the Provider's services under the Program, as permitted under section 22 of the Act (D.C. Official Code § 4-754.36). Termination pursuant to this section refers only to a termination of assistance from the Provider and does not provide the Provider or the Department with any authority to interfere with a household's tenancy rights under the lease agreement as governed by Title 14 of the District of Columbia Municipal Regulations.

New subsections 7908.5 and 7908.6 are added to read as follows:

7908.5 A household will be exited from the Program after receiving five (5) years of assistance.

7908.6 The Provider shall give to the household, personally or through an authorized representative, oral and written notice of program exit pursuant to section 22b of the Act (D.C. Official Code § 4-754.36b) at least thirty (30) days before the effective date of program exit.

Section 7910, FAIR HEARING AND ADMINISTRATIVE REVIEW, is amended to read as follows:

7910 FAIR HEARING AND ADMINISTRATIVE REVIEW

7910.1 An applying household or participating Program household shall have ninety (90) calendar days following the receipt of a written notice described in § 7903.11(a), (c), (e), or (f) to request a fair hearing, in accordance with the hearing provisions in Section 26 of the Act (D.C. Official Code § 4-754.41), for the action that is the subject of the written notice.

7910.2 Upon receipt of a fair hearing request, the Department shall offer the petitioner household or its authorized representative an opportunity for an administrative review in accordance with Section 27 of the Act (D.C. Official Code § 4-754.42),

except that if an eviction is imminent, the Department shall take all reasonable steps to provide an expedited administrative review to maximize resolution of the appeal.

7910.3 In accordance with Section 9(a) of the Act (D.C. Official Code § 4-754.11(a)(18)), any household that requests a fair hearing within fifteen (15) days of receipt of written notice of a termination pursuant to § 7908 shall have the right to the continuation of Program assistance pending a final decision from the fair hearing proceedings.

Section 7999, DEFINITIONS, is amended as follows:

Subsection 7999.2 is amended by add the following definition after the definition of “Authorized representative”:

Household – one (1) or more people who occupy a housing unit and share expenses. A household may be a family household, composed of one or more adults with at least one (1) minor or dependent child, or it may be an individual adult household, composed of one person who is eighteen (18) years old or older.

These rules were first submitted to this Office as emergency and proposed rules and were found to be legally sufficient. They were published in the *District of Columbia Register* at 70 DCR 11018 (August 11, 2023), and the District received no comments on them from the public. The instant final rules are identical to this earlier rulemaking. Accordingly, this Office also finds the final rulemaking to be legally sufficient, and I have certified it as such on the attached rulemaking transmittal form.

This final rulemaking must be submitted to the Council for a forty-five (45) day review period, pursuant to section 31(a) of the Act,³ and you have also submitted a draft approval resolution for our review. This resolution is likewise legally sufficient, and I have attached a certificate to that effect for your use.

If you have any questions regarding this memorandum, please contact David A. Hyden, Assistant Attorney General, Legal Counsel Division, at (202) 724-5386, or me at (202) 724-5524.

MDB/dah

³ See *id.* § 4-756.02(a).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



LEGAL COUNSEL DIVISION

MEMORANDUM

TO: Sarina Loy
Deputy Director
Office of Policy and Legislative Affairs

FROM: Megan D. Browder
Deputy Attorney General
Legal Counsel Division

DATE: December 20, 2023

SUBJECT: Legal Sufficiency Review of Approval Resolution Regarding Notice of Final Rulemaking Amending Chapter 79 (Flexible Rent Subsidy Pilot Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (AR-23-272-C)

This is to Certify that this Office has reviewed the above-referenced proposed legislation and has found it to be legally sufficient. If you have questions regarding this certification, please do not hesitate to contact me at 724-5524.

A handwritten signature in black ink that reads "Megan D. Browder". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Megan D. Browder