**GOVERNMENT OF THE DISTRICT OF COLUMBIA**
**RENTAL HOUSING COMMISSION**

January 30, 2020

The Honorable Anita Bonds
Chairperson, Committee on Housing and Neighborhood Revitalization
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

**SUBJECT: The Rental Housing Commission's Reponses to Questions in Advance of the Performance Oversight Public Hearing on Fiscal Years 2019/2020, to Date**

Dear Chairperson Bonds:

The Rental Housing Commission ("RHC" or the "Commission") has received questions in preparation for the Annual Performance Oversight Public Hearing, scheduled for Thursday, February 6, 2020. As requested by letter, dated January 16, 2020, the Commission has attached the pre-hearing questions and responses to said questions. The Commission will provide this letter electronically, with enclosures; and forward six (6) hard-copy binders, as requested.

Sincerely,

/s/

Michael T. Spencer
Chief Administrative Judge
Rental Housing Commission

1. Please provide a current organizational chart for the agency, including the number of vacant, frozen, and filled positions in each division or subdivision. Include the names and titles of all senior personnel and note the date that the information was collected on the chart.

**Attachment 1.**

a. Please provide an explanation of the roles and responsibilities of each division and subdivision.

**The RHC is a small agency that does not have divisions and subdivisions. Instead, the RHC operates through the following 4 programs:**

**Agency Management – provides for administrative support and the required tools to achieve operational and programmatic results.**

**Appellate Resolution – resolves appeals by tenants and housing providers to decisions from the Rent Administrator or the Office of Administrative Hearings through written, legal decisions-making or mediation.**

**Rent Regulation – issues, amends, and rescinds rules and procedures for the administration of the Act and for the resolution of disputes arising under the Act.**

**Rent Adjustments – Annually publishes a certified notice of allowable adjustments for covered rents.**

b. Please provide a narrative explanation of any changes to the organizational chart made during the previous year.

**Pursuant to A22-0492, the Rental Housing Commission Independence Clarification Amendment Act of 2018, the organization chart identifies Commission members as administrative judges instead of commissioners. The Chairperson, in coordination with DCHR, also announced a Clerk of the Court vacancy at a grade 13 to justify the additional work the incumbent would be expected to perform and to bring parity with similar positions at the Contract Appeals Board and the Office of Administrative Hearings. The Commission also filled its vacant Attorney Advisor position on November 12, 2019.**

2. Please provide a current Schedule A for the agency which identifies each position by program and activity, with the employee's title/position, salary, fringe benefits, and length of time with the agency. Please note the date that the information was collected. The Schedule A should also indicate if the position is continuing/ term/ temporary/ contract or if it is vacant or frozen. Please separate salary and fringe and indicate whether the position must be filled to comply with federal or local law.

**Attachment 2.**

3. Please list all employees detailed to or from your agency. For each employee identified, please provide the name of the agency the employee is detailed to or from, the reason for the detail, the date of the detail, and the employee's projected date of return.

**On July 18, 2018, Polly Donaldson, Director of DHCD, offered Shari Acosta, Staff Assistant, a voluntary detail to the Development Finance Division. The detail was provided while Ms. Acosta's claims filed with the DC Office of Human Rights (OHR Nos. 18-252 and 18-256) were pending investigation and an outcome/decision. On July 19, 2019, Allison Ladd, then Deputy Director of DHCD, notified Ms. Acosta that her detail would end on July 26, 2019.**

4. Please provide the Committee with:

a. A list of all employees who received or retained cellphones, personal digital assistants, or similar communications devices at agency expense in FY1 9 and FY20, to date;

**Three (3) members of the Commission and the Clerk of Court received a government-issued cellphone.**

b. A list of all vehicles owned, leased, or otherwise used by the agency and to whom the vehicle is assigned, as well as a description of all vehicle accidents involving the agency's vehicles in FY19 and FY20, to date;

**The Commission does not own, lease, or use any vehicles.**

c. A list of travel expenses, arranged by employee for FY19 and FY20, to date, including the justification for travel; and

**The Commission did not incur any travel expenses in FY19. As part of DHCD, however, the following travel expenses were incurred for:**

**Judge Lisa M. Gregory in FY19, so she could participate in the National Association of Women Judges 40th Annual Conference in San Antonio, Texas. Travel expenses (registration, travel costs, hotel) totaled $2,168.00.**

**Judge Lisa M. Gregory in FY19, so she could participate in the National Judicial College's extensive administrative law training in Reno, Nevada. Travel expenses (registration, travel costs, hotel) totaled $5,470.47.**

**Chief Judge Michael Spencer in FY19, so he could participate in and present at the National Bar Association's Annual Convention in New York, New York. Travel expenses (registration, travel costs, hotel) totaled $1,696.04.**

**Chief Judge Michael Spencer in FY19, so he could participate in the American Bar Association's Annual Conference in San Francisco, California. Travel expenses (registration, travel costs, hotel) totaled $4,683.50.**

**Attorney Daniel Mayer in FY19, so he could participate in the DC Bar Association's rulemaking course in Washington, DC. Registration totaled $99.00.**

**The Commission has incurred the following travel expenses in FY20 to date:**

**Judge Lisa M. Gregory in FY20, so she could participate in the National Association of Women Judges 41th Annual Conference in Los Angeles, California. Travel expenses (registration, travel costs, hotel) totaled $2,421.80.**

**Chief Judge Michael Spencer in FY20, so he could participate in the American Bar Association's Administrative Law Conference. Registration totaled $274.00.**

**Judge Rupa Ranga Puttagunta in FY20, so she could participate in the American Bar Association's Administrative Law Conference. Registration totaled $429.00.**

**Attorney Daniel Mayer in FY20, so he could participate in the American Bar Association's Administrative Law Conference. Registration totaled $429.00.**

**Attorney Xavier Edwards in FY20, so he could participate in the American Bar Association's Administrative Law Conference. Registration totaled $429.00.**

d. A list of the total workers' compensation payments paid in FY19 and FY20, to date, including the number of employees who received workers' compensation payments, in what amounts, and for what reasons.

**There were no overtime or workman's compensation payments paid in FY 18 and FY 19 to date.**

5. For FY19 and FY20, to date, what was the total cost for mobile communications and devices, including equipment and service plans?

**In FY19, the agency did not exist as an independent entity, but as part of DHCD, the RHC does not have a pro-rated cost to report for mobile communications and devices.**

**At the time of submission, the RHC was waiting to receive the costs for FY20, to date.**

6. For FY19 and FY20, to date, please list all intra-District transfers to or from the agency.

**In FY19, the agency did not exist as an independent entity, but as part of DHCD, the RHC had intra-District charges related to the purchase card of $13,450.**

**In FY20, through the end of December, the agency has advanced $20,335 to OCTO for IT Services, and $18,392 for the use of the purchase card.**

7. For FYl 9 and FY20, to date, please identify any special purpose revenue funds maintained by, used by, or available for use by the agency. For each fund identified, provide:

a. The revenue source name and code;

b. The source of funding;

c. A description of the program that generates the funds;

d. The amount of funds generated by each source or program;

e. Expenditures of funds, including the purpose of each expenditure; and

f. The current fund balance.

**The RHC did not maintain, use or have any special purpose revenue funds available for use in FY 19 and FY20, to date.**

8. For FY19 and FY20, to date, please list any purchase card spending by the agency, the employee making each expenditure, and the general purpose for each expenditure.

**FY 2019**

| Date | Purchase | Vendor | Cost | Authorized User |
|---|---|---|---|---|
| 11/08/2018 | Calendars & Office Supplies | Standard Office Supplies | 711.00 | LaTonya Miles |
| 11/13/2018 | Copier Paper | Standard Office Supplies | 206.67 | LaTonya Miles |
| 11/16/2018 | Interpreter Service | Deaf Access Solutions | 919.44 | LaTonya Miles |
| 03/21/19 | Binders/Notebooks | Staples | 72.08 | LaTonya Miles |
| 04/17/2019 | Installation of Recording Software | IT Solutions | 6,650.00 | LaTonya Miles |
| 07/09/2019 | Office Supplies | Standard Office Supplies | 2,499.97 | LaTonya Miles |
| 07/11/2019 | Notary Public Supplies | DC Metro Stamp | 73.65 | LaTonya Miles |
| 07/22/19 | E-Airline Ticket - Lisa Gregory Training | U.S. Airlines | 758.00 | LaTonya Miles |
| 08/30/2019 | General Office Supplies | Standard Office Supplies | 2,319.26 | LaTonya Miles |

**FY 2020**

| Date | Purchase | Vendor | Cost | Authorized User |
|---|---|---|---|---|
| 11/15/2019 | General Office Supplies | Standard Office Supplies | 1,528.52 | LaTonya Miles |
| 01/13/2020 | Notebooks, Dividers and Supplies | Staples | 358.57 | LaTonya Miles |
| 01/28/2020 | Postal Stamps (No Postage Meter) | U.S. Postal Service | 275.00 | LaTonya Miles |

9. Please list all memoranda of understanding ("MOU") entered into by your agency during FY19 and FY20, to date, as well as any MOU currently in force. For each, indicate the date on which the MOU was entered and the termination date.

**On or about October 7, 2019, the Commission entered an MOU with OCTO, in the amount of $20,334.83, to obtain technology-related services and support. The MOU will terminate on September 30, 2020.**

**As for FY20, the Commission and DCHR are working on a good faith basis pending the outcome of negotiations for an MOU between the two agencies.**

10. Please list the ways, other than MOU, in which the agency collaborated with analogous agencies in other jurisdictions, with federal agencies, or with non-governmental organizations in FY19 and FY20, to date.

**The Commission has not collaborated with analogous agencies in other jurisdictions, with federal agencies, or with non-governmental organizations in FY 19 or FY20, to date.**

11. Please provide a table showing your agency's Council-approved original budget, revised budget (after reprogrammings, etc.), and actual spending, by program and activity for FY18, FY19, and the first quarter of FY20.

a. For each program and activity, please include total budget and break down the budget by funding source (federal, local, special purpose revenue, or intra-district funds).

**Attachment 3.**

b. Include any over- or under-spending. Explain any variances between fiscal year appropriations and actual expenditures for FY19 and FY20, to date, for each program and activity code.

**Attachment 3.**

c. Attach the cost allocation plans for FY19 and FY20.

**Not applicable to RHC.**

d. In FY19 or FY20, to date, did the agency have any federal funds that lapsed? If so, please provide a full accounting, including amounts, fund sources (e.g. grant name), and reason the funds were not fully expended.

**RHC does not have any federal grants.**

12. Please provide as an attachment a chart showing the agency's federal funding by program for FY19 and FY20, to date.

**The Commission is not supported by any federal funds.**

13. With respect to capital projects, please provide:

a. A list of all capital projects in the financial plan.

b. For FY18, FY19, and FY20, an update on all capital projects under the agency's purview, including a status report on each project, the timeframe for project completion, the amount budgeted, actual dollars spent, and any remaining balances, to date.

c. An update on all capital projects planned for FY20, FY21, FY22, FY23, and FY24.

d. A description of whether the capital projects begun, in progress, or concluded in FYl8, FYl9, or FY20, to date, had an impact on the operating budget of the agency. If so, please provide an accounting of such impact.

**The Commission does not have any capital projects.**

14. Please provide a list of all budget enhancement requests (including capital improvement needs) for FY19 and FY20, to date. For each, include a description of the need and the amount of funding requested.

**The Rental Housing Commission did not request any budget enhancements for FY19 or FY20, to date.**

15. Please list, in chronological order, each reprogramming in FYl9 and FY20, to date, that impacted the agency, including those that moved funds into the agency, out of the agency, and within the agency. Include the revised, final budget for your agency after the reprogrammings for FY19 and FY20, to date. For each reprogramming, list the date, amount, rationale, and reprogramming number.

**FY19**

| | Date | Doc# | Fiscal Year | Dollar amount | Funding Source | Rationale |
|---|---|---|---|---|---|---|
| 1 | 9/30/2019 | BJDB1108 | 2019 | $ (85,824.31) | LOCAL | This reprogramming was part of $1.5M request to reallocate funds across multiple programs in DHCD (DB0) to ensure adequate funding at the CSG and program levels in order to properly close out fiscal year 2019. |
| 2 | 9/30/2019 | BJDGSRP2 | 2019 | $ (76,400.00) | LOCAL | Year End Mayor's Reprogramming request. |

**The RHC does not have any reprogrammings to date in FY2020.**

16. Please list each grant or sub-grant received by your agency in FY19 and FY20, to date. List the date, amount, source, purpose of the grant or sub-grant received, and amount expended.

a. How many FTEs are dependent on grant funding? What are the terms of this funding? If it is set to expire, what plans, if any, are in place to continue funding the FTEs?

**The Commission did not receive any grants or subgrants in FY19 or FY20, to date. No FTE at the Commission is dependent on grant funding.**

17. Please list each contract, procurement, and lease, entered into, extended, and option years exercised by your agency during FY19 and FY20, to date. For each contract, please provide the following information, where applicable:

a. The name of the contracting party;

b. The nature of the contract, including the end product or service;

c. The dollar amount of the contract, including amount budgeted and amount actually spent;

d. The term of the contract;

e. Whether the contract was competitively bid;

f. The name of the agency's contract monitor and the results of any monitoring activity; and

g. The funding source.

**In FY19, the Commission used its purchase card to procure services and goods in the amount of $14,210.17. In FY19, DHCD, procured services and goods for the RHC by entering purchase orders with Midtown Personnel (approximately $59,800), Xerox (approximately $6,780.00 and Lexis (approximately $9400).**

**In FY20, to date, the Commission spent $2,162.09 on its purchase card, and entered purchase orders with Midtown Personnel for $59,800 and Xerox for $6,780.00. The Commission plans to finalize a purchase order with Lexis for $9400.**

18. Please list all pending lawsuits that name the agency as a party. Identify which cases on the list are lawsuits that potentially expose the District to significant financial liability or will result in a change in agency practices and describe the current status of the litigation. Please provide the extent of each claim, regardless of its likelihood of success. For those identified, please include an explanation about the issues involved in each case.

**The agency is not a party to any lawsuit.**

**Shari Acosta, Staff Assistant, at the Commission, however, has an active lawsuit against the District of Columbia Government. (Shari Acosta v. District of Columbia Government et al., 2018 CA 005008, filed July 13, 2018 (complaint for employment discrimination)). This is Ms. Acosta's second lawsuit against the District government (Shari Acosta v. District of Columbia et al., 2012 CA 007712B, filed September 26, 2012 (complaint for negligent infliction of emotional distress and whistleblower protection). The court granted the District's motion to dismiss Ms. Acosta's previous lawsuit on April 12, 2019.**

**In the current case, Ms. Acosta alleges she was discriminated against and subjected to a hostile work environment based on family obligations and disability, retaliated against for reporting said discrimination, and denied leave she was entitled to under the D.C. Family and Medical Leave Act.**

19. Please list all settlements entered into by the agency or by the District on behalf of the agency in FY19 or FY20, to date, and provide the parties' names, the amount of the settlement, and if related to litigation, the case name and a brief description of the case. If unrelated to litigation, please describe the underlying issue or reason for the settlement (e.g. administrative complaint, etc.).

**Neither the Commission nor the District entered into any settlement agreements on the Commission's behalf in FY19 or FY20, to date.**

20. Please list the administrative complaints or grievances that the agency received in FY19 and FY20, to date, broken down by source. Please describe the process utilized to respond to any complaints and grievances received and any changes to agency policies or procedures that have resulted from complaints or grievances received. For any complaints or grievances that were resolved in FY19 or FY20, to date, describe the resolution.

**The Commission did not receive any administrative complaints or grievances in FY19. In FY19, the Office of Human Rights administratively dismissed Ms. Acosta's complaints (OHR Nos. 18-252 and 18-256) on August 2, 2019.**

**In FY20, to date, the Commission received an inquiry from AFGE 2725 on behalf of Ms. Acosta. The inquiry questioned the Commission's basis for excluding the Staff Assistant position currently occupied by Ms. Acosta from the union. The Office of Labor Relations and Collective Bargaining responded on the Commission's behalf and explained the exclusion was proper because the Staff Assistant's role in the newly-independent agency is "sufficiently involved in labor relations and policy formation matters."**

**The Commission also received a complaint from the Office of Employee Appeals on December 16, 2019, indicating that Shari Acosta, Staff Assistant, appealed a 20-day suspension without pay. The Commission answered the complaint and designated the Office of the Attorney General to represent the Commission in any related proceedings.**

21. Please describe the agency's procedures for investigating allegations of sexual harassment or misconduct committed by or against its employees. List and describe any allegations received by the agency in FY19 and FY20, to date, whether or not those allegations were resolved.

**The Commission follows the policy, guidance, and procedures outlined for District agencies that are outlined in Mayor's Order 2017-313, dated December 18, 2017.**

**The Commission did not receive any sexual harassment or misconduct allegations in FY 2019.**

**During FY20, to date, Shari Acosta, Staff Assistant, casually accused the Chairperson of sexual harassment on October 21, 2019 and referenced the Chairperson sexually harassing her again on January 22, 2020. On both October 21, 2019 and January 22, 2020, the Chairperson immediately encouraged Ms. Acosta to report her concerns to the Office of Human Rights. The Chairperson also reported the October 2019 incident to the Office of Human Rights himself. To the Commission's knowledge, Ms. Acosta never filed a complaint with the Office of Human Rights officially alleging the Chairperson of sexual harassment.**

22. Please list and describe any ongoing investigations, audits, or reports on the agency or any employee of the agency, or any investigations, studies, audits, or reports on the agency or any employee of the agency that were completed during FY19 and FY20, to date.

**There are no ongoing investigations, audits or reports on the Commission or any Commission employee.**

23. Please describe any spending pressures the agency experienced in FY19 and any anticipated spending pressures for the remainder of FY20. Include a description of the pressure and the estimated amount. If the spending pressure was in FY19, describe how it was resolved, and if the spending pressure is in FY20, describe any proposed solutions.

**The Commission has not had any spending pressures in FY19 and does not anticipate any in FY20, to date.**

24. Please provide a copy of the agency's FY19 performance plan. Please explain which performance plan objectives were completed in FY19 and whether they were completed on time and within budget. If they were not, please provide an explanation.

**The Commission's performance measures for FY19 were embedded in the DHCD plan. The two measures related to the RHC were:**

1. **The average number of days between Rental Housing Commission hearing a new case and final decision – 102 and**
2. **The number of Rental Housing Commission appeals disposed of in FY19 – 11.**

25. Please provide a copy of your agency's FY20 performance plan as submitted to the Office of the City Administrator.

**The Commission started working with the CA's office in June 2019 to develop a performance plan. Due to the tight deadline to finalize the performance plan for FY20, the Commission did not submit an FY20 performance plan to the Office of the City Administrator. On January 16, 2020, the Commission and the CA's office nearly completed the Commission's performance metrics for FY21.**

26. Please provide the number of FOIA requests for FY19 and FY20, to date, that were submitted to your agency. Include the number granted, partially granted, denied, and pending. In

addition, please provide the average response time, the estimated number of FTEs required to process requests, the estimated number of hours spent responding to these requests, and the cost of compliance.

**The Commission did not receive any FOIA requests for FY19 or FY20 to date.**

27. Please provide a list of all studies, research papers, reports, and analyses that the agency prepared or contracted for during FY19 and FY20, to date. Please state the status and purpose of each. Please submit a hard copy to the Committee if the study, research paper, report, or analysis is complete.

**One of the Commission's core duties under the Rental Housing Act of 1985, as amended, is to certify and publish the annual adjustment of general applicability to rents for rent-controlled units no later than March 1st of each year. This adjustment is based upon any annual changes to: (1) the Consumer Price Index (CPI-W) in the Washington, D.C. region for most tenants; or (2) the annual Social Security Cost-of-Living-Adjustment (SS-COLA) for tenants who are age 62 and older or tenants with disabilities. The Commission is further required to publish the qualifying household income for certain exemptions from rent adjustments.**

**During FY19, the Commission published the annual adjustment and qualifying income for 2019 on the Commission's webpage, which was a part of DHCD's website. On or prior to March 1, 2020, the Commission will publish the annual adjustment for 2020 on the Commission's website, which can be found at https://rhc.dc.gov/.**

28. Provide a list of all publications, brochures and pamphlets prepared by or for the agency during FY19 and FY20 to date.

**The Commission does not maintain a list of publications. The Commission generally publishes decisions, orders, and notices on the following sites:**

**Lexis Advance (paid legal research service); Formerly DHCD Website, now RHC website (public access); and Office of Open Government meeting calendar (public access).**

29. Please separately list each employee whose salary was $100,000 or more in FY19 and FY20, to date. Provide the name, position number, position title, program, activity, salary, and fringe. In addition, state the amount of any overtime or bonus pay received by each employee on the list.

**Attachment 2.**

**There was no overtime or bonus paid during the stated period.**

30. Please list in descending order the top 25 overtime earners in your agency in FYl9 and FY20, to date, if applicable. For each, state the employee's name, position number, position title, program, activity, salary, fringe, and the aggregate amount of overtime pay earned.

**No RHC employee has worked overtime in FY19 or FY20, to date.**

31. For FY19 and FY20, to date, please provide a list of employee bonuses or special pay granted that identifies the employee receiving the bonus or special pay, the amount received, and the reason for the bonus or special pay.

**DHCD formerly provided the Commission with administrative support, primarily by assigning several of its FTEs to work at the Commission, including, during FY 2019, one (1) attorney advisor. The attorney advisor DHCD assigned to the Commission received a bonus pursuant to the Collective Bargaining Compensation Agreement (CBA) between the American Federation of Government Employees ("AFGE"), Local 1403, AFL-CIO and DHCD. The CBA required DHCD to pay a two percent performance allowance to any attorney who receives an "exceeds expectations" or substantially similar rating, for the relevant evaluation periods.**

32. Please provide each collective bargaining agreement that is currently in effect for agency employees. Please include the bargaining unit and the duration of each agreement. Please note if the agency is currently in bargaining and its anticipated completion.

**Attachment 5, the Non-Compensation Collective Bargaining Agreement between the District of Columbia Government and AFGE, Local 2725, covering Compensation Units 1 and 2, dated December 13, 1988, effective through September 30, 1990.**

**Attachment 6, The Compensation Collective Bargaining Agreement between the District of Columbia Government and AFGE, Local 2725, covering Compensation Units 1 and 2.**

**The CBA between the District and AFGE, Local 1403, mentioned above, does not include independent agencies and no longer applies to the Commission's attorney-advisors.**

33. If there are any boards or commissions associated with your agency, please provide a chart listing the names, confirmation dates, terms, wards of residence, and attendance of each member. Include any vacancies. Please also attach agendas and minutes of each board or commission meeting in FY19 or FY20, to date, if minutes were prepared. Please inform the Committee if the board or commission did not convene during any month.

**There are no boards or commissions associated with the Commission.**

34. Please list all reports or reporting currently required of the agency in the District of Columbia Code or Municipal Regulations. Provide a description of whether the agency is in compliance with these requirements, and if not, why not (e.g. the purpose behind the requirement is moot, etc.).

**The Commission is not subject to any reporting requirements.**

35. Please provide a list of any additional training or continuing education opportunities made available to agency employees. For each additional training or continuing education

program, please provide the subject of the training, the names of the trainers, and the number of agency employees that were trained.

**The Department of Human Resources' Center for Learning & Development (CLD) coordinates numerous training programs and activities for District government agencies and employee. Employees at the Commission have received training in several areas. Information regarding the subject of the various trainings, the names of the trainers, and the number of Commission employees that were trained can be found by contacting that office.**

**Further, attorneys at the Commission occasionally receive invitations to attend trainings conducted or sponsored by the Office of the Attorney General, including on-demand, online trainings through the Practising Law Institute.**

**Judge Lisa M. Gregory participated in the National Association of Women Judges 40th (FY19) and 41st (FY20) Annual Conferences.**

**Chief Judge Michael Spencer participated in and presented at the National Bar Association's Annual Convention in New York, New York (FY19) as well as the American Bar Association's Annual Conference in San Francisco, California (FY20).**

**Attorney Daniel Mayer participated in the DC Bar's rulemaking course in Washington, DC (FY19).**

**Chief Judge Michael Spencer, Judge Rupa Ranga Puttagunta, and Attorneys Daniel Mayer and Xavier Edwards participated in the American Bar Association's Administrative Law Conference in Washington, DC (FY20).**

36. Does the agency conduct annual performance evaluations of all its employees? Who conducts such evaluations? What steps are taken to ensure that all agency employees are meeting individual job requirements?

**Yes. Employees were evaluated in FY19 by their appropriate supervisor following the process established by the Department of Human Resources. An overall performance rating is a culmination of the ratings assigned to each performance expectation.**

**The process for evaluating agency attorneys was set forth in Chapter 36 (Legal Service) of the District Personnel Manual (DPM) and included coordination between each agency, the Mayor's Office of Legal Counsel (MOLC) and the Department of Human Resources (DCHR).**

**The Chairperson regularly informs employees of their performance and has effectuated performance improvement plans once in FY19 and once in FY20, to date.**

37. Please provide a list of the Commission's accomplishments for FY19 and FY20, to date.

**The following list denotes the Commission's accomplishments for FY19:**

**Rulemaking – The Commission completed an internal review of the current regulations and created a draft of regulatory language that incorporates enacted legislation, caselaw, and best practices. The Commission published those revised regulations as a proposed rulemaking on August 2, 2019 in the DC Register for a 90-day public comment period. The proposed rulemaking would amend the implementing rules under the Act in Title 14 (Housing) of the District of Columbia Municipal Regulations ("DCMR"), Chapters 38 through 44. The six core purposes of the proposed rules are as follows:**

1. **Implement Statutory Changes in Determining Lawful Rents**
2. **Implement and Clarify Transfer of Evidentiary Hearing Function**
3. **Implementation of Other Statutory Changes**
4. **Codify and Conform to Existing Case Law**
5. **Update and Improve Operations and Procedures**
6. **Clarify Language and Increase Specificity**

**Cultivated a Collegial Work Environment – Commissioners and staff made significant investments in cultivating a work environment that values respect, accountability, professionalism and collegiality.**

**The following list denotes the Commission's accomplishments for FY20, to date:**

1. **New Agency**
2. **Reclassification**
3. **New Attorney Hire**
4. **Rulemaking Feedback**
5. **Performance Metric**
6. **Case Disposition Standards**

**The Commission also continued in FY19 and FY20, to date, its function of reviewing appeals and issuing decisions. Its accomplishments in this area are described in the following responses.**

38. The Commission is responsible for deciding appeals to decisions of the Rent Administrator and the Office of Administrative Hearings (OAH).

a. What is the Commission's current total appeals caseload?

**Appeals awaiting Certified Record (from OAH): 2**
**Appeals without Scheduled Mediation Date: 0**
**Appeals without Scheduled Hearing Date: 28**
**Appeals Scheduled for Hearing: 0**

| | |
|---|---|
| **Appeals Scheduled for Mediation:** | **28** |
| **Appeals Pending Decision:** | **10** |
| **Total:** | **68** |

b. How many cases were opened by the Rental Housing Commission in FY19 and FY20, to date? Please include a breakdown of the status of those cases (e.g., number of appeals filed, appeals heard, cases settled, and cases decided)?

| | FY19 | FY20 |
|---|---|---|
| **Number of Appeals Filed:** | **11** | **3** |
| **Number of Appeals Heard:** | **10** | **0** |
| **Cases Settled:** | **1** | **0** |
| **Non-Dispositive Procedural Orders:** | **12** | **30** |
| **Cases Decided/Dismissed:** | **8** | **0** |

c. Were there any trends in the subject matter of cases filed with the Commission?

**Claims of Housing Code violations, rent concessions, improper registration of housing accommodations, and retaliation against tenants continue to be common issues raised in notices of appeal. Because many of these cases remain pending, the Commission cannot comment in detail as to the issues raised.**

d. Among the decisions issued, how many OAH and Rent Administrator decisions were affirmed or overturned?

| | FY19 | FY20 |
|---|---|---|
| **Affirmed:** | **0** | **0** |
| **Reversed:** | **2** | **0** |
| **Affirmed/Reversed in part:** | **2** | **0** |
| **Dismissed by Procedural Orders:** | **4** | **0** |
| **Total** | **8** | **0** |

**All dispositive orders during FY19 and FY20 to date have been on appeals from OAH.**

39. Please provide the breakdown of the types of cases brought before the Commission.

**The breakdown of the types of cases in which decisions were issued by the Commission in FY19 and FY20 are as follows:**

| | FY19 | FY20 |
|---|---|---|
| **Tenant Petition (TP):** | **10** | **_** |
| **Notice to Vacate (NV):** | **0** | **0** |
| **Hardship Petition (HP):** | **0** | **0** |
| **Voluntary Agreement (VA):** | **0** | **0** |
| **Capital Improvement (CI):** | **1** | **0** |

| | | |
|---|---|---|
| **Services and Facilities (SF):** | **0** | **0** |
| **Show Cause (SC):** | **0** | **0** |

40. What were the average amount of days in FY19 for the Commission to resolve a case? If relevant, please differentiate between different types of cases and stages of Commission review of cases.

**FY 19 total time from hearing to decision: 89 days**

a. How does this number compare to FY17? and FY18?

**FY17 - 46 days FY 18 - 210 days**

b. What additional measures could the Commission take to streamline its processing of cases?

**The Commission has in the past stated that it endeavors to issue decisions within 45 days of holding its hearing on a case. The Commission is in the process of taking several steps to expedite its processing of appeals. First, the Commission has recognized for some time that the existing performance goal of 45 days is unrealistic and was developed some years ago without sufficient understanding of the Commission's role and the nature of its cases. By developing realistic metrics based on industry best practices, the Commission will be better able to hold itself accountable (e.g., such as the case disposition standards adopted by the Center for State Courts, Attachment 7).**

**Second, the Commission is implementing a mandatory mediation process that will hopefully resolve additional cases without a full decision-writing process by the Commission and its legal staff.**

**Third, the Commission is standardizing its internal process for scheduling of briefing and hearings, which has historically allowed parties to informally request delays that may become excessive.**

**Finally, the Commission intends to use its rulemaking process (described below) to establish a fairer, more standard schedule for briefing and oral arguments, in line with the rules of the DC Court of Appeals.**

**With respect to the final point, the Commission believes legislative action is warranted to assure the Commission can issue rules that are more consistent with typical appellate practice. Our recommendations are detailed at below in response to Question 47.**

41. The Commission is tasked with issuing, amending, and rescinding regulations required to enforce the Rental Housing Act of 1985 (RHA). Please provide a status update on this process.

**The Commission published a notice of proposed rulemaking ("NPRM") on August 2, 2019. The NPRM represents the first comprehensive review of the implementing regulations under the Rental Housing Act since their initial promulgation in 1986. It is also the first**

**rulemaking the Commission has undertaken at all since 1998, and accounts for at least 20 major, minor, and technical legislative amendments to the Rental Housing Act that have been made since then. The NPRM was published with a 90-day formal public comment period.**

**On or before October 31, 2019, the Commission received comments on the NPRM from several individuals and organizations.**

**Between October 31, 2019 and January 10, 2020, the Commissioners and legal staff conducted a preliminary review of the comments. Based on the comments received, the Commission decided to convene a series of interagency review sessions to discuss what was submitted and what changes need to be made. The Commission invited the Office of Administrative Hearings and the Rent Administrator and her team to join our review sessions.**

**On January 21-23, the agencies met for most of the workday and discussed comments on Chapters 38-41, reaching consensus on most issues and flagged several for further discussion in public stakeholder meetings. On February 11-13, the agencies will meet again on the same schedule to review Chapters 42-43. We expect much of Chapter 42 will warrant further discussion in public stakeholder meetings.**

42. Please list out:

a. The issued regulations

b. The amended regulations

c. The rescinded regulations

**The Commission has not taken final action to issue, amend, or rescind any regulations in FY19 or FY20, to date. The NPRM proposes a comprehensive revision to seven existing chapters of the DCMR. While much of the general organization and many substantive and procedural rules remain the same, albeit often reworded for precision or clarity, it is impossible as a practical matter to list every change no matter how small. For reference, please find attached a copy of the preamble to the NPRM, which describes its core purposes, major proposed changes, and key examples of technical and procedural changes (Attachment 8). The Commission is also happy to schedule further discussion with the Committee.**

43. What is the schedule for final promulgation of the Rental Housing Act regulations published on August 2, 2019?

**The Commission plans to complete its inter-agency review of the public comments on the schedule stated above. The Commission expects to conduct meetings with public stakeholders to discuss key issues raised by the comments in late February or early March. A second notice of proposed rulemaking will likely be required for legal sufficiency, but the Commission expects it will receive fewer public comments at that stage. The Commission**

**will determine the schedule for final promulgation of the Rental Housing Act regulations as soon as practical.**

44. How many comments did the Commission receive on the proposed rules? From whom were the comments? What were the primary issues of concern addressed in the comments.

**The Commission received eight (8) packages of comments on various aspects of the proposed rules from the following:**

1. **Bread for the City, Briarcliff Tenants Association, Coalition for Nonprofit Housing & Economic Development, DC Tenants' Rights Center, Housing Counseling Services, Latino Economic Development Center, Legal Aid Society of the District of Columbia, Legal Counsel for the Elderly, Neighborhood Legal Services Program and Rising for Justice.**
2. **Apartment and Office Building Association of Metropolitan Washington.**
3. **Office of the Tenant Advocate.**
4. **Michael Colonna.**
5. **Burnetta Coles.**
6. **Cynthia Pols.**
7. **Christine Burkhardt.**
8. **Rent Control Consultants, Inc.**

**Each package of comments was different in its length and level of specificity. As described below in response to question 46, the majority of commenters focused on the substance of how rents are regulated. Several commenters also recommended changes to the Commission's and RAD's procedural rules, and some tenant advocates also addressed eviction notices, retaliation, and late fees. The Commission is happy to provide the Committee with copies of any or all of the comments submitted on request.**

45. Now that the Commission is fully independent pursuant to A22-0492, the Rental Housing Commission Independence Clarification Amendment Act of 2018, what role, if any, does the Department of Housing and Community Development currently play in the promulgation of Rental Housing Act regulations?

**The Rent Administrator, who is the head of the Rental Accommodations Division ("RAD") of DHCD, is a critical partner in the Commission's efforts to issue, amend, and rescind the regulations required to enforce the Rental Housing Act. The Rent Administrator is authorized to draft rules and procedures for the administration of the Act for consideration by the Commission. The Rent Administrator's statutorily-defined role affords it critical insight into how the Act and regulations play out in the day-to-day lives of tenants and housing providers. DC Code § 42–3502.04(a) and (e) state that "[t]he Rent Administrator shall draft rules and procedures for the administration of this chapter to be transmitted to the Rental Housing Commission for its action[,]" and that "[t]he Rent Administrator or a designee may attend all policy meetings of the Rental Housing Commission."**

**Moreover, the rules in chapters 39 and 41 govern how the Rent Administrator and RAD function and what information they must collect from and provide to housing providers and tenants. Chapter 42 spells out the Rent Administrator's role in providing initial review of housing provider petitions and voluntary agreements, as well as elderly and disability exemption applications. Chapters 43 and 44 provide detail on the Rent Administrator's role in reviewing notices to vacate and applications for demolition or conversion of housing accommodations. These rules substantially impact not only our colleagues in the RAD, but the rights of private parties.**

**Accordingly, the Commission would never move forward on a proposed rulemaking on these matters without consulting the Rent Administrator. Nonetheless, the Commission retains final authority to issue, amend, or rescind rules under the Act.**

46. Please list out the top 3 concerns expressed to the Commission by:

a. Tenants

b. Housing management companies

c. Housing providers

**Without characterizing any particular group's priorities, the Commission sees that several issues were raised repeatedly by advocates on both the tenant and housing provider sides. The Commission received the most comments on the following 3 issues:**

1. **Definition and consistency of usage of terminology including rent, rent charged, rent adjustment, and rent surcharge, following rent ceiling abolition and rent concession legislation;**
2. **Timing for implementing rent increases after approval; and**
3. **Process and standards for approval of voluntary agreements.**

47. What areas of rental housing do you believe regulations will be necessary to address in the next two years as the amount of rental housing stock increases, the city becomes more densely populated, and residents focus on quality community living?

**The Rental Housing Act primarily regulates the condition of older housing stock in the District and prevents displacement from that stock due to rising rents. The most important focus for the Commission in its rulemaking function is that District residents and housing providers can follow clear legal requirements and can obtain efficient, consistent resolution to any disputes under the Rental Housing Act.**

**Changes to the District's housing stock, population density, and quality of life will inevitably raise unforeseen legal questions and prompt the Council to enact new legislation. The Commission will be ready to issue, amend, and rescind regulations as that occurs.**

**The Commission recommends legislative action with respect to the appeals process, which will enable the Commission to implement, by rulemaking, fairer and more efficient review of appeals. Under § 216(h) of the Rental Housing Act, D.C. Code § 42-3502.16(h), notice of appeal must be filed within 10 business days of a final order being issued by the Rent Administrator or Office of Administrative Hearings. The Commission is then required to issue a decision in 30 days of the filing of an appeal. For a number of reasons, some within and some outside of the Commission's control, issuing a decision in 30 days of an appeal being filed is impossible.**

**To start the process, the Commission recommends that a party aggrieved by a final order should be given 30 days to file an appeal. This is the same amount of time provided for a party aggrieved by a judgment of the Superior Court to appeal to the DC Court of Appeals, or to petition the Court of Appeals for review of a Commission (or other agency's) decision.**

**The Commission's rules require a notice of appeal give a "clear and concise" statement of the issues a party wants to appeal. We believe this rule is beneficial as many unrepresented parties may not have the knowledge or time to write a longer brief later in the process, although they are also given that opportunity under the Commission's rules. However, only 10 business days is not enough time, we think, for a party, even one who has counsel, to make both the strategic decision to appeal and to draft a notice that will set the scope of issues to be fully litigated later.**

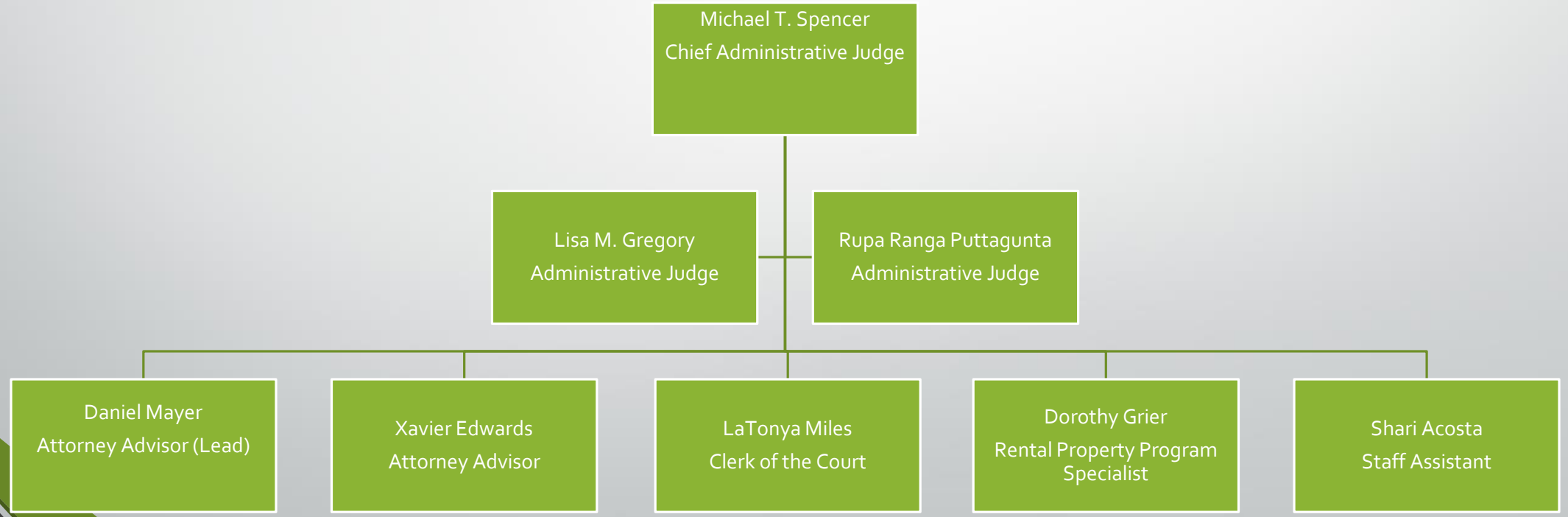
**After an appeal is filed, the Commission must obtain a certified copy of the record of a case from the Office of Administrative Hearings. This can take a significant amount of time, particularly in complicated cases or cases with a large amount of documentary evidence. During this time, the Commission is instituting a mediation program in the hopes of resolving cases faster and amicably. The Commission would like to issue rules governing this program and setting clear expectations for parties.**

**After a record is certified, the Commission notifies the parties of the time for filing of briefs and the scheduling of a hearing. The Commission's current rules are confusing and provide very little time, so the issuance of the notice is often delayed out of consideration for the parties. The Commission would like to amend its rules governing briefing and oral arguments to provide fair, reasonable, and predictable timelines, in accordance with the rules and practices of the DC Court of Appeals.**

**Presently, issuing rules to implement mediation and provide fair opportunities for arguing an appeal would greatly exceed the 30-day, statutory limit for the Commission to decide a case. The Commission recommends that the Council either remove the legal limit on its decision-making (subject, of course, to oversight based on reasonable performance metrics) or to impose a reasonable timeline that begins when the parties have fully submitted their arguments, at which point further delay in the resolution of the case is entirely in the Commission's control. Any such timeline should incorporate best practices of other intermediate appellate tribunals.**

**In comments submitted regarding the Commission's August 2, 2019 NPRM, a coalition of tenant advocates including the Legal Aid Society of the District of Columbia and eight other organizations offered their support for the Commission amending its briefing rules in this manner and in seeking a statutory amendment to ensure the legal sufficiency of such rules.**

# Organizational Chart
# Government of the District of Columbia
# Rental Housing Commission



**FY19-20 Performance Oversight Hearings**
**Rental Housing Commission**
**FY 2020 Schedule A**

| Posn Nbr | Title | Name | Hire Date | Vac Stat | Grade | Step | Salary | FTE x Dist % | Pay | Barg | Union | Budgeted Position | Appr Year | Combo Cd | Agency | Fund Code | Prgm Code | Activity | F/P Time | Reg/Temp/ Term | FTE | Dist % | Fringe | Fringe Costs | Total Salary & Fringe Benefits |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 99873 | CHIEF ADMIN JUDGE | Spencer,Michael T. | 2/2/2009 | F | 18 | 0 | 160,478.55 | 1 | DS | CH11 | XAA | Y | 20 | 123949 | DR0 | 100 | 9100 | 9110 | F | Reg | 1 | 100 | 22% | 35,305.28 | 195,783.83 |
| 99874 | Staff Assistant | Acosta,Shari R | 7/16/2001 | F | 11 | 0 | 85,784.00 | 1 | DS | CH11 | XAA | Y | 20 | 123949 | DR0 | 100 | 9100 | 9110 | F | Reg | 1 | 100 | 22% | 18,872.48 | 104,656.48 |
| 99877 | Attorney Advisor | Mayer,Daniel J. | 3/10/2014 | F | 13 | 8 | 126,666.00 | 1 | LA | CH11 | XAA | Y | 20 | 123949 | DR0 | 100 | 9100 | 9110 | F | Reg | 1 | 100 | 22% | 27,866.52 | 154,532.52 |
| 99878 | ADMIN JUDGE | Puttagunta,Rupa Ranga | 1/7/2019 | F | 17 | 0 | 146,567.00 | 1 | DS | CH11 | XAA | Y | 20 | 123949 | DR0 | 100 | 9100 | 9110 | F | Reg | 1 | 100 | 22% | 32,244.74 | 178,811.74 |
| 99880 | ADMIN JUDGE | Gregory,Lisa M. | 1/22/2008 | F | 17 | 0 | 146,567.48 | 1 | DS | CH11 | XAA | Y | 20 | 123949 | DR0 | 100 | 9100 | 9110 | F | Reg | 1 | 100 | 22% | 32,244.85 | 178,812.33 |
| 99881 | Clerk of the Court | | | V | 11 | 0 | 66,542.00 | 1 | DS | C1 | BIB | Y | 20 | 123949 | DR0 | 100 | 9100 | 9110 | F | Reg | 1 | 100 | 22% | 14,639.24 | 81,181.24 |
| 99882 | Attorney Advisor | Edwards,Xavier B. | 11/12/2019 | F | 12 | 6 | 100,766.00 | 1 | LA | CH11 | XAA | Y | 20 | 123949 | DR0 | 100 | 9100 | 9110 | F | Reg | 1 | 100 | 22% | 22,168.52 | 122,934.52 |
| 99890 | Rental Property Program Spec | Greer,Dorothy | 11/19/2007 | F | 13 | 10 | 122,227.00 | 1 | DS | C1 | BIB | Y | 20 | 123949 | DR0 | 100 | 9100 | 9110 | F | Reg | 1 | 100 | 22% | 26,889.94 | 149,116.94 |
| 99946 | Clerk of the Court | Miles,Latonya A | 12/23/1985 | F | 13 | 1 | 94,858.00 | 1 | DS | C1 | BIB | Y | 20 | 123949 | DR0 | 100 | 9100 | 9110 | F | Reg | 1 | 100 | 22% | 20,868.76 | 115,726.76 |

**Rental Housing Commission**
**FY18 Budget vs Actuals**

| Fund Detail Title | GAAP Category Title | Program | Program Title | Activity | Activity Title | Values<br>Sum of FY 2018 Approved Budget | Sum of FY 2018 Revised Budget | Sum of FY 2018 Expenditures |
|---|---|---|---|---|---|---|---|---|
| **LOCAL FUNDS** | **PERSONNEL SERVICES** | 9100 | **RENTAL HOUSING COMMISSION** | 9110 | RENTAL HOUSING COMMISSION | 998,699.25 | 944,283.94 | 946,216.80 |
| | **PERSONNEL SERVICES Total** | | | | | **998,699.25** | **944,283.94** | **946,216.80** |
| | **NON-PERSONNEL SERVICES** | 9100 | **RENTAL HOUSING COMMISSION** | 9110 | RENTAL HOUSING COMMISSION | 40,928.44 | - | 5,886.32 |
| | **NON-PERSONNEL SERVICES Total** | | | | | **40,928.44** | **-** | **5,886.32** |
| **LOCAL FUNDS Total** | | | | | | **1,039,627.69** | **944,283.94** | **952,103.12** |
| **Grand Total** | | | | | | **1,039,627.69** | **944,283.94** | **952,103.12** |

**Agency Name** DEPT. OF HOUSING AND COMM. DEVELOPMENT

**RENTAL HOUSING COMMISSION**
**FY19 BUDGET vs. ACTUALS**

| Appropriated Fund Title | GAAP Category Title | Program | Program Title | Activity | Activity Title | Comp Source Group | Comp Source Group Title | Values FY 2019 Approved Budget | FY 2019 Revised Budget | FY 2019 Expenditures | Sum of FY 2020 Approved FTEs | Sum of Current Balances | Comments |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| LOCAL FUND | PERSONNEL SERVICES | 9100 | RENTAL HOUSING COMMISSION | 9110 | RENTAL HOUSING COMMISSION | 11 | REGULAR PAY - CONT FULL TIME | 427,298.40 | 451,791.11 | 450,782.34 | 6.00 | 1,008.77 | Vacancy lapse |
| | | | | | | 12 | REGULAR PAY - OTHER | 276,307.80 | 262,201.85 | 261,547.18 | 3.00 | 654.67 | Vacancy lapse |
| | | | | | | 13 | ADDITIONAL GROSS PAY | 175,633.37 | 3,022.30 | 24,754.13 | | (21,731.83) | Unbudgeted terminal leave payment |
| | | | | | | 14 | FRINGE BENEFITS - CURR PERSONNEL | 151,978.94 | 151,978.94 | 142,309.22 | | 9,669.72 | Vacancy lapse |
| | **PERSONNEL SERVICES Total** | | | | | | | **1,031,218.51** | **868,994.20** | **879,392.87** | **9.00** | **(10,398.67)** | |
| | NON-PERSONNEL SERVICES | 9100 | RENTAL HOUSING COMMISSION | 9110 | RENTAL HOUSING COMMISSION | 20 | SUPPLIES AND MATERIALS | 8,391.61 | 8,391.61 | 4,962.76 | | 3,428.85 | Spending below projections |
| | | | | | | 40 | OTHER SERVICES AND CHARGES | 2,441.27 | 2,441.27 | 917.77 | | 1,523.50 | Spending below projections |
| | | | | | | 41 | CONTRACTUAL SERVICES - OTHER | 11,967.00 | 11,967.00 | - | | 11,967.00 | Contractual services paid out of DHCD budget |
| | | | | | | 70 | EQUIPMENT & EQUIPMENT RENTAL | 9,852.83 | 9,852.83 | 7,569.44 | | 2,283.39 | Spending below projections |
| | **NON-PERSONNEL SERVICES Total** | | | | | | | **32,652.71** | **32,652.71** | **13,449.97** | - | 19,202.74 | |
| **LOCAL FUND Total** | | | | | | | | **1,063,871.22** | **901,646.91** | **892,842.84** | 9.00 | 8,804.07 | |
| **Grand Total** | | | | | | | | **1,063,871.22** | **901,646.91** | **892,842.84** | **9.00** | **8,804.07** | |

Agency Name RENTAL HOUSING COMMISSION
Agency DR0

**RENTAL HOUSING COMMISSION**
**FY20 BUDGET vs. ACTUALS**

| Appropriated Fund Title | GAAP Category Title | Program | Program Title | Activity | Activity Title | Comp Source Group | Comp Source Group Title | Sum of FY 2020 Approved Budget | Sum of FY 2020 Revised Budget | Sum of FY 2020 YTD Expenditures | Sum of FY 2020 Approved FTEs | Sum of Current Balances | Comments |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **LOCAL FUND** | **PERSONNEL SERVICES** | 9100 | **RENTAL HOUSING COMMISSION** | 9110 | **RENTAL HOUSING COMMISSION** | 11 | REGULAR PAY - CONT FULL TIME | 615,860.44 | 615,860.44 | 229,952.30 | 6.00 | 385,908.14 | One-quarter of year elapsed |
| | | | | | | 12 | REGULAR PAY - OTHER | 391,103.35 | 391,103.35 | 10,312.02 | 3.00 | 380,791.33 | One-quarter of year elapsed |
| | | | | | | 14 | FRINGE BENEFITS - CURR PERSONNEL | 188,302.25 | 188,302.25 | 46,950.87 | - | 141,351.38 | One-quarter of year elapsed |
| | | | | | | 15 | OVERTIME PAY | - | - | 264.43 | - | (264.43) | No overtime budgeted |
| | **PERSONNEL SERVICES Total** | | | | | | | **1,195,266.04** | **1,195,266.04** | **287,479.62** | **9.00** | **907,786.42** | |
| | **NON-PERSONNEL SERVICES** | 9100 | **RENTAL HOUSING COMMISSION** | 9110 | **RENTAL HOUSING COMMISSION** | 20 | SUPPLIES AND MATERIALS | 8,392.00 | 8,392.00 | 1,528.52 | - | 6,863.48 | One-quarter of year elapsed |
| | | | | | | 31 | TELECOMMUNICATIONS | 4,369.00 | 4,369.00 | - | - | 4,369.00 | Fixed cost assessment not yet complete |
| | | | | | | 32 | RENTALS - LAND AND STRUCTURES | 51,000.00 | 51,000.00 | - | - | 51,000.00 | Fixed cost assessment not yet complete |
| | | | | | | 34 | SECURITY SERVICES | 5,052.00 | 5,052.00 | - | - | 5,052.00 | Fixed cost assessment not yet complete |
| | | | | | | 35 | OCCUPANCY FIXED COSTS | 3,218.00 | 3,218.00 | - | - | 3,218.00 | Fixed cost assessment not yet complete |
| | | | | | | 40 | OTHER SERVICES AND CHARGES | 61,317.96 | 61,317.96 | 4,168.55 | - | 57,149.41 | One-quarter of year elapsed |
| | | | | | | 41 | CONTRACTUAL SERVICES - OTHER | 59,800.00 | 59,800.00 | 14,490.00 | - | 45,310.00 | One-quarter of year elapsed |
| | | | | | | 70 | EQUIPMENT & EQUIPMENT RENTAL | 9,853.00 | 9,853.00 | - | - | 9,853.00 | One-quarter of year elapsed |
| | **NON-PERSONNEL SERVICES Total** | | | | | | | **203,001.96** | **203,001.96** | **20,187.07** | **-** | **182,814.89** | |
| **LOCAL FUND Total** | | | | | | | | **1,398,268.00** | **1,398,268.00** | **307,666.69** | **9.00** | **1,090,601.31** | |
| **Grand Total** | | | | | | | | **1,398,268.00** | **1,398,268.00** | **307,666.69** | **9.00** | **1,090,601.31** | |

Department of Housing and
Community Development
and
Department of Public and
Assisted Housing

# Labor Management Agreement

Local 272

Effective through September 30, 199

★★★

Government of
the District
of Columbia

Marion Barry Jr.
Mayor

David S. Dennison
Director, DHCD

Roland Turpin

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## PREAMBLE

This Agreement is entered into between the District of Columbia Department of Housing and Community Development, the District of Columbia Department of Public and Assisted Housing, (hereinafter referred to as the Department) and the American Federation of Government Employees, Local 2725 (hereinafter referred to as the Union), and collectively known as the parties.

The purpose of this Agreement is:

1. to promote fair and reasonable working conditions;

2. to promote harmonious relations between the parties;

3. to establish an equitable and orderly procedure for the resolution of differences;

4. to protect the rights and interest of the employee, the Union and the Department; and

5. to promote the efficient operations of the Department.

Each party affirms without reservation the contents of this Agreement. Now therefore, in consideration of mutual covenants and promises contained herein, the Department and the Union do hereby agree as follows:

## ARTICLE 1
## RECOGNITION

Section A:

Local 2725 of the American Federation of Government Employees, AFL-CIO, is hereby recognized as the sole and exclusive representative for all employees in the bargaining units as described in Section B of this Article.

The Union as the exclusive representative of all employees in the unit has the right, as provided in Title 1, Chapter 6, Subchapter XVIII of the D.C. Code (1987 ed.) to act for and negotiate agreements covering all employees in the Unit and is responsible for representing the interests of all such employees without discrimination and without regard to membership in the labor organization.

Section B:

The bargaining units represented by the American Federation of Government Employees, Local 2725 are as follows:

1. All employees of the Department of Housing and Community Development (DHCD), excluding the security force, management officials, confidential employees, supervisors, any employees engaged in personnel work in other than a purely clerical capacity or employees engaged in administering the provisions of Title 1, Chapter 6, Subchapter XVIII of the D.C. Code (1987 ed.).

2. All employees of the Department of Public and Assisted Housing (DPAH), excluding the security force, management officials, confidential employees, supervisors, any employees engaged in personnel work in other than a purely clerical capacity or employees engaged in administering the provisions of Title 1, Chapter 6, Subchapter XVIII of the D.C. Code (1987 ed.).

Section C:

When a position(s) changes or a new position(s) is established and the parties differ as to whether the position(s) is inside or outside the bargaining unit, either party may file a unit clarification petition with the D.C. Public Employee Relations Board (PERB).

## ARTICLE 2
## GOVERNING LAWS AND REGULATIONS

Section A:

In the event any D.C. Government-wide or Department rules, regulations, issuances or policies are in conflict with the provisions of this Agreement, this Agreement shall prevail.

Section B:

It is understood that D.C. Government-wide laws, rules and regulations that are not in conflict with this Agreement and are not specifically incorporated herein are, nevertheless, applicable to bargaining unit employees.

Section C:

If during the life of this Agreement a law from a higher authority invalidates or requires an amendment to any part of this Agreement the parties shall meet promptly upon request of either party to negotiate the change.

Section D:

The Department shall communicate, consult and negotiate with

nly the Union on matters related to working conditions affecting bargaining unit members. However, in accordance with the provisions of Article 9, Grievance Procedure, the Department may communicate with a grievant and/or authorized non-union representative in order to resolve a grievance related to the working conditions of the grievant.

Section E:

Except in emergency situations, the Department shall consult with the Union prior to changing Department rules, regulations or policies which affect the working conditions of bargaining unit employees. When the change directly impacts on the conditions of employment of bargaining unit members, such impact shall be a proper subject of negotiation.

## ARTICLE 3
## EMPLOYEE RIGHTS

Section A - General:

1. All employees shall be treated fairly, equitably and with respect, in accordance with District of Columbia laws, rules and regulations.

2. Instructions and guidances shall be given in a reasonable and constructive manner and in an atmosphere that will avoid unecessary embarassment before other employees or the public.

3. The Department shall not retaliate against any employee for the exercise of his/her rights under this Agreement or any applicable laws, rules or regulations.

Section B:

1. The Department and the Union agree that employees have the right to join, organize, or affiliate with, or to refrain from joining, organizing, or affiliating with the Union. This right extends to participating in the management of the Union, or acting as a representative of the Union, including representation of its views to the officials of the Executive Branch, City Council, or other appropriate authority.

2. Employees shall be free from interference, restraint, coercion and discrimination in the exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining and Labor-Management cooperation.

## ARTICLE 4
## MANAGEMENT RIGHTS AND RESPONSIBILITIES

**Section A:**

The Department shall retain the sole right, in accordance with applicable laws, rules and regulations:

1. to direct employees of the Department;

2. to hire, promote, transfer, assign and retain employees in positions within the Department and to suspend, demote, discharge or take other disciplinary action against employees for cause;

3. to relieve employees of duties because of lack of work or other legitimate reasons;

4. to maintain the efficiency of the District Government operations entrusted to them;

5. to determine the mission of the Department, its budget, its organization, the number of employees and the number, types and grades of positions of employees assigned to an organizational unit, work project or tour of duty, and the technology of performing its work; or its internal security practices; and,

6. to take whatever actions may be necessary to carry out the mission of the Department in emergency situations.

**Section B:**

Notwithstanding Section A above, the Union may grieve, if in exercising management's rights, the Department violates any provisions of this Agreement or any Government-wide laws, rules or regulations which are grievable under this Contract.

## ARTICLE 5
## DISTRIBUTION OF AGREEMENT AND ORIENTATION OF EMPLOYEES

**Section A:**

The Department shall print and distribute a copy of this Agreement to each individual in the bargaining unit within ninety (90) days of the effective date of this Agreement. The costs associated with the reproduction of this Agreement shall be borne by the Department.

tion B:

When the Department conducts orientation sessions for new employees, thirty (30) minutes shall be allocated to the Union to make a presentation and distribute the Union's membership packet. The Department shall provide each new employee with a copy of this Agreement, the Department's Employee Handbook and other relevant information.

Section C:

The Department shall provide the Union with reasonable written advance notice of the date, time and place of each orientation session.

Section D:

The Department shall include in each handbook published, the following statement:

> Many employees of _____ are represented by Local 2725 of the American Federation of Government Employees, AFL-CIO, which is the exclusive bargaining agent and representative. e Union is available to help and represent employees on any ployement related matter. The Union office is located at 1133 th Capitol Street, N.E., Room G-9, and the telephone number is 2-4540.

In the event the Department does not publish a new handbook for the duration of this Agreement, the above paragraph shall be printed and inserted in each existing handbook. In addition, the Department shall list the Union in each publication of its telephone directory.

## ARTICLE 6
## NON-DISCRIMINATION

Section A:

The Department and the Union agree not to discriminate for or against employees covered by this Agreement on account of membership or non-membership in the Union, or on account of race, color, religion, sex (including sexual harassment), national origin, age, physical handicap, marital status, political affiliation or other criteria prohibited by law. The Department recognizes its esponsibility to promote and ensure equal employment for all persns on the basis of merit without discrimination based on race, ligion, color, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, physical handicap or political affiliation and to

promote the full realization of EEO through positive programs of affirmative action at every management level within the Department.

Section B:

In the development and implementation of its affirmative action plan, and in accordance with District laws and regulations, the Department agrees to consider the following:

1. Procedures to allow for the redesigning of jobs to reflect the needs of the Department and the skills of employees;

2. Reasonable accommodations to the religious needs of employees; and

3. Ensure that discriminatory personnel management policies, procedures, or practices shall be handled in accordance with EEO procedures and statues.

Section C:

The Department agrees to provide the Union with copies of the Affirmative Action Plan and furnish each employee with a copy. The EEO complaint regulations and procedures will be published, posted and distributed to each employee as well as included in the Affirmative Action Plan. The parties agree that EEO complaints shall be processed in accordance with District law, rules and regulations. This does not preclude the non-EEO aspects of mixed grievances (where clear distinction can be made and where such complaints are within the scope of the grievance procedure as defined within this Agreement) from going through the negotiated procedure.

Section D:

The Union recognizes its responsibility as bargaining agent and agrees to represent all employees in the unit without discrimination.

Section E:

The Department agrees that the Union may submit names of employees to the Department for consideration for appointment to EEO Counselor positions, using the same criteria as are used for any other nominee. The Union shall be promptly notified in writing of the names and telephone numbers of the EEO Counselors.

Section F:

The names and telephone numbers of the EEO Counselors shall be posted on all bulletin boards in the Department.

ion G:

The Department shall provide all EEO Counselors with the education and training necessary to effectively perform the duties and responsibilities of the position of EEO Counselor.

Section H:

The Union shall have one (1) member on the Employee's Women's Program Advisory Committee selected by the Union representing a cross section of unit employees. The Union may designate an alternate to serve in the absence of its regular representative.

Section I:

The Department and the Union recognize that sexual harassment is a form of misconduct that undermines the intergrity of the employment relationship and adversely affects employee opportunities. All employees must be allowed to work in an environment free from unsolicited and unwelcome sexual overtures. Sexual harassment is defined in Equal Employment Opportunity rules governing complaints of discrimination in the District of Columbia Government (31 DCR 56):

> "Sexual harassment" means unwelcome sexual advance, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicityly or implicitly a term or condition of employment; (2) submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting such employee; or (3) such conduct has the purpose of or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment. Sexual harassment may include, but is not limited to, (a) verbal harassment or abuse, (b) subtle pressure for sexual activity, (c) patting or pinching, (d) brushing against another employee's body, and (e) demands for sexual favors.

Section J:

Through the procedures established for Labor-Management cooperation, each party shall advise the other of equal employment opportunity programs of which they are aware. The Department shall ensure that problems brought to its attention under this Article shall be promptly remedied.

## ARTICLE 7
## UNION SECURITY AND UNION DUES DEDUCTIONS

Section A:

The terms and conditions of this Agreement shall apply to all employees in the bargaining unit without regard to Union membership. Employees covered by this Agreement have the right to join or refrain from joining the Union.

Section B:

The Department agrees to deduct Union dues from each employee's bi-weekly pay upon authorization on D.C. Form 277. Union dues withholding authorization may be cancelled upon written notification to the Union and the Department thirty (30) days prior to each annual anniversary date (effective date) of this Agreement, regardless of the provisions of the 277 Form. When Union dues are cancelled, the Department shall withhold a service fee in accordance with Section C of this Article.

Section C:

Because the Union is responsible for representing the interests of all unit employees without discrimination and without regard to Union membership, (except as provided in Section E below), the Department agrees to deduct a service fee from each non-union member's bi-weekly pay without a written authorization. The service fee and/or Union dues withheld shall be transmitted to the Union, minus a collection fee of five cents ($.05) per deduction per pay period. Upon a showing by the Local Union of sixty percent (60%) of the eligible employees in the bargaining unit for which it has certification are Union members, the Department shall begin withholding, not later than the second pay period after this Agreement becomes effective and the showing of sixty percent (60%) is made, a service fee applicable to all employees in the bargaining unit(s) who are not Union members. The service fee withholding shall continue for the duration of this Agreement. Payment of dues or service fees through wage deductions shall be implemented in accordance with procedures established by the Department and this Article. Employees who enter the bargaining unit where a service fee is in effect shall have the service fee or Union dues withheld by the Department within two (2) pay periods of his/her date of entry on duty or 277 Form authorization.

Section D:

The service fee applicable to non-union members shall be equal to the bi-weekly union membership dues that are attributable to representation.

Section E:

Where a service fee is not in effect, the Union may require any employee who does not pay dues or a service fee shall pay all reasonable costs incurred by the Union in representing such employee(s) in grievance or adverse action proceedings in accordance with provisions of Title 1, Chapter 6 of the D.C. Code.

Section F:

Within two (2) pay periods following the submission of an employees application for membership and dues check-off the Department shall start deducting Union dues from the employees.

Section G:

Within two (2) pay periods following the effective date of an employee's separation from the bargaining unit, the Department shall stop deducting Union dues or service fees from the affected employee.

Section H:

Payment of dues or service fees shall not be a condition of employment.

Section I:

The Employer shall be indemnified or otherwise held harmless for any good faith errors or ommissions in carrying out the provisions of this Article.

## ARTICLE 8
## UNION REPRESENTATION

Section A:

The Department shall recognize elected Union Officers and stewards not to exceed fifty (50) provided that the distribution of union stewards is such that there is no more than one (1) steward for every twenty (20) employees within any one Administration. Such stewards shall be designated in proportion to the number of employees in each Department. As the number of authorized positions in the bargaining unit of each Department increases, one (1) additional steward shall be recognized for each twenty (20) employees added over and above the number employed by the Department as of the effective date of this Agreement. The Department shall also recognize appropriate elected Union officials and non-employee Union officials as authorized representatives of the Union.

Section B:

The Union will furnish the Department a written list of elected officials, stewards and authorized employee representatives and submit changes as they occur. Recognition will be given to those representatives whose names have been submitted to the Department.

Section C:

Stewards are authorized to perform and discharge the duties and responsibilities of their position as it relates to representing the employees of the Unit. Requests by Stewards to meet with employees or requests of employees to meet with Stewards shall not require prior explanation to the supervisor of the problems involved other than to identify the area to be visited, and the general nature of the Union business to be conducted.

Section D:

The Department shall make every reasonable effort to notify the Union no later than five (5) work days prior to placing Union representatives on special assignments and/or details or making shift changes. In the case of reassignments or transfers, the requirements of Article 18 shall apply. In no case shall such action be taken as a means of punishment or retaliation.

Section E:

A Union representative, when leaving work to transact permissible labor-management business as defined by this Agreement during work hours, first shall request permission from his/her immediate supervisor.

The Union and employees recognize that workload and scheduling considerations will not always allow for the immediate release of employees from their assignments. However, the Department agrees that such permission for release shall not be unreasonably delayed.

Section F:

Upon entering a work area other than his/her own, the Union representative shall advise the appropriate supervisor of his/her presence and the name of the employee he/she desires to visit. In the event the Union representative wishes to visit a work area but not to meet with a bargaining unit member, he/she must notify the appropriate supervisor upon arrival.

Section G:

Union representatives who are unit employees shall be permitted official time to engage in the following labor-management activities:

1. Assist employees in the preparation and/or presentation of grievances, complaints or appeals;

2. Furnish the employees advice on his/her rights and privileges under this Agreement and applicable laws, rules and regulations;

3. Arrange for witnesses and obtain other information or assistance relative to a grievance or appeal;

4. Consult with Management officials or other appropriate District Government officials to provide mutual cooperation; and

5. Conduct and/or participate in other legitimate labor-management business.

Section H:

The Union agrees that grievances should preferably be investigated, received, processed and presented during the first and last hour of the grievant's scheduled tour of duty unless otherwise authorized. The Department recognizes that this is not always practicable and will not prevent Union representatives from representing employees at other times consistent with the provisions of this Agreement.

Section I:

The Department reserves the right to grant permission for attendance at Union meetings during work hours when such assemblage is in the interest of the Department, provided that release of employees will not unduly interrupt the work force in the judgment of Management.

Section J:

The Department shall not punish or retaliate against employees for performing permissible labor-management business.

## ARTICLE 9
## GRIEVANCE PROCEDURE

Section A:

The purpose of this Article is to provide a mutually acceptable method for the prompt and equitable settlement of grievances.

Therefore, the Department and the Union retain the right to settle any grievance in the enforcement of this Agreement. The Department shall ensure that all settlements reached with respect to grievance resolution and other matters regarding enforcement of this Agreement shall be implemented.

Section B:

A grievance is a complaint by a party or parties that:

1. There has been a violation, misapplication or misinterpretation of this Agreement;

2. That there has been a violation or misapplication of appropriate term(s) and condition(s) of the Compensation Agreement for Units 1 & 2.

3. There has been a violation or misapplication of any law, rule or regulation which affects a term(s) or condition(s) of employment.

Section C- Presentation of Grievance:

1. This procedure is designed to enable the parties to settle grievances at the lowest possible administrative leve.

2. Catagories of Grievance:

a. Personal: A grievance of a personal nature requires signature of the aggrieved employee at Step 2 even if the grievant is represented by the Union. In the case of an individual grievant proceeding without Union representation, the Union shall be given the opportunity pursuant to advance notification to be present and offer its view at any meeting held to adjust the grievance. A copy of any settlement agreement reached between the parties or adjustment, decision or response made by the Department must be sent to the Union.

b. Class: A grievance involving all the employees in the bargaining unit must be filed and signed by the Union President directly at Step 4 of the grievance procedure. Grievances so filed will be processed only if the issue raised is common to all unit employees. A class grievance must contain all information specified in Step 2 of the grievance procedure and the Department Head, or his designee shall respond in writing within 20 working days of its receipt.

c. Group: If a grievance involves a group of bargaining unit employees within the Department, the grievance may be filed by the group of employees at the appropriate step of the grievance procedure where resolution is possible.

In the event the group is not represented by the Union, the Union must be given opportunity pursuant to advance notification to be

present and offer its view at any meeting held to adjust the grievance. A copy of any settlement agreement reached between the parties as adjustment, decision or response made by the Department must be sent to the Union.

Section D - Procedure:

a. Step 1: The aggrieved employee, with or without a Union representative, shall orally present and discuss the grievance with the employee's immediate or acting supervisor within twenty (20) work days of the occurrence of the event giving rise to the grievance, or within twenty (20) work days of the employee's or Union's knowledge of such event. The supervisor shall make a decision on the grievance and reply to the employee and his/her representative within ten (10) work days after oral presentation of the grievance.

b. Step 2: If the grievance is not settled, the employee with or without his/her Union representative, shall submit a signed, written grievance to the appropriate management official within ten (10) work days following the supervisor's oral response. The grievance at this and subsequent steps shall contain:

1. Description of the nature of the grievance;

2. The date(s) on which the alleged violation occurred;

3. A statement of the remedy or adjustment sought;

4. Authorization by the employee if Union representation is desired.

5. The signature of the aggrieved employee and the Union representative, if applicable, according to the category of the grievance.

Should the grievance not contain the required information, the grievant shall be so notified in writing and given five (5) work days from receipt of notification to resubmit the grievance.

The appropriate management official shall submit a signed, written response to the grievance to the employee and his/her Union representative within ten (10) work days of its receipt. If the aggrieved employee is not being represented by the Union, the management official must send a copy of the Step 2 response to the Union within ten (10) work days of receipt of the Step 2 grievance.

c. Step 3: If the grievance remains unsettled, the grievance shall be submitted to the Chief Management Official in his/her division within ten (10) work days following receipt of the appropriate management official's Step 2 response.

The Chief Management official in the division shall respond in a signed statement to the employee and his/her represen-

tative within ten (10) work days of the Step 3 grievance. If the aggrieved employee is not being represented by the Union, the Chief Management official of the division must send a copy of the Step 3 response to the Union within ten (10) work days of receipt of the Step 3 grievance.

d. Step 4: If the grievance remains unsettled, the employee shall submit it to the Director within ten (10) work days following receipt of the Step 3 response. Within fifteen (15) work days of the Step 4 grievance the Director or his designee shall meet with the aggrieved employee and his/her representative to attempt to resolve the grievance or must respond in writing. If a meeting occurs, the Director shall respond in writing to the employee and his/her representative within seven (7) work days following the Step 4 metting. If the employee is not being represented by the Union, the Director must send a copy of the Step 4 response to the Union within ten (10) work days of the Step 4 meeting.

e. Step 5: If the grievance remains unsettled, the Union within twenty (20) work days from receipt of the Director's response, shall advise the Director in a signed statement whether the Union intends to request arbitration of the matter on behalf of the employee(s). Only the Union can refer a grievance to arbitration.

Section E - Arbitration:

1. Selection of an Arbitrator: Within seven (7) work days from the Department's receipt of the arbitration request, the moving party shall solicit a panel of seven (7) impartial arbitrators from the Federal Mediation and Conciliation Service (FMCS) or the American Arbitration Association (AAA). Upon receipt of the FMCS or AAA panel, the parties shall select a mutually agreeable arbitrator. If the list does not contain a mutually agreeable arbitrator, then each party shall alternately strike names from the panel until one (1) remains.

If, before the selection process begins, either party maintains that the panel of arbitrators is unacceptable, a request for a new panel from FMCS or AAA shall be made. Subsequent requests can be made until the parties receive an acceptable panel.

If either party refuses to participate in the selection of an arbitrator, FMCS or AAA shall have the authority to appoint one, upon the request of the opposing party.

2. The Department shall provide the hearing site, which must be agreeable to both parties. If any additional costs are involved, they shall be borne equally by the parties.

3. The arbitrator shall hear and decide only one (1) grievance in each case unless the parties mutually agree to consolidate grievances.

4. The arbitration hearing shall be informal and the rules of evidence shall not strictly apply.

5. The hearing shall not be open to the public or persons not immediately involved.

6. Witnesses shall be sequestered upon request of either party.

7. Either party has the right to record the hearing or to have a verbatim stenographic record made at its own expense. The expense may be shared upon mutual agreement.

8. The parties shall attempt to submit a written joint statement of the issue or issues to the arbitrator.

9. The parties shall exchange witness lists either orally or in writing prior to the date the hearing is commenced.

10. The arbitrator's award shall be in writing and shall set forth the arbitrator's findings, reasonings and conclusions within thirty (30) days after the conclusion of the hearing or within thirty (30) days after the arbitrator receives the briefs, if filed, whichever is later.

11. The arbitrator shall not have the power to add to, subtract form, or modify the provisions of this Agreement through the award. The arbitrator shall confine his/her award to the issue(s) presented.

12. The arbitrator shall have full authority to award appropriate remedies.

13. The arbitrator's award shall be binding upon both parties.

14. A statement of the arbitrator's fee and expenses shall accompany the award. The fees and expenses of the arbitrator shall be borne equally by the parties. Either party may appeal the arbitrator's award in accordance with applicable law and regulations.

Section F - General:

1. All time limits shall be strictly observed unless the parties mutually agree to extend said time limits.

2. The presentation and discussion of grievances shall be conducted at a time and place which will afford a fair and reasonable opportunity for both parties and their witnesses to attend. Such witness(s) shall be present only for the time necessary for them to present evidence. When discussions and hearings required under this procedure are held during the work hours of the participants, all unit employees entitled to be present shall be excused with pay for that purpose. An employee whose tour of duty is other than the administrative work week shall have his/her tour

justed to be placed in a duty status for any hearing at which ey are called as witness.

3. If either party considers a grievance to be either subantively or procedurally non-grievable or non-arbitrable, that rty shall so notify the other party prior to the date of the aring.

4. Issues of procedural or substantive arbitrability raised ıall be presented first at the arbitration proceeding.

## ARTICLE 10
## DISCIPLINE

ection A:

Disciplinary action(s), including adverse action(s), corrective action(s) and admonishment(s) shall be imposed against a argaining unit employee only for cause as defined in D.C. Code, 1-617.1(d)(1987 ed.).

ection B:

Employees have the right to contest corrective or adverse ıctions taken for cause through either OEA or the negotiated grievance procedure. An employee shall elect either of these procedures in writing and the selection once made cannot be changed.

1. Should the employee elect to appeal the action to OEA, such appeal shall be filed in accordance with OEA regulations.

2. Should the employee elect to grieve the action under the negotiated grievance procedure, the grievance must be filed at the appropriate step within twenty (20) work days from the effective date of the action. However, should the employee elect to utilize the negotiated grievance procedure, only the Union may take the appeal of a corrective or adverse action to arbitration.

Section C:

In imposing disciplinary actions the Department shall apply progressive discipline and shall consider the mitigating factors against the alleged offense, in accordance with D.C. Code, §1-617 (1987 ed.).

Section D:

If the Department has reason to counsel an employee, it shall be done in private so as not to unnecessarily embarrass the employee before other employees or the public.

ction E:

Employees against whom disciplinary action(s) is proposed shall be informed in writing of the right to Union representation. If a supervisor believes that any meeting with an employee could result in disciplinary action, the employee may request to have a Union representative present at said meeting. Such requests shall not be denied.

## ARTICLE 11
## LABOR-MANAGEMENT COOPERATION

Section A:

The Department and the Union shall establish a joint labor-management committee that will meet on a monthly basis. The agenda for scheduled meetings shall be exchanged at least five (5) days prior to the meeting. In the absence of an agenda or notification five (5) days in advance, no meeting shall be held. Labor-Management meetings shall be held with the Director of the Department or his/her designee.

ection B:

The Committee shall be composed of five (5) members representing the Union and five (5) members representing the Department.

The Labor-Management Committee shall exchange views and consider and make recommendations to the Department about policies and practices related to working conditions, terms of employment and the implementation of this Agreement. The Committee shall also discuss matters of common interest to both parties, or other matters which either party believes will contribute to the improvement of relations between them.

It is understood that appeals, grievances or problems of individual employees shall not be subjects of discussion at these meetings, nor shall the meeting be for any other purpose which will modify, add to or detract from the provisions of this Agreement.

Other meetings of the Committee may be scheduled as the need arises upon the request of either party at times mutually agreed upon.

Section C:

The standing members of the Labor-Management Committee ppointed by the Union shall be granted official time to attend the bove conferences when the conferences occur during the regular work-

ing hours of the employees. The Union shall notify the Department at least one (1) day in advance of any scheduled meeting if an alternate will attend in the absence of the appointed members.

Section D:

Each party may have other officials who are not employees of the Department. However, such representatives shall not exceed two (2), unless otherwise mutually agreed upon.

Section E:

A brief summary of the matters discussed and any understandings reached at all meetings as well as the position taken by the parties in a disagreement will be prepared and initialed by both sides.

## ARTICLE 12
## EMPLOYEE LISTS AND INFORMATION

Section A:

Within 30 days after the effective date of this Agreement, the Department shall provide the Union with a list of all employees in the bargaining unit. The list shall include the following information:

1. Name;
2. Job title, series and grade;
3. Responsibility Center Code;
4. Service Computation Date; and
5. "Not to Exceed" dates for term employees.

This list shall be updated quarterly. If the list is not provided in a timely fashion the Union shall submit a written request to the Department.

Section B:

The Union shall also be provided the following information:

1. A list of new hires, separations, transfers, reassignments and details in excess of 60 days, to be provided quarterly;

2. EEO Reports, as they are printed; and,

3. Merit Staffing Vacancy Announcements, as they are posted.

Section C:

Within thirty (30) days after the effective date of this Agreement, the Department shall provide the Union with an approved, standardized copy of the position description for each job category in the bargaining unit.

Section D:

Management agrees to provide the Union with a copy of updates and changes to the Comprehensive Merit Personnel Act (CMPA), the District Personnel Manual (DPM), and all written Department administrative issuances which affect working conditions of bargaining unit employees as they are issued.

Section E:

The Department will notify the Union of reorganization/realignment plans within the Department prior to implementation.

## ARTICLE 13
## FACILITIES AND SERVICES

Section A:

The Department agrees to the use of facilities for meeting purposes for the Union subject to the following conditions:

1. Meetings will be held before the start of business, during lunch periods and after close of business.

2. The use of facilities will not involve any additional expense to the District Government other than the normal expenses which are incurred for items such as heating and lighting.

3. The Union will request in writing the use of D.C. Government facilities for the purpose of Union meetings no later than two (2) working days in advance of requested meeting date. The Department will reply within two (2) days of initial request.

4. The Union recognizes its responsibility in using District facilities to observe all applicable security and public safety regulations and to conduct its meetings in an orderly manner so as not to interfere with normal work operations, and assumes responsibility for all damages to District property occasioned by their use, and agrees to leave the facility in a clean and neat condition.

## ARTICLE 14
## BULLETIN BOARDS

The Department agrees to provide a reasonable amount of space on existing or new bulletin boards and in areas commonly used by employees in the unit. The Union shall use this space for the purpose of advising members of meetings and any other legitimate Union information.

## ARTICLE 15
## SAFETY, HEALTH AND COMFORT

Section A:

The Department shall provide the employees with reasonably safe and healthful working conditions in accordance with Title 1, Chapter 6, Subchapter XXI of the D.C. Code (1987 ed.). It shall ensure the implementation and enforcement of all applicable District and Federal laws, rules and regulations regarding health and safety.

Section B:

The Department shall ensure that training is offered, at no expense to the employee, in cardiopulmonary resuccitation (CPR) and first aid. The Department shall provide first aid kits for each administration. The names, work telephone numbers and work locations of all employees trained in CPR techniques and first aid shall be provided to the Union and included in the Department's telephone book. In addition, the Department shall provide one (1) first aid kit at each outside property and in each emergency vehicle. The Department and the employees will cooperate in ensuring that all first aid kits are maintained. The Department shall promptly contact outside emergency medical or other appropriate employee services when an emergency occurs which warrants this type of assistance.

Section C:

The Department shall make every reasonable effort to provide and maintain clean, sanitary and stocked restroom facilities for all employees.

Section D:

The Department shall make every effort, within a reasonable period of time and consistent with the District Government timetable, to remove asbestos from all known worksites.

Section E:

The Department agrees to maintain the work place and its equip-

nt in good condition. Deficiencies in this area shall be discussed and corrected. Shower rooms and related facilities shall be repaired and maintained in good condition.

The Union and the Department shall make every effort to prevent accidents of any kind. If accidents occur, the prime consideration will be the welfare of the injured employee. As promptly as the situation allows, accidents are to be reported to the supervisor by the injured employee and/or his/her coworkers. The supervisor must report injuries to the Safety Officer.

Section F:

In the event of excessive temperature or equipment failure, nonessential employees may be reassigned or released in accordance with the District Personnel Manual, Chapter 12.

The District Personnel Manual defines excessive temperature in Appendix C and is listed here for informational purposes:

95 degrees Fahrenheit - 55% humidity (minimum)
96 degrees Fahrenheit - 52% humidity
97 degrees Fahrenheit - 49% humidity
98 degrees Fahrenheit - 45% humidity
99 degrees Fahrenheit - 42% humidity
100 degrees Fahrenheit - 38% humidity

During extremely cold weather conditions, the Department agrees that affected nonessential employees, as determined by the Director, working inside buildings will be dismissed or relocated at Management's option, when the temperature in a particular building is so low that employees cannot perform work adequately.

Nonessential employees who are required to work outside shall not be required to perform those duties during periods of severe inclemency, as determined by the Director, with consideration of the U.S. (National) Weather Bureau.

Section G:

Employees shall promptly report to Management all deficiencies in maintenance of vehicles for corrective action. The Department agrees to present vehicles to D.C. Safety Inspection at the prescribed time(s).

Section H:

When an employee identifies what she/he believes to be an unsafe or unhealthful working condition, the employee shall notify his/her supervisor, who shall investigate the matter immediately and take prompt and appropriate action. If an unsafe or unhealthful condition is determined to exist, the affected employee(s) shall not be required to perform duties in the affected area. During this period, the supervisor may require the employee(s) to perform

their duties in another work area or to perform other duties outside the affected area.

Section I:

When the Department is aware of a workplace inspection or investigation which is conducted by a Department safety representative or by an outside agency, such as OSHA or NIOSH, in response to a complaint by the Union or bargaining unit employee, the Union shall be given the opportunity to participate. During the course of any such inspection or investigation any employee may bring to the attention of the inspector any unsafe or unhealthful working condition.

Section J:

Employees shall be protected against penalty or reprisal for reporting any unsafe or unhealthful working condition or practice, assisting in the investigation of such conditions, or for participating in any occupational safety and health program and activities.

Section K:

The Department shall prepare and post instructions to evacuate the building at 1133 North Capitol Street, N.E.; 51 N Street, N.E., 70 Pierce Street, N.E., any other work site(s) of DHCD or DPAH in case of emergency.

Section L:

The Department agrees to take necessary steps to ensure the safety of employees who are required to work alone. The Department agrees to immediately implement all present security/safety measures affecting these employees and to ensure that these procedures are known and carried out by all employees. Where necessary, the Department agrees to revise and/or implement security/safety measures for the protection of employees. A continuous review of security/safety measures shall be the joint responsibility of Management and the Union.

Section M:

The Department shall acquire, maintain and require employees to use safety/protective equipment to protect them from hazardous condtions encountered during the performance of official duties.

The Union may, at its discretion, recommend new protective clothing and equipment and modifications to existing equipment for consideration by the Department. The Union shall also be consulted prior to purchase of major new equipment and/or devices impacting upon working conditions and/or personnel.

The Union agrees to promote and encourage employees to follow safety procedures.

Section N:

The Department agrees to provide to potentially exposed employees and the Union, all information available to the Department concerning hazardous substances. A listing of all chemicals used by the Department along with their generic names shall be provided annually to the Union. Such listing shall indicate chemical use by work area. Within budgetary limitations, emergency shower facilities shall be provided at locations where employees are required to be exposed to hazardous substances.

Section O - Safety Committee:

A safety committee of three representatives from the Union and three representatives from Management, one of whom shall be the Department's Safety Officer, will be established in the Department. One Union and one management representative shall serve as co-chairpersons. The Committee shall:

(1) Meet once a month, or at the call of either co-chairperson, to review special conditions which may develop.

(2) Conduct safety surveys and inspections and make joint recommendations to the appropriate administrator, through the Safety Officer.

(3) Seek resources and coordinate the development and conduct of appropriate health and safety training programs. All training must be coordinated with the Office of Administration and Management.

(4) Consult with, and render assistance to the Department Safety Officer upon request.

Section P:

The Department is responsible for providing injured employees with information regarding proper accident reporting forms and for helping employees properly complete accident reporting and compensation forms.

Section Q:

The safety officer shall provide the Union a copy of the monthly report of on-the-job injuries, submitted to the Department of Employment Services, Office of Occupational Safety and Health. The safety officer shall promptly notify the Union in the event of an on-the-job death.

Section R:

Within space limitations, the Department agrees to provide an employee lunchroom at the main offices of DHCD and DPAH which may be used by employees during their lunch period. If this is not possible, and at other Department facilities, Management shall attempt to identify space in which employees may eat lunch.

Section S:

The Department and the Union mutually recognize the need for protection of employees from assault and intimidation at the work place and will work cooperatively to obtain appropriate protective measures.

Section T:

An employee may be accompanied by a Union representative at any meeting regarding a fitness-for-duty examination.

Section U:

The Department agrees to explore the establishment of a Health Unit for use by DHCD and DPAH employees and to consult with the Union on this issue.

## ARTICLE 16
## ENVIRONMENTAL DIFFERENTIAL

The Union may submit to the Department a list of positions which it has determined to be eligible for an environmental differential. The Department shall submit this list, along with the necessary supporting information, to the D.C. Office of Personnel for approval or disapproval. Personnel's decision will be made available to the Union.

## ARTICLE 17
## REASSIGNMENTS

Section A:

If any employee is to be reassigned, he/she will be given advance notice of the reassignment including an explanation related thereto. If reassignment involves a relocation to a different facility or building, five (5) working days notice will be given. Any notification of reassignment will be accompained by a request for personnel action.

Section B:

In no instance will reassignment or transfer from the bargaining unit be used as a means of punishment or retaliation.

Section C:

In the event a reasignment of a Union Steward, Chief Steward or President is planned, the Union President will be given fifteen (15) working days written notice regarding such anticipated reassignment.

Section D:

Employees requesting reassignment or transfer within the same organizational unit or to other organizational units shall submit a request in writing inclusive of the supportive reasons to their immediate supervisor. If denied by the immediate supervisor, the request may be appealed through the appropriate levels of supervision up to the Director. Response to the request shall be issued at each level within a reasonable period of time.

## ARTICLE 18
## UNIFORMS

The Department shall provide all wage grade and District schedule employees whose duties require uniforms with a supply of five (5) uniforms. Replacement uniforms will be provided only when the worn ones are returned to the Department. Employees who have been issued uniforms are required to wear those uniforms while on duty. Employees who terminate their employment are required to return their uniforms prior to receiving their final pay check.

If the Department determines that protective clothing is required for certain employees to perform their duties, such items shall be provided. If protective clothing is provided, it must be worn. In its determination of whether or not protective clothing is required for an employee's duties, the Department shall follow appropriate OSHA safety standards as well as any other applicable laws, rules and regulations.

Employees required to work outside shall be furnished with appropriate clothing, such as rainwear, etc., which is suitable for the weather conditions in which they are required to work.

## ARTICLE 19
## TOOLS

Section A:

The Department shall provide at no cost a first issue of all tools it deems necessary for employees to perform their work. New and current employees will be responsible for replacing tools lost or stolen except where theft from a secured department vehicle, authorized private vehicle, or location is involved and where the employee was not at fault. Management will replace worn or broken tools issued upon the return of unservicable tools, unless it is evidenced that the employee has abused the tools. Management shall provide lockable tool boxes and secure locations for the tools. Employees will be responsible for obtaining and maintaining their own locks for individually issued tool boxes.

Section B:

The Department shall maintain its power and special tools in safe working condition. Employees will be responsible for proper care and safe operation of power and special tools after receiving proper training in the use and care of the tools. Tools issued will remain the property of the District of Columbia Government. Employees terminating their employment shall be required to return such tools prior to receiving their final paycheck.

## ARTICLE 20
## TEMPORARY OR TERM EMPLOYEES

The Department shall provide the opportunity to an employee who has occupied a temporary or term position(s) for more than one (1) year and has performed at a satisfactory level to be considered for a permanent position in the Department.

## ARTICLE 21
## HOURS OF WORK/OVERTIME ADMINISTRATION

Section A:

To the extent possible employees shall be notified five (5) work days in advance of any permanent or long term (i.e. six (6) months or longer) change in their scheduled tour of duty.

Section B:

Staff meetings shall be scheduled during regular working hours except in the case of an emergency.

Section C:

The use of compensatory time shall be governed by the provisions of the Compensation Units 1 and 2 Agreement.

Section D:

Overtime assignments shall be distributed equitably among volunteers from the work unit in which the overtime work is to be performed. If there are not enough volunteers, Management shall distribute the remaining overtime assignments equitably among qualified employees. An employee assigned to work overtime may be excused at the supervisor's discretion if he/she has a valid reason. Each such situation shall be considered on its merits.

Section E:

The Department shall make every effort to notify employees in advance when overtime work will be required. When a supervisor requests or directs an employee to perform overtime work the supervisor shall make every reasonable effort to give the employee a written statement that the overtime work has been authorized by the Director.

Section F:

The Department shall properly record on time and attendance forms overtime hours worked, and shall process the forms so that the employee(s) may be paid no later than the first pay period following the one in which the work was performed.

## ARTICLE 22
## USE OF PRIVATE VEHICLES

Section A:

1. The Department shall provide within budgetary limitations, vehicles for the use of employees who need transportation to perform their duties. Usage of such vehicles shall be given priority in areas where public transportation is not available.

2. In the event a vehicle is not available for an employee who needs transportation to perform his/her duties, the employee shall have the right to elect to use either his/her private vehicle or public transportation, consistent with Department and District-wide rules and regulations.

Section B:

1. If an employee elects to use his/her private vehicle to perform his/her duties the Department shall reimburse the employee for mileage at the rate established between the Department and Union at the City-wide level, consistent with Department and District-wide rules and regulations.

2. Where an employee elects to use public transportation, work assignments shall be adjusted to allow for increased travel time. Employees who use public transportation for the performance of their duties shall not be adversely affected in the Department's evaluation of their productivity if such productivity is diminished as a result of longer travel time. The Department shall reimburse employees for the actual cost of public transportation use, consistent with Department and District-wide rules and regulations.

Section C:

An employee whose vehicle is rendered inoperable during the course of official duties shall be granted reasonable time, upon notification to the supervisor, to make minor repairs or get the vehicle to a garage and return to the Office.

Section D:

Employees shall be reimbursed in accordance with District government rules and regulations for the following expenses incurred during the performance of duties for the Department with a government or private vehicle:

1. Parking fees;

2. Tolls; and

3. Parking tickets incurred through no fault of the employee.

## ARTICLE 23
## CONSULTATION AND COUNSELING

Section A:

The parties recognize that alcoholism, drug abuse and emotional disorders are illnesses that can interfere with job performance. As such the Department shall make substantial efforts in accordance with the District EAP Program to assist bargaining unit employees, suffering from these illnesses, to recover.

Section B:

When a bargaining unit employee's excessive absenteeism or performance deficiencies are suspected to be due to alcoholism, drug abuse or an emotional disorder, the Department shall refer the employee, in writing, to a counseling or treatment program. If the employee accepts the Department's referral and participates in the counseling or treatment program, the Department must give the employee a reasonable period of time after completion of the treatment program to recover and to improve his or her performance and/or attendance.

Section C:

If the employeee refuses to seek counseling and/or there is not an inadequate improvement in work performance and/or attendance, as determined by the supervisor, disciplinary action or appropriate administrative action shall be initiated as warranted. Employees accepting direct referral will be provided reasonable time prior to adverse action being taken to improve work performance and/or

the requirements of the employee consultation and counseling service as the employee's work performance satisfactorily improves.

Section D:

The Employer will post a notice on bulletin boards describing the consultation and counseling service.

Section E:

The Department shall grant excused leave (i.e. Annual Leave, Sick Leave or Leave Without Pay) to an employee suffering from alcoholism, drug abuse or an emotional disorder for the time he/she participates in a counseling or treatment program. Such leave must be requested in advance and scheduled so as not to unduly interfere with the work of the Department.

Section F:

The Department shall give written referrals to the D.C. Employee Consultation and Counseling Service to an employee who is experiencing other personal problems which are causing an adverse affect on his/her job performance and/or attendance.

If the employee accepts the Department's referral and participates in the Service, the Department shall give the employee a reasonable opportunity to improve his/her performance and/or attendance. If the employee's performance and/or attendance does not improve, the Department may initiate disciplinary action against the employee for cause in accordance with Article 10 of this Agreement and applicable D.C. laws and regulations.

Section G:

With respect to any programs or services attended by employees pursuant to this Article, no employee shall be required to sign a consent form(s) authorizing the release of information to any supervisor or to the Department except for information regarding an employee's attendance in the program.

## ARTICLE 24
## TRAINING, CAREER DEVELOPMENT, AND UPWARD MOBILITY

Section A:

Consistent with employee development and affirmative action program guides, it is the Department's intention to provide training and career development opportunities for bargaining unit employees for the purpose of developing and maintaining their skills so that they may perform at their highest possible levels

in their positions and advance in accordance with individual potential and abilities.

Section B:

1. The Department will offer to assist employees in implementing individual career development plans by providing easy access to information on training opportunities, publicizing current training programs, advising employees of requirements needed to enter training programs, assisting employees in applying for training opportunities, scheduling training and making resources available to cover approved expenses for training.

2. The Department shall distribute to all bargaining unit employees, on a quarterly basis, a list of training programs offered by or through the Department.

3. Employees shall be given reasonable opportunities to discuss training needs and/or opportunities with their supervisors and/or other Department or Personnel officials.

Section C:

1. The Department shall distribute training and educational opportunities among the bargaining unit employees.

2. Requests for training and educational opportunities shall be processed promptly.

3. A record of satisfactorily completed training courses may be filed by each employee in their Official Personnel File.

4. When an institution of higher learning provides for accreditation of on-the-job experience, upon the employee's request the Department shall submit verification of such experience.

Section D:

The parties recognize the importance of career development, training and upward mobility. The Labor-Management Committee established in this Agreement shall on a periodic basis perform the following functions:

a. review existing policies and practices, with respect to training and career development and recommend changes in existing programs;

b. recommend the adoption of new programs, policies and practices;

c. review and offer comments on programs proposed by the Department; and

The Labor-Management Commitee may, if it deems necessary, establish a subcommittee to deal with these issues.

Recommendations submitted to the Director by the Committee shall be given careful consideration and the Committee shall be informed within a reasonable period of time of the status of its recommendations.

## ARTICLE 25
## PERFORMANCE EVALUATIONS

Section A:

The parties agree that the perfomance rating plan in effect on December 31, 1979 shall remain in effect and apply until such time as a new performance rating plan is established, after negotiations with appropriate labor organizations, consistent with the Comprehensive Merit Personnel Act (CMPA).

Section B:

Each employee will be given, within thirty (30) days of entering a new position, or within thirty (30) days of reassignment involving changed or additional duties, notification of the duties and responsibilities which will be used in the performance rating process. As soon as factors are identified for each occupational group, every employee in that occupational group will be notified of the factors which will be used in rating his/her performance.

Section C:

The employer agrees to discuss work deficiencies with employees when observed and advise ways of improving performance. In any case, notice of unsatisfactory performance shall be given in accordance with personnel regulations.

Section D:

The Employer recognizes its responsibility to assure employees fair and objective evaluations.

Section E:

At the same time that an annual performance rating is given, the responsible supervisor will discuss with the employee areas of potential development and improvement, including the employee's performance under the agency's work plan.

## ARTICLE 26
## PERSONNEL FILES

ection A:

The Official Personnel Files of all employees in the bargaining unit covered by this Agreement shall be maintained by the ffice of Personnel.

ection B:

Employees shall have the right to examine the contents of heir Official Personnel Folder. Upon request in accordance with egulations and procedures issued by the Office of Personnel, and hall have the right to obtain copies of any official documents herein.

ection C:

Upon presentation of written authorization by an employee, the nion representative may examine the employee's personnel file and ake copies of materials placed in his/her folder.

ection D:

The Department shall keep all arrests from the Metropolitan olice, fingerprint records and other confidential reports in a conidential file apart from the official personnel folder. No person hall have access to the confidential file without authorization rom the Director of Personnel.

ection E:

The access card signed by all those who have requested and been given access to the employee's file, as required by personnel regulations and procedures, shall be made available for review by the employee.

Section F:

Each employee shall have the right to present information immediately germane to any information contained in his/her official personnel record and have irrelevant or untimely information removed from the record.

## ARTICLE 27
## DETAILS AND TEMPORARY PROMOTIONS

Section A - Details:

1. A detail is the temporary official assignment of an employee

to a different position for a specified time period with the employee returning to his/her regular duties at the end of the detail. The employee on detail shall at all times be considered the incumbent of his/her regular position.

2. Details shall be made in accordance with personnel regulations and will be used for meeting temporary needs of the Department's work program and for on-thejob training. Details may be appropriately used to meet emergencies occasioned by abnormal work loads, changes in mission or organization, unanticipated absence, or to complete special projects.

3. When an employee is detailed to a higher graded position for more than ninety (90) days, he/she shall receive the higher rate of pay as acting pay, effective the pay period which begins on or after the ninety-first (91st) day.

4. For details in excess of thirty (30) days, the detail shall be documented, a copy given to the employee and a copy made a part of the employee's official personnel file.

5. For details in excess of ninety (90) days, the employee's performance in the position to which he/she has been detailed shall be evaluated (including a rating) by the detail supervisor; the detail evaluation shall be included in the employee's official personnel file.

6. Details shall not be made as a means of retaliation or punishment.

Section B - Temporary Promotions:

1. A career employee may be given a temporary promotion to meet a temporary need. At the end of the specified period of time, the employee shall be returned to the same or comparable position from which the employee was temporarily promoted.

2. A temporary promotion of 120 days or less may be made without regard to merit promotion requirements.

3. A temporary promotion exceeding 120 days shall be made in accordance with merit promotion procedures.

## ARTICLE 28
## POSITION MANAGEMENT AND CLASSIFICATION

Section A:

Each position covered in the bargaining unit that is in existe or is established or changed must be accurately described in

writing, and classified to the proper occupational title, series, schedule and grade.

Section B:

Employees shall be furnished a current, accurate, approved copy of the description of the position to which assigned at the time of the assignment, or upon request. Employees detailed or reassigned to established positions shall be given position descriptions at the time of assignment. Employees detailed to a unestablished position shall be furnished with statements of duties at the time of assignment to the detail.

Section C:

The position description shall be kept current and accurate. Changes to a position shall be incorporated in the position description to assure that the position is correctly classified/graded to the proper title, series, schedule and grade.

Section D:

Where language such as "other duties as assigned" or "performs other duties as assigned" appears in an employee's official position description, the clause shall mean those duties which must be performed and must be directly related to those duties listed in the employee's position description.

Section E:

The parties agree that the principle of equal pay for substantially equal work shall be applied to all position classifications and personnel actions in accordance with the D.C. Code.

Section F:

An employee, upon request, shall have access to organizational and functional charts, and other pertinent information directly related to the classification of his/her position.

Section G:

Violations of classification issues/equal pay for equal work shall be appealed through the procedures outlined in the District Personnel Manual, Chapter 11A, §1110.

## ARTICLE 29
## MERIT STAFFING

Section A - Purpose:

1. The Department shall ensure that merit promotion principles

are applied in a consistent and equitable manner to all applicants in bargaining unit positions.

2. All selections shall be based on objective, job-related selection criteria and shall be made without regard to race, color, religion, national origin, sex, age, marital status, personal apperance, sexual orientation, family responsibilities, matriculation, physical handicap, political affiliation or Union activity.

Section B:

All position within the bargaining unit shall be filled in accordance with the District's Merit Staffing Plan.

Section C:

The Department agrees that vacancy announcements shall be posted in accordance with personnel regulations for a period of at least ten (10) work days prior to the expiration date throughout the Department. If such announcements are limited to Department only, they may be posted five (5) days, consistent with District personnel regulations. Such announcements shall provide a synopsis of duties to be performed, qualifications required, any special knowledge, skills or ability that will be given consideration. The Union president or designee shall be furnished a copy of all vacancy announcements, cancellations, corrections or amendments.

Section D:

A review of an applicant's minimum qualifications shall be made by a representative of the D.C. Office of Personnel (DCOP). An applicant in the bargaining unit who is rated ineligible shall be notified by DCOP in writing. Redress, if any, shall be in accordance with the District's Merit Staffing Plan.

Section E:

If the selecting official interviews one (1) candidate, he/she shall interview all candidates in accordance with District Personnel Manual. Interviews must be job-related, reasonably consistent, and fair to all candidates, consistent with D.C. laws and regulations.

## ARTICLE 30
## CONTRACTING OUT

It is recognized that contracting out of work that is normally performed by employees covered by this Agreement is a mutual concern to the Department and the Union. The Department agrees to consult with the Union regarding the impact of such contracting out

on employees covered by this Agreement. The Department agrees to abide by appropriate District rules and regulations regarding contracting out.

When there will be adverse impact to bargaining unit employees, the Employer shall consult with the Union ninety (90) days prior to final action, except in emergencies. The Union shall have full opportunity to make its recommendations known to the Employer who will duly consider the Union's positions and give reasons in writing to the Union for any contracting out action.

## ARTICLE 31
## GENERAL PROVISIONS

Section A. - Distribution of Health Benefit Plan Brochures:

The Department through the Public Service Cluster #4, agrees to distribute the American Federation of Government Employees (AFGE) Health Benefit Plan Brochure to all eligible unit employees during open health enrollment periods, provided such brochures are made available to the Department by the Union.

Section B. - Receipt of Bi-Weekly Paychecks:

All employees shall receive bi-weekly paychecks as soon as they are sorted and distributed to the various work locations. The Department shall distribute checks once they are processed.

## ARTICLE 32
## REDUCTION-IN-FORCE

Section A:

The Department agrees to provide the Union with at least thirty (30) days notice prior to formal notification to employees of a proposed reduction-in-force due to reorganization or technological changes which may result in a reduction-in-force of employees in the bargaining unit. The Department further agrees to investigate alternatives for minimizing the effect on employees through reassignment, retraining, or job restructuring, restricting recruitment and other appropriate means to avoid separation of employees in full compliance with applicable laws and regulations.

Priority reemployment rights will be afforded to employees separated through reduction-in-force prior to filling vacant positions of the same or similar job classifications (except when the agency fills positions through in-service placement action) in accordance with District's reduction-in-force procedures.

Section B:

The Department shall implement all reductions-in-force in accordance with Title 1, Chapter 6, Subchapter XXV of the D.C. Code (1981 ed.) and Chapter 24 of the D.C. Personnel Regulations published in the D.C. Register.

Section C:

The Department shall implement the provisions of the Compensation Agreement for Compensation Units 1 and 2 concerning layoffs and furloughs.

## ARTICLE 33
## REORGANIZATION/REALIGNMENT

Prior to the Department's implementation of a reorganization/realignment, the Department shall notify the Union, in writing, and shall provide the Union with the following:

a. a description of the purpose and nature of the changes;

b. organizational charts both existing and proposed;

c. mission and function statements both existing and proposed;

d. staffing patterns both existing and proposed; and

e. any other relevant information needed by the Union to evaluate the reorganization and its impact on the bargaining unit.

## ARTICLE 34
## LEAVE ADMINISTRATION

Section A - Maternity:

Absence for maternity reasons is a period of approved absence for incapacitation related to pregnancy and confinement.

The granting of leave for this purpose is a combination of leave without pay, accumulated sick leave and annual leave. A pregnant employee is entitled to use her accumulated sick leave for period she is unable to work for medical reasons certified by a physician.

The employee is required to make known to her supervisor in advance her intent to request leave for maternity reasons, including the type of leave, approximate dates, and anticipated duration

to allow the Department to arrange for any staffing adjustments which might be necessary.

Section B - Paternity Leave:

A male employee may be granted his accumulated annual leave, leave without pay or a combination of both, for purposes of assisting or caring for his minor children or the mother of his newborn child while she is incapacitated for maternity reasons.

Section C - Leave for Adoptive Parents:

Request for leave by an employee, male or female, adopting a child may be granted based on his/her accumulated annual leave, leave without pay or a combination of both.

Section D:

Leave for maternity or paternity purposes may be granted for a period of up to three (3) months and may be extended to a maximum of six (6) months. The total amount of leave that can be granted for parenting reasons, consistent with this paragraph cannot exceed one (1) year.

Section E:

An employee will remain in the position or be placed in a position of like seniority, status and pay, upon return to work unless termination is otherwise required by expiration of appointment, by reduction-in-force, for cause, or for similar reasons unrelated to the maternity absence.

Section F:

Approval of leave shall be in accordance with District policies and regulations.

Section G - Union Business Leave:

Employees elected to any Union office or selected to perform work which takes them from their employer shall submit a written request for a Leave of Absence Without Pay. A request for a leave of absence shall be submitted two (2) weeks in advance. Such requests shall contain justification and dates of commencement and termination of such leave. The Employer agrees that the initial request for a leave of absence shall not exceed one (1) year.

The Employer shall have the right to grant or deny such requests. If granted, the initial leave of absence shall not exceed one (1) year and the employee benefit costs during that period will not be borne by the District government.

Section H - Education and Training Leave:

An employee may be granted a leave of absence without pay for

to one (1) year for educational or professional purposes. Such st must be submitted at least six (6) weeks in advance. The nuation of benefits shall be consistent with District's tions and policies.

ection I - Military and Reserve Component:

The parties agree that this section is placed in the Agreement or information purposes only and does not constitute as having been egotiated this term. If there is a conflict between District olicy and regulation regarding military and reserve components as tated herein, District policy and regulations shall prevail.

Members of the reserve components of the Armed Forces are ntitled to leave with pay for a maximum of fifteen (15) calendar ays in a calendar year upon submission of proper orders.

Members of the D.C. National Guard are entitled to unlimited ilitary leave without loss of pay for all days of service for any arade or encampment which the D.C. National Guard, or any portion hereof, may be ordered to perform by the Commanding General, but oes not include time spent on weekly drills and meetings of the .C. National Guard. Notwithstanding the above, additional mili- ary leave with pay will be granted to members of the reserve omponent of the armed forces of the National Guard for the purpose f providing military aid to enforce law for a period not to exceed w ty-two (22) work days in a calendar year.

ion J - Call-In-Time:

Request for leave for illness or emergencies are required at least one (1) hour prior to or within the first hour of the scheduled tour of duty. All requests shall be called in to the employee's immediate supervisor. If the immediate supervisor is not on duty, or cannot be reached, the employee should call the next designated supervisor or manager's office. The supervisor receiving the call shall convey the request to the proper supervisor.

Section K - Leave for Death in the Family:

In the event of a death in an employee's immediate family (grandparents, parents, spouse, children, brother or sister, mother or father-in-law, brother or sister-in-law, son or daughter-in-law) every effort will be made to grant the employee's request for annual leave or leave without pay.

## ARTILCE 35
## NO STRIKE OR LOCKOUT

Section A:

Under the provisions of Section 1705 of D.C. Law 2-139, it is awful to participate in, authorize or ratify a strike.

Section B:

The term strike as used herein means a concerted refusal to perform duties or any unauthorized concerted work stoppage or slowdown.

Section C:

No lockout of employees shall be instituted by the Employer during the term of this Agreement, except that the Department in a strike situation retains the right to close down any facilities and provide for the safety of employees, equipment or the public.

## ARTICLE 36
## SAVINGS CLAUSE

In the event any Article, Section or portion of the Agreement should be held invalid and unenforceable by any Court or higher authority of competent jurisdiction, such decision shall apply only to the specified Article, Section or portion thereof specified in the decision; and upon issuance of such a decision, either party may demand immediate negotiation for a substitute for the invalidated Article, Section, or portion thereof.

## ARTICLE 37
## DURATION AND FINALITY OF AGREEMENT

Section A:

This Agreement shall remain in full force and effect until September 30, 1990. The Agreement will become effective upon the Mayor's approval subject to the provisions of D.C. Code §1-618.15 (1987 ed.) and ratification by the Union. If disapproved because of certain provisions are asserted to be contrary to applicable law or if not ratified by the Union the parties shall meet within thirty (30) days to negotiate a legally constituted replacement provision or the offensive provision shall be deleted.

Section B:

The parties acknowledge that this contract represents the complete Agreement arrived at as a result of negotiations during which both had the unlimited right and opportunity to make demands and proposals with respect to any negotiable subject or matter. The Employer and the Union agrees to waive the right to negotiate with respect to any subject or matter referred to or covered or not specifically referred to or covered in this Agreement for the duration of this contract, unless by mutual consent or as provided in this Agreement.

Section C:

In the event that a state of civil emergency is declared by the Mayor (civil disorders, nature disasters, etc.) the provisions of this Agreement may be suspended by the Mayor during the time of emergency.

Section D:

This Agreement shall remain in effect until September 30, 1990 in accordance with Section A of this article, and will be automatically renewed for three (3) year periods thereafter unless either party gives to the other party written notice of intention to terminate or modify the Agreement no later than May 4, 1990.

Section E:

All terms and conditions of employment not covered by the terms of this Agreement shall continue to be subject to the Employer's direction and control provided, however, that if the Employer desires to institute a major change that has a significant impact upon the term(s) or condition(s) of employment of the entire bargaining unit or any group of barganing unit employees the Employer shall provide Union with advance notice and upon written request of the Union parties shall promptly negotiate the impact of such change.

## MEMORANDUM OF UNDERSTANDING

The parties agree that the issues of child care and flexible work schedules are appropriate subjects for labor-management discussions. Therefore, the parties agree that during the term of the contract either party may initiate discussions regarding these topics. Further, the Union will be given the opportunity to present to the Department information it has with respect to these items.

Louise Smothers

Louise Smothers, President
American Federation of
Government Employees, Local
2725

Date: 12-13-88

Karen-Ann Melehy for MP

Michelle Peterson
Labor Relations Officer
D.C. Office of Labor Relations
and Collective Bargaining

Date: 12-13-88

IN WITNESSES THEREOF, the parties have entered into this Agreement on this 18 day of December, 1988.

Alphonso Jackson, Director
Department of Public and Assisted Housing

Louise Smothers, President
Local 2725, American Federation of Government Employees, AFL-CIO

David Dennison
Director, Department of Housing and Community Development

Theodore Richardson, First Vice-President, Local 2725, American Federation of Government Employees, AFL-CIO

chelle Peterson, Chief Negotiator
C. Office of Labor Relations and Collective Bargaining

Vermond Vess, Asst. Chief Steward, Local 2725, American Federation of Government Employees, AFL-CIO

Nancy Holt, Department of Public and Assisted Housing

Patricia Allen, Negotiation Committee Member, Local 2725 American Federation of Government Employees, AFL-CIO

Dayton Watkins, Department of Housing and Community Development

Lolita Givens, Union Steward (DHCD), Local 2725, American Federation of Government Employees, AFL-CIO

Marian Fryer, Department of Housing and Community Development

Maggie Maple, Secretary
Local 2725, American Federation of Government Employees, AFL-CIO

Frances Sloan, Department of Housing and Community Development

Arkei A. Sharef, Union Steward Local 2725, American Federation of Government Employees, AFL-CIO

Alphonzo Johns, Department of Housing and Community Development

Terrie Bjorklund, Attorney to Local 2725, American Federation of Government Employees, AFL-CIO

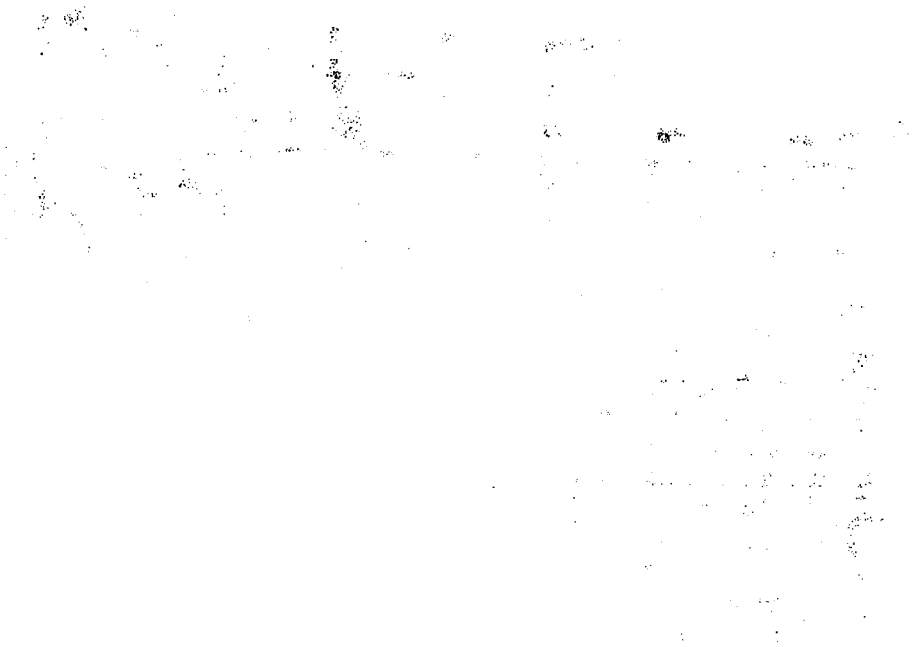
Moses Wilds, Jr., Department of Housing and Community Development

Lola Black, D.C. Office of Personnel

## APPROVAL

This Collective Bargaining Agreement Between the District of Columbia Government and the American Federation of Government Employees (AFGE), Local 2725, dated December 13, 1988 has been reviewed in accordance with Section 1715(a) of the District of Comprehensive Merit Personnel Act (CMPA) of 1978 (§1-347.15, D.C. Code, 1973 Edition, Supplement VII, 1980) and is hereby approved this 27th day of January, 1989.

Marion Barry, Jr.
Mayor



# COMPENSATION COLLECTIVE BARGAINING AGREEMENT

# BETWEEN

# THE DISTRICT OF COLUMBIA GOVERNMENT

# AND

# COMPENSATION UNITS 1 AND 2

# EFFECTIVE APRIL 1, 2013 – SEPTEMBER 30, 2017

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PREAMBLE

This Compensation Agreement is entered into between the Government of the District of Columbia and the undersigned labor organizations representing units of employees comprising Compensation Units 1 and 2, as certified by the Public Employee Relations Board (PERB).

The Agreement was reached after negotiations during which the parties were able to negotiate on any and all negotiable compensation issues, and contains the full agreement of the parties as to all such compensation issues. The Agreement shall not be reconsidered during its life nor shall either party make any changes in compensation for the duration of the Agreement unless by mutual consent or as required by law.

## ARTICLE 1
## WAGES

**SECTION A: FISCAL YEAR 2013**:

Effective the first day of the first full pay period beginning on or after April 1, 2013, the FY 2013 salary schedules of employees employed in bargaining units as certified and assigned to Compensation Units 1 and 2 by the Public Employees Relations Board shall be adjusted by 3%.

**SECTION B: FISCAL YEAR 2014:**

The Parties agree that the District shall set aside the amount equivalent to 1.5% of the total salaries for Compensation Units 1 and 2, as of November 19, 2012, to be used to implement any compensation adjustment required by the Classification and Compensation and Reform Project.

**SECTION C: FISCAL YEAR 2015**:

Effective the first day of the first full pay period beginning on or after October 1, 2014, the FY 2015 salary schedules of employees employed in bargaining units as certified and assigned to Compensation Units 1 and 2 by the Public Employees Relations Board shall be adjusted by 3%.

**SECTION D: FISCAL YEAR 2016:**

Effective the first day of the first full pay period beginning on or after October 1, 2015, the FY 2016 salary schedules of employees employed in bargaining units as certified and assigned to Compensation Units 1 & 2 by the Public Employees Relations Board shall be adjusted by 3%.

**SECTION E: FISCAL YEAR 2017:**

Effective the first day of the first full pay period beginning on or after October 1, 2016, the FY 2017 salary schedules of employees employed in bargaining units as certified and assigned to Compensation Units 1 & 2 by the Public Employees Relations Board shall be adjusted by 3%.

## ARTICLE 2
## METRO PASS

The District of Columbia Government shall subsidize the cost of monthly transit passes for personal use by employees by not less than twenty five ($25.00) per month for employees who purchase and use such passes to commute to and from work.

## ARTICLE 3
## PRE-PAID LEGAL PLAN

**SECTION A:**

The Employer shall make a monthly contribution of ten dollars ($10.00) for each bargaining unit member toward a pre-paid legal services plan. The Employer shall make monthly contributions directly to the designated provider of the legal services program.

**SECTION B:**

The plan shall be contracted for by the Union subject to a competitive bidding process where bidders are evaluated and selected by the Union. The District may present a proposed contract which shall be evaluated on the same basis as other bidders. The contract shall provide that the Employer will be held harmless from any liability arising out of the implementation and administration of the plan by the benefit provider, that the benefit provider will supply utilization statistics to the Employer and the Union upon request for each year of the contract, and that the benefit provider shall bear all administrative costs.

**SECTION C:**

The parties shall meet to develop procedures to implement the legal plan which shall be binding upon the benefit provider. The procedures shall include an enrollment process.

**SECTION D:**

To be selected for a contract under this Article, the benefit provider must maintain an office in the District of Columbia; be incorporated in the District and pay a franchise tax and other applicable taxes; have service providers in the District; and maintain a District bank account.

**SECTION E:**

The Employer's responsibility under the terms of this Article shall be as outlined in Section C of this Article and to make premium payments as is required under Section A of this Article. To the extent that any disputes or inquiries are made by the legal services provider chosen by the Union, those inquiries shall be made exclusively to the Union. The Employer shall only be required to communicate with the Union to resolve any disputes that may arise in the administration of this Article.

## ARTICLE 4
## DISTRICT OF COLUMBIA
## NEGOTIATED EMPLOYEE ASSISTANCE HOME PURCHASE PROGRAM

**SECTION A:**

The Parties shall continue the Joint Labor-Management Taskforce on Employee Housing.

**SECTION B:**

Pursuant to the DPM, Part 1, Chapter 3 §301, the District provides a preference for District residents in employment. In order to encourage employees to live and work in the District of Columbia, a joint Labor-Management Task Force on Employee Housing was established during previous negotiations with Compensation Units 1 & 2. The Taskforce strives to inform employees of the programs currently available for home ownership in the District of Columbia. Additionally, the Taskforce collaborates with other government agencies including the Department of Housing and Community Development and the District's Housing Finance Agency to further affordable housing opportunities for bargaining unit employees, who have been employed by the District Government for at least one year.

**SECTION C:**

The parties agree that $500,000.00 will be set aside to be used toward Negotiated employee Assistance Home Purchase Program (NEAHP) for the duration of the Agreement. If at any time, the funds set aside have been depleted, the Parties will promptly convene negotiations to provide additional funds for the program.

**SECTION D**:

Any funds set aside in Fiscal Years 2014, 2015, 2016 and 2017 shall be available for expenditure in that fiscal year or any other fiscal year covered by the Compensation Units 1 and 2 Agreement. All funds set aside for housing incentives shall be expended or obligated prior to the expiration of the Compensation Units 1 and 2 Agreement for FY 2014 – FY 2017.

## ARTICLE 5
## BENEFITS COMMITTEE

**SECTION A:**

The parties agree to continue their participation on the District's Joint Labor-Management Benefits Committee for the purpose of addressing the benefits of employees in Compensation Units 1 and 2. The Benefits Committee shall meet quarterly, in January, April, July and October of each year.

**SECTION B: RESPONSIBILITIES:**

The Parties shall be authorized to consider all matters that concern the benefits of employees in Compensation Units 1 and 2 that are subject to mandatory bargaining between the parties. The Parties shall be empowered to address such matters only to the extent granted by the Unions in Compensation Units 1 and 2 and the District of Columbia Government. The parties agree to apply a system of expedited arbitration if necessary to resolve issues that are subject to mandatory bargaining. The Committee may, by consensus, discuss and consider other benefit issues that are not mandatory bargaining subjects.

**SECTION C:**

The Committee shall:

1. Monitor the quality and level of services provided to covered employees under existing Health, Optical and Dental Insurance Plans for employees in Compensation Units 1 and 2.

2. Recommend changes and enhancements in Health, Optical and Dental benefits for employees in Compensation Units 1 and 2 consistent with Chapter 6, Subchapter XXI of the D.C. Official Code (2001 ed.).

3. With the assistance of the Office of Contracting and Procurement, evaluate criteria for bids, make recommendations concerning the preparation of solicitation of bids and make recommendations to the contracting officer concerning the selection of providers following the receipt of bids, consistent with Chapter 4 of the D.C. Official Code (2001 ed.).

4. Following the receipt of bids to select health, dental, optical, life and disability insurance providers, the Union's Chief Negotiator shall be notified to identify no more than two individuals to participate in the RFP selection process.

5. Explore issues concerning the workers' compensation system that affect employees in Compensation Units 1 and 2 consistent with Chapter 6, Subchapter XXIII of the D.C. Official Code (2001 ed.).

6. The Union shall be notified of proposed benefit programs to determine the extent to which they impact employees in Compensation Units 1 and 2. Upon notification, the Union shall inform the Office of Labor Relations and Collective Bargaining within ten (10) calendar days to discuss any concerns it has regarding the impact on employees in Compensation Units 1 and 2.

## ARTICLE 6
## BENEFITS

**SECTION A: LIFE INSURANCE:**

**1.** Life insurance is provided to covered employees in accordance with §1-622.01, *et seq.* of the District of Columbia Official Code (2001 Edition) and Chapter 87 of Title 5 of the United States Code.

(a) District of Columbia Official Code §1-622.03 (2001 Edition) requires that benefits shall be provided as set forth in §1-622.07 to all employees of the District first employed after September 30, 1987, except those specifically excluded by law or by rule.

(b) District of Columbia Official Code §1-622.01 (2001 Edition) requires that benefits shall be provided as set forth in Chapter 87 of Title 5 of the United States Code for all employees of the District government first employed before October 1, 1987, except those specifically excluded by law or rule and regulation.

**2.** The current life insurance benefits for employees hired on or after October 1, 1987 are: The District of Columbia provides life insurance in an amount equal to the employee's annual salary rounded to the next thousand, plus an additional $2,000. Employees are required to pay two-thirds (2/3) of the total cost of the monthly premium. The District Government shall pay one-third (1/3) of the total cost of the premium. Employees may choose to purchase additional life insurance coverage through the District Government. These additions to the basic coverage are set-forth in the schedule below:

| | | |
|---|---|---|
| Option A – Standard | Provides $10,000 additional coverage | Cost determined by age |
| Option B – Additional | Provides coverage up to five times the employee's annual salary | Cost determined by age and employee's salary |
| Option C – Family | Provides $5,000 coverage for the eligible spouse and $2,500 for each eligible child. | Cost determined by age. |

Employees must contact their respective personnel offices to enroll or make changes in their life insurance coverage.

**SECTION B: HEALTH INSURANCE:**

1. Pursuant to D.C. Official Code §1-621.02 (2001 Edition), all employees covered by this agreement and hired after September 30, 1987, shall be entitled to enroll in group health insurance coverage provided by the District of Columbia.

**(a)** Health insurance coverage shall provide a level of benefits comparable to the plan(s) provided on the effective date of this agreement. Benefit levels shall not be reduced during the term of this agreement except by mutual agreement of the District, representatives of Compensation Units 1 and 2 and the insurance carrier(s). District employees are required to execute an enrollment form in order to participate in this program.

**(b)** The District may elect to provide additional health care providers for employees employed after September 30, 1987, provided that such addition of providers does not reduce the current level of benefits provided to employees. Should the District Government decide to expand the list of eligible providers, the District shall give Compensation Units 1 & 2 representatives notice of the proposed additions.

**(c)** Employees are required to contribute 25% of the total premium cost of the employee's selected plan. The District of Columbia Government shall contribute 75% of the premium cost of the employee's selected plan.

2. Pursuant to D.C. Official Code §1-621.01 (2001 Edition), all District employees covered by this agreement and hired before October 1, 1987, shall be eligible to participate in group health insurance coverage provided through the Federal Employees Health Benefits Program (FEHB) as provided in Chapter 89 of Title 5 of the United States Code. This program is administered by United States Office of Personnel Management.

3. The plan descriptions shall provide the terms of coverage and administration of the respective plans. Employees and union representatives are entitled to receive a copy of the summary plan description upon request. Additionally, employees

and union representatives are entitled to review copies of the actual plan description upon advance request.

**SECTION C: OPTICAL AND DENTAL:**

**1.** The District shall provide Optical and Dental Plan coverage at a level of benefits comparable to the plan(s) provided on the effective date of this agreement. Benefit levels shall not be reduced during the term of this agreement except by mutual agreement of the District, the Union and the insurance carrier(s). District employees are required to execute an enrollment form in order to participate in the Optical and Dental program.

**2.** The District may elect to provide additional Optical and/or Dental providers, provided that such addition of providers does not reduce the current level of benefits provided to employees. Should the District Government decide to expand the list of eligible providers, the District shall give Compensation Units 1 & 2 representatives notice of the proposed additions.

**SECTION D: SHORT-TERM DISABILITY INSURANCE PROGRAM**

Employees covered by this Agreement shall be eligible to enroll, at their own expense, in the District's Short-Term Disability Insurance Program, which provides for partial income replacement when employees are required to be absent from duty due to a non-work-related qualifying medical condition. Employees may use income replacement benefits under the program in conjunction with annual or sick leave benefits provided for in this Agreement.

**SECTION E: ANNUAL LEAVE:**

**1.** In accordance with D.C. Official Code §1-612.03 (2001 Edition), full-time employees covered by the terms of this agreement are entitled to:

**(a)** one-half (1/2) day (4 hours) for each full biweekly pay period for an employee with less than three years of service (accruing a total of thirteen (13) annual leave days per annum);

**(b)** three-fourths (3/4) day (6 hours) for each full biweekly pay period, except that the accrual for the last full biweekly pay period in the year is one and one-fourth days (10 hours), for an employee with more than three (3) but less than fifteen (15) years of service (accruing a total of twenty (20) annual leave days per annum); and,

**(c)** one (1) day (8 hours) for each full biweekly pay period for an employee with fifteen (15) or more years of service (accruing a total of twenty-six (26) annual leave days per annum).

**2.** Part-time employees who work at least 40 hours per pay period earn annual leave at one-half the rate of full-time employees.

3. Employees shall be eligible to use annual leave in accordance with the District of Columbia laws.

**SECTION F: SICK LEAVE:**

1. In accordance with District of Columbia Official Code §1-612.03 (2001 Edition), a full-time employee covered by the terms of this agreement may accumulate up to thirteen (13) sick days in a calendar year.

2. Part-time employees for whom there has been established in advance a regular tour of duty of a definite day or hour of any day during each administrative workweek of the biweekly pay period shall earn sick leave at the rate of one (1) hour for each twenty (20) hours of duty. Credit may not exceed four (4) hours of sick leave for 80 hours of duty in any pay period. There is no credit of leave for fractional parts of a biweekly pay period either at the beginning or end of an employee's period of service.

**SECTION G: OTHER FORMS OF LEAVE:**

1. **Military Leave**: An employee is entitled to leave, without loss of pay, leave, or credit for time of service as reserve members of the armed forces or as members of the National Guard to the extent provided in D.C. Official Code §1-612.03(m) (2001 Edition).

2. **Court Leave:** An employee is entitled to leave, without loss of pay, leave, or service credit during a period of absence in which he or she is required to report for jury duty or to appear as a witness on behalf of the District of Columbia Government, or the Federal or a state or local government to the extent provided in D.C. Official Code §1-612.03(l) (2001 Edition).

3. **Funeral Leave:**

a. An employee is entitled to two (2) days of leave, without loss of pay, leave, or service credit to make arrangements for or to attend the funeral or memorial service for an immediate relative. In addition, the Employer shall grant an employee's request for annual or compensatory time up to three (3) days upon the death of an immediate relative. Approval of additional time shall be at the Employer's discretion. However, requests for leave shall be granted unless the Agency's ability to accomplish its work would be seriously impaired.

b. For the purpose of this section "immediate relative" means the following relatives of the employee: spouse (including a person identified by an employee as his/her "domestic partner" (as defined in D.C. Official Code §32-701 (2001 edition), and related laws), and parents thereof, children (including adopted and foster children and children of whom the employee is legal guardian and spouses thereof, parents, grandparents, grandchildren, brothers, sisters, and spouses thereof. For the purposes of certification of leave, employees shall provide a copy of the obituary or death notice, a note from clergy or funeral professional or a death certificate upon the Employer's request.

c. An employee is entitled to not more than three (3) days of leave, without loss of pay, leave, or service credit to make arrangements for or to attend the funeral or memorial service for a family member who died as a result of a wound, disease or injury incurred while serving as a member of the armed forces in a combat zone to the extent provided in D.C. Official Code §1-612.03(n) (2001 Edition).

**SECTION H: PRE-TAX BENEFITS:**

1. Employee contributions to benefits programs established pursuant to D.C. Official Code §1-611.19 (2001 ed.), including the District of Columbia Employees Health Benefits Program, may be made on a pre-tax basis in accordance with the requirements of the Internal Revenue Code and, to the extent permitted by the Intemal Revenue Code, such pre-tax contributions shall not effect a reduction of the amount of any other retirement, pension, or other benefits provided by law.

2. To the extent permitted by the Internal Revenue Code, any amount of contributions made on a pre-tax basis shall be included in the employee's contributions to existing life insurance, retirement system, and for any other District government program keyed to the employee's scheduled rate of pay, but shall not be included for the purpose of computing Federal or District income tax withholdings, including F.I.C.A., on behalf of any such employee.

**SECTION I: RETIREMENT:**

1. **CIVIL SERVICE RETIREMENT SYSTEM (CSRS):** As prescribed by 5 U.S.C. §8401 and related chapters, employees first hired by the District of Columbia Govemment before October 1, 1987, are subject to the provisions of the CSRS, which is administered by the U.S. Office of Personnel Management. Under Optional Retirement the aforementioned employee may choose to retire when he/she reaches:

**(a)** Age 55 and 30 years of service;
**(b)** Age 60 and 20 years of service;
**(c)** Age 62 and 5 years of service.

Under Voluntary Early Retirement, which must be authorized by the U.S. Office of Personnel Management, an employee may choose to retire when he/she reaches:

**(a)** Age 50 and 20 years of service;
**(b)** Any age and 25 years of service.

The pension of an employee who chooses Voluntary Early Retirement will be reduced by 2% for each year under age 55.

## 2. CIVIL SERVICE RETIREMENT SYSTEM: SPECIAL RETIREMENT PROVISIONS FOR LAW ENFORCEMENT OFFICERS:

Employees first hired by the District of Columbia Government before October 1, 1987, who are subject to the provisions of the CSRS and determined to be:

(a) a "law enforcement officer" within the meaning of 5 U.S.C. §8331(20)(D); and

(b) eligible for benefits under the special retirement provision for law enforcement officers;

shall continue to have their retirement benefits administered by the U. S. Office of Personnel Management in accordance with applicable law and regulation.

## 3. DEFINED CONTRIBUTION PENSION PLAN:

Section A:

The District of Columbia shall continue the Defined Contribution Pension Plan currently in effect which includes:

(1) All eligible employees hired by the District on or after October 1, 1987, are enrolled into the defined contribution pension plan.

(2) As prescribed by §1-626.09(c) of the D.C. Official Code (2001 Edition) after the completion of one year of service, the District shall contribute an amount not less than 5% of their base salary to an employee's Defined Contribution Pension Plan account. The District government funds this plan; there is no employee contribution to the Defined Contribution Pension Plan.

(3) As prescribed by §1-626.09(d) of the D.C. Official Code (2001 Edition) the District shall contribute an amount not less than an additional .5% of a detention officer's base salary to the same plan.

(4) Compensation Units 1 and 2 Joint Labor Management Technical Advisory Pension Reform Committee

(a) Establishment of the Joint Labor-Management Technical Advisory Pension Reform Committee (JLMTAPRC or Committee)

(1) The Parties agree that employees should have the security of a predictable level of income for their retirement after a career in public service. In order to support the objective of providing retirement income for employees hired on or after October 1, 1987, the District shall plan and implement an enhanced retirement program effective October 1, 2008. The enhanced program will consist of a

deferred compensation component and a defined benefit component.

(2) Accordingly, the Parties agree that the JLMTAPRC is hereby established for the purpose of developing an enhanced retirement program for employees covered by the Compensation Units 1 and 2 Agreement.

(b) Composition of the JLMTAPRC

The Joint Labor-Management Technical Advisory Pension Reform Committee will be composed of six (6) members, three (3) appointed by labor and three (3) appointed by management, and the Chief Negotiators (or his/her designee) of Compensation Units 1 and 2. Appointed representatives must possess a pension plan background including but not limited to consulting, financial or actuarial services. In addition, an independent consulting firm with demonstrated experience in pension plans design and actuarial analysis will support the Committee.

(c) Responsibilities of the JLMTAPRC

The Committee shall be responsible to:

- Plan and design an enhanced retirement program for employees hired on or after October 1, 1987 with equitable sharing of costs and risks between employee and employer;
- Establish a formula cap for employee and employer contributions;
- Establish the final compensation calculation using the highest three-year consecutive average employee wages;
- Include retirement provisions such as disability, survivor and death benefits, health and life insurance benefits;
- Design a plan sustainable within the allocated budget;
- Draft and support legislation to amend the D.C. Code in furtherance of the "Enhanced Retirement Program."

(d) Duration of the Committee

The Committee shall complete and submit a report with its recommendations to the City Administrator for the District of Columbia within one hundred and twenty (120) days after the effective date of the Compensation Units 1 and 2 Agreement.

**4. TIAA-CREF PLAN:**

For eligible education service employees at the University of the District of Columbia hired by the University or a predecessor institution, the University will contribute an amount not less than seven percent (7%) of their base salary to the Teachers Insurance and Annuity Association College Retirement Equities Fund (TIAA-CREF).

**SECTION J: HOLIDAYS:**

1. As prescribed by D.C. Official Code §1-612.02 (2001 Edition) the following legal public holidays are provided to all employees covered by this agreement:

(a) New Year's Day, January 1st of each year;
(b) Dr. Martin Luther King, Jr.'s Birthday, the 3rd Monday in January of each year;
(c) Washington's Birthday, the 3rd Monday in February of each year;
(d) Emancipation Day, April 16th;
(e) Memorial Day, the last Monday in May of each year;
(f) Independence Day, July 4th of each year;
(g) Labor Day, the 1st Monday in September of each year;
(h) Columbus Day, the 2nd Monday in October of each year;
(i) Veterans Day, November 11th of each year;
(j) Thanksgiving Day, the 4th Thursday in November of each year; and
(k) Christmas Day, December 25th of each year.

2. When an employee, having a regularly scheduled tour of duty is relieved or prevented from working on a day District agencies are closed by order of the Mayor, he or she is entitled to the same pay for that day as for a day on which an ordinary day's work is performed.

## ARTICLE 7
## OVERTIME

**SECTION A: Overtime Work:**

Hours of work authorized in excess of eight (8) hours in a pay status in a day or forty (40) hours in a pay status in a work week shall be overtime work for which an employee shall receive either overtime pay or compensatory time unless the employee has used unscheduled leave during the eight (8) hours shift or the forty (40) hour work week. The unscheduled leave rule will not apply when an employee has worked a sixteen (16) hour shift (back-to-back) and takes unscheduled leave for an eight (8) hour period following the back-to-back shift or where an employee has indicated his/her preference not to work overtime and the Employer has no other option but to order the employee to work overtime. Scheduled leave is leave requested and approved prior to the close of the preceding shift.

**SECTION B: Compressed, Alternate and Flexible Schedules:**

1. Compressed, Alternate and Flexible schedules may be jointly determined within a specific work area that modifies this overtime provision (as outlined in Section A of this Article) but must be submitted to the parties to this contract prior to implementation. This Agreement to jointly determine compressed schedules does not impact on the setting of the tour of duty.

2. When an employee works a Compressed, Alternate, and Flexible schedule, which generally means (1) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays, and (2) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays, the employee would receive overtime pay or compensatory time for all hours in a pay status in excess of his/her assigned tour of duty, consistent with the 2004 District of Columbia Omnibus Authorization Act, 118 Stat. 2230, Pub. L. 108-386 Section (October 30, 2004).

3. The purpose of this Section is to allow for authorized Compressed, Alternate, and Flexible time schedules which exceed eight (8) hours in a day or 40 hours in a week to be deemed the employee's regular tour of duty, and not be considered and not be considered overtime within the confines of the specific compressed work schedule and this Article. Bargaining unit members so affected would receive overtime or compensatory time for all hours in pay status in excess of their assigned tour of duty.

**SECTION C:**

Subject to the provisions of Section D of this Article, an employee who performs overtime work shall receive either pay or compensatory time at a rate of time and one-half (1-1/2) for each hour of work for which overtime is payable.

**SECTION D:**

Bargaining Unit employees shall receive overtime pay unless the employee and the supervisor mutually agree to compensatory time in lieu of pay for overtime work. Such mutual agreement shall be made prior to the overtime work being performed.

**SECTION E:**

Paramedics and Emergency Medical Services Technicians employed by the Fire and Emergency Medical Services Department and represented by the American Federation of Government Employees, Local 3721 shall earn overtime after they have worked 40 hours in a week.

## ARTICLE 8
## INCENTIVE PROGRAMS

**PART I - SICK LEAVE INCENTIVE PROGRAM:**

In order to recognize an employee's productivity through his/her responsible use of accrued sick leave, the Employer agrees to provide time-off in accordance with the following:

**SECTION A:**

A full time employee who is in a pay status for the leave year shall accrue annually:

1. Three (3) days off for utilizing a total of no more than two (2) days of accrued sick leave.

2. Two (2) days off for utilizing a total of more than two (2) but not more than four (4) days of accrued sick leave.

3. One (1) day off for utilizing a total of more than four (4) but no more than five (5) days of accrued sick leave.

**SECTION B:**

Employees in a non-pay status for no more than two (2) pay periods for the leave year shall remain eligible for incentive days under this Article. Sick leave usage for maternity or catastrophic illness/injury, not to exceed two (2) consecutive pay periods, shall not be counted against sick leave for calculating eligibility for incentive leave under this Article.

**SECTION C:**

Time off pursuant to a sick leave incentive award shall be selected by the employee and requested at least three (3) full workdays in advance of the leave date. Requests for time off pursuant to an incentive award shall be given priority consideration and the employee's supervisor shall approve such requests for time off unless staffing needs or workload considerations dictate otherwise. If the request is denied, the employee shall request and be granted a different day off within one month of the date the employee initially requested. Requests for time off shall be made on the standard "Application for Leave" form.

**SECTION D:**

All incentive days must be used in full-day increments following the leave year in which they were earned. Incentive days may not be substituted for any other type of absence from duty. There shall be no carryover or payment for any unused incentive days.

**SECTION E:**

Part-time employees are not eligible for the sick leave incentive as provided in this Article.

**SECTION F:**

This program shall be in effect in Fiscal Years 2014, 2015, 2016 and 2017.

**PART II – PERFORMANCE INCENTIVE PILOT PROGRAM:**

In order to recognize employees' productivity through their accomplishment of established goals and objectives, special acts toward the accomplishment of agency initiatives, demonstrated leadership in meeting agency program and/or project goals and/or the District's Strategic Plan initiatives, the Employer, in accordance with criteria established by the High Performance Workplace Committee agrees to establish pilot incentive programs within agencies, including time off without loss of pay or charge to leave as an incentive award. The District of Columbia Government Office of Labor Management Partnerships and the District of Columbia Incentive Awards Committee may serve as resources at the request of the parties in the implementation of the pilot incentive programs within agencies.

## ARTICLE 9
## CALL-BACK/CALL-IN/ON-CALL AND PREMIUM PAY

**SECTION A: CALL-BACK**

A minimum of four (4) hours of overtime, shall be credited to any employee who is called back to perform unscheduled overtime work on a regular workday after he/she completes the regular work schedule and has left his/her place of employment.

**SECTION B: CALL-IN**

1. When an employee is called in before his/her regular tour of duty to perform unscheduled overtime and there is no break before the regular tour is to begin, a minimum of two (2) hours of overtime shall be credited to the employee.

2. A minimum of four (4) hours of overtime work shall be credited to any employee who is called in when not scheduled and informed in advance, on one of the days when he/she is off duty.

**SECTION C: ON-CALL**

1. An employee may be required to be on call after having completed his/her regular tour of duty. The employer shall specify the hours during which the employee is on call; and shall compensate the employee at a rate of twenty-five percent (25%) of his/her basic rate of pay for each hour the employee is on call.

2. The employee's schedule must specify the hours during which he/she will be required to remain on-call. On call designation will be made on the form attached as Appendix 1.

**SECTION D: HOLIDAY PAY**

An employee who is required to work on a legal holiday falling within his or her regular basic workweek, shall be paid at the rate of twice his or her regular basic rate of pay for not more than eight (8) hours of such work.

**SECTION E: NIGHT DIFFERENTIAL**

An employee shall receive night differential pay at a rate of ten percent (10%) in excess of their basic day rate of compensation when they perform night work on a regularly scheduled tour of duty falling between 6:00 p.m. and 6:00 a.m. Employees shall receive night differential in lieu of shift differential.

**SECTION F: PAY FOR SUNDAY WORK**

A full-time employee assigned to a regularly scheduled tour of duty, any part of which includes hours that fall between midnight Saturday and midnight Sunday, is entitled to Sunday premium pay for each hour of work performed which is not overtime work and which is not in excess of eight (8) hours for each tour of duty which begins or ends on Sunday. Sunday premium pay is computed as an additional twenty-five percent (25%) of the employee's basic rate of compensation.

**SECTION G: ADDITIONAL INCOME ALLOWANCE FOR CHILD AND FAMILY SERVICES**

1. The Additional Income Allowance (AIA) program within the Child and Family Services Agency (CFSA) which was established pursuant to the "Personnel Recruitment and Retention Incentives for Child and Family Services Agency Compensation System Changes Emergency Approval Resolution of 2001", Council Resolution 14-53 (March 23, 2001) and as contained in Chapter 11, Section 1154 of the District Personnel Manual, "Recruitment and Retention Incentives – Child and Family Services Agency," shall remain in full force and effect during the term of this Agreement.

2. The Administration of the AIA within CFSA shall be governed by the implementing regulations established in Child and Family Services Agency, Human Resources Administration Issuance System, HRA Instruction No. IV.11-3.

3. **OTHER SUBORDINATE AGENCIES WITH SIGNIFICANT RECRUITMENT AND RETENTION PROBLEMS**

Subordinate agencies covered by this Agreement may provide additional income allowances for positions that have significant recruitment and retention problems consistent with Chapter 11, Part B, Section 1143 of the District Personnel Manual.

# ARTICLE 10
# MILEAGE ALLOWANCE

**SECTION A:**

The parties agree that the mileage allowance established for the employees of the Federal Government who are authorized to use their personal vehicles in the performance of their official duties shall be the rate for Compensation Units 1 and 2 employees, who are also authorized in advance, by Management to use their personal vehicles in the performance of their official duties.

**SECTION B:**

To receive such allowance, authorization by Management must be issued prior to the use of the employee's vehicle in the performance of duty. Employees shall use the appropriate District Form to document mileage and request reimbursement of the allowance.

**SECTION C:**

1. Employees required to use their personal vehicle for official business if a government vehicle is not available, who are reimbursed by the District on a mileage basis for such use, are within the scope of the District of Columbia Non-Liability Act (D.C. Official Code §§2-411 through 2-416 (2001 Edition)). The Non-Liability Act generally provides that a District Employee is not subject to personal liability in a civil suit for property damage or for personal injury arising out of a motor vehicle accident during the discharge of the employee's official duties, so long as the employee was acting within the scope of his or her employment.

2. Claims by employees for personal property damage or loss incident to the use of their personal vehicle for official business if a government vehicle is not available may be made under the Military Personnel and Civilian Employees Claim Act of 1964 (31 U.S.C. §3701 *et seq.*).

**SECTION D:**

No employee within Compensation 1 and 2 shall be required to use his/her personal vehicle unless the position vacancy announcement, position description or other pre-hire

documentation informs the employee that the use of his/her personal vehicle is a requirement of the job.

**SECTION E:**

Employees required as a condition of employment to use their personal vehicle in the performance of their official duties may be provided a parking space or shall be reimbursed for non-commuter parking expenses, which are incurred in the performance of their official duties.

## ARTICLE 11
## ANNUAL LEAVE/COMPENSATORY TIME BUY-OUT

**SECTION A:**

An employee who is separated or is otherwise entitled to a lump-sum payment under personnel regulations for the District of Columbia Government shall receive such payment for each hour of unused annual leave or compensatory time in the employee's official leave record.

**SECTION B:**

The lump-sum payment shall be computed on the basis of the employee's rate at the time of separation in accordance with such personnel regulations.

## ARTICLE 12
## BACK PAY

Arbitration awards or settlement agreements in cases involving an individual employee shall be paid within sixty (60) days of receipt from the employee of relevant documentation, including documentation of interim earnings and other potential offsets. The responsible Agency shall submit the SF-52 and all other required documentation to the Department of Human Resources within thirty (30) days upon receipt from the employee of relevant documentation.

## ARTICLE 13
## DUTY STATION COVERAGE

The Fire and Emergency Medical Services employees and the correctional officers at the Department of Corrections and the Department of Youth Rehabilitative Services who are covered under Section 7(k) of the Fair Labor Standards Act shall be compensated a minimum of one hour pay if required to remain at his/her duty station beyond the normal tour of duty.

## ARTICLE 14
## GRIEVANCES

**SECTION A:**

This Compensation Agreement shall be incorporated by reference into local working conditions agreements in order to utilize the grievance/arbitration procedure in those Agreements to consider alleged violations of this Agreement.

**SECTION B:**

Grievances concerning compensation shall be filed with the appropriate agency and the Office of Labor Relations and Collective Bargaining under the applicable working conditions agreement.

## ARTICLE 15
## LOCAL ENVIRONMENT PAY

**SECTION A:**

Each department or agency shall eliminate or reduce to the lowest level possible all hazards, physical hardships, and working conditions of an unusual nature. When such action does not overcome the hazard, physical hardship, or unusual nature of the working condition, additional pay is warranted. Even though additional pay for exposure to a hazard, physical hardship, or unusual working condition is authorized, there is a responsibility on the part of a department or agency to initiate continuing positive action to eliminate danger and risk which contribute to or cause the hazard, physical hardship, or unusual working condition. The existence of pay for exposure to hazardous working conditions or hardships in a local environment is not intended to condone work practices that circumvent safety laws, rules and regulations.

**SECTION B:**

Local environment pay is paid for exposure to (1) a hazard of an unusual nature which could result in significant injury, illness, or death, such as on a high structure when the hazard is not practically eliminated by protective facilities or an open structure when adverse conditions exist, e.g., darkness, lightning, steady rain, snow, sleet, ice, or high wind velocity; (2) a physical hardship of an unusual nature under circumstances which cause significant physical discomfort in the form of nausea, or skin, eye, ear or nose irritation, or conditions which cause abnormal soil of body and clothing, etc., and where such distress or discomfort is not practically eliminated.

**SECTION C:**

Wage Grade (WG) employees as listed in Chapter 11B, Appendix C of the DPM and any other employee including District Service (DS) employees as determined pursuant to Section 4 of this Article and Chapter 11B, Subpart 10.6 of the DPM are eligible for environmental differentials.

**SECTION D:**

The determination as to whether additional pay is warranted for workplace exposure to environmental hazards, hardships or unusual working conditions may be initiated by an agency or labor organization in accordance with the provisions of Chapter 11B, Subpart 10.6 of the DPM.

**SECTION E:**

Employees eligible for local environment pay under the terms of this Agreement shall be compensated as follows:

1. **Severe Exposure.** Employees subject to "Severe" exposure shall receive local environment pay equal to twenty seven percent (27%) of *the rate for RW 10, step 2 on the Compensation Unit 2 pay schedule.* The following categories of work are currently paid the rate for "severe" exposure:

- High Work

2. **Moderate Exposure.** Employees subject to "Moderate" exposure shall receive local environment pay equal to ten percent (10%) of *the rate for RW 10, step 2 on the Compensation Unit 2 pay schedule.* The following categories of work are currently paid the rate for "moderate" exposure:

- Explosives and Incendiary Materials – High Degree Hazard
- Poison (Toxic Chemicals) – High Degree Hazard
- Micro Organisms – High Degree Hazard

3. **Low Exposure.** Employees subject to "Low" exposure shall receive local environment pay equal to five percent (5%) of *the rate for RW 10, step 2 on the Compensation Unit 2 pay schedule.* The following categories of work are currently paid the rate for "low" exposure:

- Dirty Work
- Cold Work
- Hot Work
- Welding Preheated metals

- Explosives and Incendiary Materials
  – Low Degree Hazard
- Poison (Toxic Chemicals)
  – Low Degree Hazard
- Micro Organisms
  – Low Degree Hazard

**SECTION F:**

These changes to local environment pay shall not take effect until the payroll modules of PeopleSoft are implemented by the District of Columbia.

## ARTICLE 16
## NEWLY CERTIFIED BARGAINING UNITS

For units placed into a new compensation unit, working conditions or non-compensatory matters shall be negotiated simultaneous with negotiations concerning compensation. Where the agreement is for a newly certified collective bargaining unit assigned to an existing compensation unit, the parties shall proceed promptly to negotiate simultaneously any working conditions, other non-compensatory matters, and coverage of the compensation agreement. There should not be read into the new language any intent that an existing compensation agreement shall become negotiable when there is a newly certified collective bargaining unit. Rather, the intent is to require prompt negotiations of non-compensatory matters as well as application of compensation (e.g., when pay scale shall apply to the newly certified unit).

## ARTICLE 17
## TERM AND TEMPORARY EMPLOYEES

The District of Columbia recognizes that many temporary and term employees have had their terms extended to perform permanent services. To address the interests of current term and temporary employees whose appointments have been so extended over time and who perform permanent services, the District of Columbia and the Union representing the employees in Compensation Units 1 and 2 agree to the following:

**SECTION A:**

Joint labor-management committees established in each agency/program in the Compensation Units 1 and 2 collective bargaining agreement which was effective through September 30, 2010, shall continue and will identify temporary and term employees whose current term and or temporary appointments extend to September 30, 2006, and who perform permanent services in District agency programs.

**SECTION B:**

Each Agency and Local Union shall review all term appointments within the respective agencies to determine whether such appointments are made and maintained consistent with applicable law. The Union shall identify individual appointments it believes to be contrary to applicable law and notify the Agency. The Agency shall provide the Union reason(s) for the term or temporary nature of the appointment(s), where said appointments appear to be contrary to law. If an employee has been inappropriately appointed to or maintained in a temporary or term appointment, the Agency and the Union shall meet to resolve the matter.

**SECTION C:**

The agency shall convert bargaining unit temporary and term employees identified by the joint labor-management committees, who perform permanent services, who are in a pay status as of September 30, 2010, and are paid from appropriated funding to the career service prior to the end of the FY 2013 – FY 2017 Compensation Agreement.

**SECTION D:**

Prior to the end of the FY 2013 – FY 2017 Compensation Agreement, to the extent not inconsistent with District or Federal law and regulation, the District shall make reasonable efforts to convert to the career service temporary and term bargaining unit employees identified by the joint labor-management committees who perform permanent services, are in a pay status as of September 30, 2017, are full-time permanent positions, and are paid through intra-district funding or federal grant funding.

**SECTION E:**

Employees in term or temporary appointments shall be converted to permanent appointments, consistent with the D.C. Official Code.

**SECTION F:**

District agencies retain the authority to make term and temporary appointments as appropriate for seasonal and temporary work needs.

**SECTION G:**

A Joint-Labor Management Committee shall consist of one (1) representative from each national union comprising Compensation Units 1 and 2. The District shall appoint an equal number of representatives. The Committee will facilitate the implementation of this Article should difficulties arise in the Joint-Labor Management Committees set forth in Section A.

## ARTICLE 18
## SAVINGS CLAUSE

**SECTION A:**

Should any provisions of this Agreement be rendered or declared invalid by reason of any existing or subsequently enacted law or by decree of a court or administrative agency of competent jurisdiction, such invalidation shall not affect any other part or provision hereof. Where appropriate, the parties shall meet within 120 days to negotiate any substitute provision(s).

**SECTION B:**

The terms of this contract supersede any subsequently enacted D.C. laws, District Personnel Manual (DPM) regulations, or departmental rules concerning compensation covered herein.

## ARTICLE 19
## DURATION

This Agreement shall remain in full force and effect through September 30, 2017. On this _____ day of _____ 2013, and as witness the parties hereto have set their signature.

**Compensation Units One and Two Collective Bargaining Agreement**
**Signed: July, 2013**

**FOR THE DISTRICT OF COLUMBIA GOVERNMENT**

Natasha Campbell, Director
Office of Labor Relations and
Collective Bargaining

Dean Aqui,
Supervisory Attorney Advisor
Office of Labor Relations and
Collective Bargaining

Joxel Garcia, MD, MBA, Acting Director
Department of Health

Earl Murphy, Labor Liaison
Department of Health

William Howland, Director
Department of Public Works

Kwelli Sneed, Labor Liaison
Department of Public Works

Cathy Lanier, Chief
Metropolitan Police Department

**FOR THE UNIONS**

Geo T. Johnson, Chief Negotiator
Compensation Units 1 and 2

James Ivey, President
AFSCME Local 2091

Miranda Gillis, President
AFGE Local 2725

John Rosser, Chairman
Fraternal Order of Police/Department of
Corrections Labor Committee

Lee Blackmon, President
National Association of Government
Employees, R3-07

Ben Butler, President
AFGE Local 2741

Cynthia Perry, Staff Representative
1199 NUCHHE

**Compensation Units One and Two Collective Bargaining Agreement**
**Signed: July, 2013**

Mark Viehmeyer, Labor Liaison
Metropolitan Police Department

Lisa Wallace, Vice President
SEIU 1199E-DC

Kenneth Ellerbe, Chief
DC Fire and Emergency Medical Services

Clifford Lowrey, President
AFGE Local 1975

Brian Lee
DC Fire and Emergency Medical Services

Sabrina Brown, President
AFSCME Local 2401

Jesús Aguirre, Director
Department of Parks and Recreation

Reginald Walker, President
AFSCME Local 1200

Jamarj Johnson, Labor Liaison
Department of Park and Recreation

Cliff Dedrick, President
AFSCME Local 2743

Lucinda Babers, Director
Department of Motor Vehicles

Kenneth Lyons, President
AFGE Local 3721

Odessa Nance, Labor Liaison
Department of Motor Vehicles

Robert Hollingsworth, President
AFSCME Local 2776

Terry Bellamy, Director
Department of Transportation

Antoinette White-Richardson, President
AFSCME Local 1808

**Compensation Units One and Two Collective Bargaining Agreement**
**Signed:** July, **2013**

Melissa Williams, Labor Liaison
Department of Transportation

Robert Mayfield, President
AFGE Local 2978

Thomas Faust, Director
Department of Corrections

Timothy Traylor, President
AFGE Local 383

Paulette Johnson-Hutchings,
Labor Liaison
Department of Corrections

~~Richard Campbell~~, President Alletta Samuels
AFGE Local 1000

Marie Lydie Pierre-Louis
Chief Medical Examiner
Office of the Chief Medical Examiner

Walter Jones, President
AFSCME Local 2087

Beverly Fields, Labor Liaison
Office of the Chief Medical Examiner

Barbara Milton, President
AFGE Local 631

Brian Hanlon, Director
Department of General Services

Antonio Reed, President
NAGE R3-05

Cecelia Bankins, Labor Liaison
Department of General Services

Cedric Crawley
FOP-DYRSLC

Phillip A. Lattimore, III, Director
Office of Risk Management

Darren Roach, President
AFSCME Local 877

**Compensation Units One and Two Collective Bargaining Agreement**
**Signed: July, 2012**

Amy Mauro, Labor Liaison
Office of Risk Management

Sheila Bailey-Wilson, President
AFSCME Local 709

Emily Duso, Interim State
Superintendent of Education
Office of the State Superintendent
Of Education

Johnnie Walker, Representative
AFGE Local 3444

RaeShawn Crosson, Labor Liaison
Office of the State Superintendent
Of Education

Keith Washington, President
AFSCME Local 2092

Dr. Natwar Gandhi,
Chief Financial Officer
Office of the Chief Financial Officer

Mary Horne, President
AFSCME Local 2095

Paul Lundquist, Labor Liaison
Office of the Chief Financial Officer

Phillip A. Lattimore, III, Director
Office of Risk Management

Wayne M. Turnage, Director
Department of Health Care Finance

**Compensation Units One and Two Collective Bargaining Agreement**
**Signed: July, 2012**

Portia Shorter, Labor Liaison
Department of Health Care Finance

David Berns, Director
Department of Human Services

Jaki Buckley, Labor Liaison
Department of Human Services

Ginnie Cooper, Executive Director
DC Public Libraries

Barbara Kirven, Labor Liaison
DC Public Libraries

Jennifer Green, Director
Office of Unified Communications

Arnita Bonner-Evans, Labor Liaison
Office of Unified Communications

**Compensation Units One and Two Collective Bargaining Agreement**
**Signed: July, 2012**

Gustavo F. Velasquez, Director
Office of Human Rights

Ayanna Lee, Labor Liaison
Office of Human Rights

Lisa Maria Mallory, Director
Department of Employment Services

Rahsaan J. Coefield, Labor Liaison
Department of Employment Services

William P. White, Commissioner
Department of Insurance, Securities
And Banking

Margaret Schruender, Labor Liaison
Department of Insurance, Securities
And Banking

Nicholas A. Majett, Director
Department of Consumer and
Regulatory Affairs

Donald Tatum, Labor Liaison
Department of Consumer and
Regulatory Affairs

**Compensation Units One and Two Collective Bargaining Agreement**
**Signed: July, 2012**

Keith Anderson, Director
Department of the Environment

Denise Rivera-Portis, Labor Liaison
Department of the Environment

Michael Kelly, Director
Department of Housing and
Community Development

Angela Nottingham, Labor Liaison
Department of Housing and
Community Development

Dr. James E. Lyons, Sr., Interim President
University of the District of Columbia

_____, Labor Liaison
University of the District of Columbia

Neil Stanley, Director
Department of Youth Rehabilitation
Services

Tania Mortensen, Labor Liaison
Department of Youth Rehabilitation
Services

Vikkie Garay, Labor Liaison
Department of General Services

**Compensation Units One and Two Collective Bargaining Agreement**
**Signed:** July, **2012**

Ron M. Linton, Commissioner
DC Taxicab Commission

Patty Mason, Labor Liaison
DC Taxicab Commission

Harriet Tregoning, Director
Office of Planning

Sandra Harp, Labor Liaison
Office of Planning

Eric E. Richardson, Executive Director
Office of Cable Television

Angela Harper, Labor Liaison
Office of Cable Television

Robert Mancini, Chief Technology Officer
Office of the Chief Technology Officer

Christina Fleps, Labor Liaison
Office of the Chief Technology Officer

**Compensation Units One and Two Collective Bargaining Agreement**
**Signed: July, 2012**

Laura L. Nuss, Director
Department of Disability Services

Kehinde Asuelimen, Labor Liaison
Department of Disability Services

James Staton, Jr., Chief Procurement Officer
Office of Contracting and Procurement

Shirley Lanier, Labor Liaison
Office of Contracting and Procurement

Stephen Baron, Director
Department of Mental Health

Frankie T. Wheeler, Director,
Human Resources
Department of Mental Health

Brendolyn McCarty-Jones, Labor Liaison
Department of Mental Health

APPROVAL

This collective bargaining agreement between the District of Columbia and Compensation Units 1 and 2, dated April 12, 2012, has been reviewed in accordance with Section 1-617.15 of the District of Columbia Official Code (2001 Ed.) and is hereby approved on this 10th day of July, 2013.

Vincent C. Gray

Vincent Gray
Mayor

APPENDIX A

## Memorandum of Understanding

Between
Compensation Units 1 & 2
and
The District of Columbia
Concerning Classification and Compensation Collaborative Review

"The Parties hereby agree that in order to support the objective of rewarding a high performance workforce, a training program for all bargaining committee members shall be developed by a joint labor-management committee. The Committee will be composed of sixteen members, eight appointed by labor and eight appointed by management, and the Chief and Co-Chief negotiators of Compensation Units 1 & 2. This training program shall enhance the understanding of compensation and classification concepts and explore the appropriateness and application of high performance rewards to the District's workforce.

Furthermore, the Parties hereby agree that the District and the Unions shall commence a joint labor-management classification and compensation collaborative review of District jobs. This project shall examine the current classification and compensation systems in order to ensure that job classifications fairly represent actual work performed by District employees as well as the appropriateness of the District's current classification and compensation systems.

In order to support the training, classification and compensation joint labor-management initiatives, it is understood that the District shall retain the services of The Segal Company to assume the role of the lead consultant with these projects."

For Labor

For Management

January 30, 2001

R

**APPENDIX B**

**MEMORANDUM OF AGREEMENT**
**BETWEEN THE**
**DISTRICT OF COLUMBIA**
**AND**
**COMPENSATION UNITS 1 AND 2**
**CLASSIFICATION AND COMPENSATION REFORM TASK FORCE INITIATIVES**

Pursuant to the terms of the "Memorandum of Understanding Between Compensation - Units 1 and 2 and the District of Columbia Concerning Classification and Compensation Collaborative Review," which was incorporated as part of the Compensation Agreement between the District of Columbia Government and Compensation Units I and 2, FY 2001-FY 2003 ("Compensation Agreement"), the District of Columbia Government and the Unions in Compensation Units I and 2, established the Joint Labor-Management Classification and Compensation Reform Task Force (Joint Task Force). In addition, under the terms of the Compensation Agreement, the District Government agreed to set aside certain funding in fiscal years 2002 and 2003, which would be used by the Joint Task Force to implement initiatives designed to reform the District's compensation and classification systems.

The Compensation Agreement provides that in FY 2003 the District shall invest the equivalent of a minimum of one percent (1 %) increase in the aggregate salaries of Compensation Units 1 and 2 ("1 % Set-aside") toward classification and compensation reform. The District expended a portion of the 1 % Set-aside to implement the first significant change to the compensation system in the District by changing the pay progression of Compensation Units 1 and 2 employees, or how employees move between steps within a grade. The Joint Task Force has also agreed to begin the first classification reform project by reviewing the position classifications in each of the 9 occupational pay groups and where appropriate reclassify positions and adjust the grades and rates of pay for the reclassified positions.

The Joint Task Force classification review will begin in August 2003, with a review of positions in the clerical/administrative occupational group and specific classification series and/or positions, which the Joint Task Force has determined, requires immediate review. The Joint Task Force has agreed that the District shall expend the unencumbered FY 2003 1% Set-aside fund balance under the terms of the Compensation Agreement, to fund increases in salaries or make other pay adjustments for employees in Compensation Units 1 and 2 who occupy positions the grade and/or the rate of pay of which is changed because of reclassification, re-grading, rate adjustment or changes in the District's classification and/or compensation policy as part of the classification reform project initiated by the Joint Task Force in FY 2003.

The Joint Task Force has agreed to apply any rate adjustment retroactively to a date in FY 2003. The retroactive date of implementation will be determined based on the number of employees affected and the unexpended balance of the 1% set-aside. That is pay adjustments will be made in affected employees' pay retroactive to the date permitted by the fund balance. Payment to employees should be made by March 31, 2004.

Further, the contracting parties agree that amounts hereafter designated through collective bargaining for classification and compensation collaborative review under the terms of the FY 2004 to FY2006 Compensation Units 1 and 2 Agreement, shall be accorded similar treatment for purposes of implementation. Specifically, any funds set aside in the Fiscal Years 2004, 2005 or 2006 shall be available for expenditure in that fiscal year or any other fiscal year covered by the Compensation Unit 1 and 2 agreement. Provided however, that all funds set aside for compensation and classification reform shall be expended or obligated prior to the expiration of the Compensation Units 1 and 2 Agreement for FY2004 – FY2006.

AGREED, this 26th day of August, 2003.

**FOR THE DISTRICT OF COLUMBIA GOVERNMENT**

Mary E. Leary, Director
Office of Labor Relations
and Collective Bargaining

**FOR COMPENSATION UNITS 1 & 2**

Geo T. Johnson, Chief Negotiator
Compensation Units 1 and 2

Union Proposal 2/1/06

**Memorandum of Understanding**
**Between**
**Compensation Units 1 and 2 and the District of Columbia**

The "Memorandum of Understanding between Compensation Units 1 and 2 and the District of Columbia Concerning Classification and Compensation Collaborative Review" was initially incorporated as part of the Compensation Agreement between the District of Columbia Government and Compensation Units 1 and 2 covering fiscal years 2001 through 2003.

Pursuant to the terms of this MOU, the joint Labor Management Classification and Compensation Reform Task Force (LMCCRTF) shall:

1. Effective March 1, 2006, this joint labor management committee established pursuant to the terms of the Compensation Units 1 and 2 collective bargaining agreements (the LMCCRTF) shall be administered under the District's Office of Labor Relations and Collective Bargaining (OLRCB);

2. The LMCCRTF shall have eight (8) voting representatives from labor including representatives from each national labor union comprising Compensation Units 1 and 2 and the District's OLRCB shall appoint an equal number of management representatives;

3. Outside consultants and other subject matter experts are not members of the LMCCRTF and shall not have voting rights in the LMCCRTF. However, such persons may be invited to attend said meetings only when they are presenting information relevant to the task;

4. The funds from the LMCCRTF for fiscal years FY 2004 through FY 2006 shall be used to implement the new pay schedules the last pay period of September 2006, which are attached as Appendices A(1) through A(8) to management's proposals for base wage increases for the contract beginning October 1, 2006.

mel 2/1/06

G.T.S. 2/1/06

# MODEL TIME STANDARDS

for

# STATE APPELLATE COURTS



Conference of CHIEF JUSTICES


# MODEL TIME STANDARDS

## for

# STATE APPELLATE COURTS

**August 2014**

A joint project of the Court Management Committee of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA), in conjunction with participation from the Conference of Chief Judges of the State Courts of Appeal (CCJSCA), the National Conference of Appellate Court Clerks (NCACC) and the American Bar Association (ABA).


PROJECT COMMITTEE

Hon. Linda S. Dalianis, Chief Justice, New Hampshire Supreme Court, co-chair
Hon. Roger S. Burdick, Chief Justice, Idaho Supreme Court, co-chair
Hon. Ann A. Scott Timmer, Justice, Arizona Supreme Court
Hon. William B. Murphy, Chief Judge, Michigan Court of Appeals
Frank Broccolina, State Court Administrator of Maryland (Retired)
David Slayton, State Court Administrator of Texas
Christie S. Cameron Roeder, Clerk of the North Carolina Supreme Court
Joseph Lane, Chief Executive Officer, California Court of Appeal-2nd Appellate District
Tillman J. Breckenridge, Reed Smith LLP, Washington, D.C.
John J. Bursch,, Grand Rapids, MI; formerly State of Michigan Solicitor General

PROJECT STAFF

John P. Doerner, Principal Court Management Consultant, National Center for State Courts

## Table of Contents

**Executive Summary**

Time to disposition standards have existed in varying forms in a number of jurisdictions since the mid-twentieth century. The American Bar Association (ABA) played a leading role in these efforts by establishing speedy trial standards for criminal cases in the 1960s and time standards for other case types in the 1970s. These standards were revised in 1984 and again in 1992. The ABA also recommended time standards for state supreme courts and intermediate appellate courts in the *Standards Relating to Appellate Courts*[1] originally published in 1977 and amended in 1987 and again in 1994. A small number of appellate courts adopted the ABA developed standards and a few others adjusted them for their own internal aspirational guidelines, but overall, the standards were widely seen as unattainable.

This current project came about through the efforts of the Joint Court Management Committee of the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA). Funding was provided by the State Justice Institute (SJI) and project committee participants included members of CCJ and COSCA, as well as the Council of Chief Judges of the State Courts of Appeal (CCJSCA), the National Conference of Appellate Court Clerks (NCACC) and the ABA.

As the first phase of this effort, the project committee conducted preliminary research to ascertain which state appellate courts currently have time standards in place. Subsequent to that research, the committee developed and distributed surveys to all state and U.S. territory appellate courts, based on whether those courts had time standards in place.

These model time standards are designed to allow state appellate courts to adopt them as presented in this document, or to modify them to establish time standards based on their own particular circumstances. Modifying the model standards to local circumstances will create variation from one state to the next, making interstate comparisons less meaningful. However, the process of adjusting time standards to local conditions is necessary for realistic implementation of the standards throughout a nation of diverse courts. Consequently, any substantial deviations from the model time standards should be based on the requirements for doing justice in an individual state and not merely on disagreement with the concept of a national time standard. States with multiple intermediate appellate courts having the same case type jurisdiction

[1] *Standards of Judicial Administration, Volume III; The Standards Relating to Appellate Courts, 1994 Edition,* Copyright © 1977, 1995 American Bar Association

should agree upon and adopt a common set of time standards.

Use of the term "standards" does not imply that the model times presented in this document are intended to serve as overarching requirements that all state appellate courts would be expected to achieve. Many factors impact an individual court's ability to decide cases in accordance with any established timeline. The model standards should not be seen as a single national standard that should be imposed upon the appellate courts. Achievement of the standards presumes that appellate courts are adequately staffed and funded and that courts are utilizing their available resources effectively. At present, the model time standards presented in this document are likely to be fully achievable in a modest number of appellate courts, partially achievable in most others, and unattainable in the remainder. However, simply because an appellate court is not presently in a position to achieve these model time standards is not to say that they are without value. Use of these model time standards can provide appellate courts with a set of aspirational goals, inform legislatures in providing sufficient funding to enable courts to achieve those goals, and guide future revisions of applicable court rules and operating procedures that can have an impact on how long appellate courts take to resolve the cases before them.

Ideally, these model appellate court time standards will provide the courts with the information and impetus to implement their own time standards or reexamine their previously established time to disposition goals. Such efforts should be undertaken in accordance with Section VII of this document and be led by the chief justice of the COLR and the chief judge of the IAC who are in the best position to understand the effects of implementing the standards, including necessary procedural changes and resource requirements.

Common values among state appellate courts include accountability, efficiency and timeliness, productivity and quality. These values, in conjunction with the responsibilities of all appellate courts, form a foundation upon which time standards can be established. In an era of limited funding for state courts, it is increasingly important to demonstrate how well courts are operating relative to achieving their mission and goals, and accountability for their use of public resources. The timely resolution of cases is probably the most widely accepted objective measure of court operations. In addition, the appellate courts, as leaders within the Judicial Branch, are expected to lead by example. Institutional accountability of the Judicial Branch can be undermined when leadership does not demonstrate a willingness to establish time-based goals for the resolution of appellate cases. When an appellate court establishes time standards for itself, it is making a commitment toward

ensuring efficiency and timeliness in the resolution of appellate cases. This commitment is enhanced by the regular measurement of actual case resolution times with comparisons to the time standards. Publishing the actual results of a comparison between actual time to resolution and the time standards also demonstrates organizational accountability. Releasing this information may sometimes require an appellate court to acknowledge or explain a result that falls below the established standard and, if appropriate, make efforts to address the cause. However, when managed effectively, the response to such a temporary distress can build the court's credibility and engender public trust and confidence.

It must be acknowledged, that appellate courts need adequate funding and staffing to effectively fulfill their constitutional and statutory duties. This includes an appropriate number of judges to hear and decide cases in accordance with the adopted time standards. The inability of an appellate court to achieve its time standards can be an indicator that the court has an insufficient number of judges or judicial staff (law clerks and staff attorneys). However, to justify a request for more judges or staff, judicial leaders must first be able to demonstrate that they have examined all of the other potential reasons for the court's lack of timeliness.

The judicial leaders should be able to demonstrate that they have thoroughly evaluated whether they are making the best use of their available staff, that court procedures are simple, clear and streamlined, and that they are efficiently using their equipment and technology before requesting additional resources to reduce a backlog or maintain timeliness. It may also be appropriate to conduct a workload study, estimating the average amount of time that is devoted to each type of case in order to identify the number of judges and staff members needed in providing quality and timely resolutions of the number and type of cases in the court.

**Model Time Standards for State Appellate Courts**

In developing this model, the project committee reviewed survey responses and actual filing to disposition data on civil and criminal appeals from a wide variety of appellate courts across the country. Based on this research and the broad experience of the committee members in litigating, processing, reviewing and deciding appellate cases, the committee designed a model which includes time standards for both reviews by permission and appeals by right in the civil and criminal case categories. This model provides reasonably achievable times to disposition for both intermediate appellate courts and courts of last resort.

These model time standards, which are generally applicable to all state appellate courts, provide a sufficient challenge for the courts to aspire to in improving their time

to disposition, yet should also be viewed as reasonable by the courts themselves. They are currently expected to be at least partially achievable by about one-third of the state appellate courts and represent a challenge that all appellate courts should strive to attain.

The model provides discrete sets of time standards for both courts of last resort and intermediate appellate courts. The review by permission and appeal by right categories are structured to coincide with the State Court Guide to Statistical Reporting.[2] A review by permission is one that the appellate court can choose to review while an appeal by right is a case that the appellate court must review. Each state determines the particular aspects of the mandatory and discretionary jurisdictions of their appellate courts, which may be set by constitution, statute, or court rule.

Within each of the general appellate case type categories (review by permission, review granted and appeal by right), the model includes separate time standards for civil and criminal cases (excluding death penalty). Depending upon a particular court's jurisdiction, makeup of caseload, and procedural distinctions, it may also be helpful to supplement the model time standards with additional case types such as juvenile, death penalty, administrative agency, attorney discipline, etc.

[2] *State Court Guide to Statistical Reporting*, Conference of State Court Administrators and the National Center for State Courts, Williamsburg, VA. http://www.courtstatistics.org/~/media/Microsites/Files/CSP/DATA%20PDF/CSP%20StatisticsGuide%20v1%203.ashx

| MODEL APPELLATE TIME STANDARDS IN DAYS | | | | | | |
|---|---|---|---|---|---|---|
| **Court** | **Case Types** | | **Starting Event** | **Ending Event** | **Time Standards** | |
| | | | | | **75%** | **95%** |
| COLR | Review By Permission | Civil | Filing Initial Document | Grant/Deny Decision | 150 | 180 |
| | | Criminal | Filing Initial Document | Grant/Deny Decision | 150 | 180 |
| | Review Granted | Civil | Grant/Deny Decision | Disposition | 180 | 240 |
| | | Criminal | Grant/Deny Decision | Disposition | 180 | 240 |
| | Appeal By Right | Civil | Filing Initial Document | Disposition | 270 | 390 |
| | | Criminal (exc. Death penalty) | Filing Initial Document | Disposition | 180 | 330 |
| IAC & single level COLRs | Review By Permission | Civil | Filing Initial Document | Grant/Deny Decision | 150 | 180 |
| | | Criminal | Filing Initial Document | Grant/Deny Decision | 150 | 180 |
| | Review Granted | Civil | Grant/Deny Decision | Disposition | 240 | 270 |
| | | Criminal | Grant/Deny Decision | Disposition | 300 | 420 |
| | Appeal By Right | Civil | Filing Initial Document | Disposition | 390 | 450 |
| | | Criminal (exc. Death penalty) | Filing Initial Document | Disposition | 450 | 600 |

Appellate courts establishing time standards should include the following recommended practices;

- Time should begin to run at the occurrence of the case initiating event, typically filing of a notice of appeal or petition for review.
- Time should also be measured within discrete interim stages of the case which can help to identify any causes of undue delay.
- The results of measurements of time to disposition, relative to the established standards, should be published periodically. This can build accountability and credibility with the public.

This document also includes a suggested outline of activities that can be used as a guide in establishing time to disposition standards and implementing a program of time measurement. To be most successful,

such efforts must be championed by the chief justice of the court of last resort and/or chief judge of the intermediate appellate court. These individuals can provide the leadership and credibility that such a project requires among the bench, court staff, external stakeholders and the public.

## I. Introduction

The establishment of time to disposition standards is not a new development in the state courts. Such standards have existed in varying forms in a number of jurisdictions since the mid-twentieth century. The American Bar Association (ABA) played a leading role in these efforts by establishing speedy trial standards for criminal cases in the 1960s and time standards for other case types in the 1970s. These standards were revised in 1984 and again in 1992. The Conference of State Court Administrators (COSCA) promulgated its own set of national time standards in 1983. These were revised and updated in 2011[3] through a joint effort of COSCA, the Conference of Chief Justices (CCJ), and the National Association for Court Management (NACM) and the National Center for State Courts (NCSC).

The ABA also recommended time standards for state supreme courts (also referred to as courts of last resort) and intermediate appellate courts in the *Standards Relating to Appellate Courts*[4] originally published in 1977. The *Standards* were amended in 1987 and again in 1994. A small number of appellate courts adopted the ABA developed standards and a few others adjusted them for their own internal aspirational guidelines, but overall, the standards were widely seen as unattainable and did not gain much traction. In recent years, further efforts toward developing and implementing time to disposition standards have taken place at the trial court level with only a relatively modest focus on the appellate courts.

It has now become a common refrain among many trial court judges and managers that their courts are required to manage toward a set of time to disposition goals or standards, often imposed by the state supreme court, but that most appellate courts do not have such requirements. While it is correct that a good number of appellate courts have not established such time standards, some of them have, and more are currently considering adopting them.

It should be noted that a variety of phrases are used by the courts to describe their established time to disposition goals. Some use the common term "time standards" while others refer to "time processing guidelines" or "time reference points." These varying phrases are often used to denote that the related time frames describe aspirational goals and to avoid a perception that those cases exceeding the time frames may not be receiving appropriate attention from the court. For simplicity, we will use the common term "time standards" throughout this document to identify time frames or goals related to the resolution of appellate cases.

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[3] *Model Time Standards for State Trial Courts*, National Center for State Courts, Williamsburg, VA, (2011)

[4] *Standards of Judicial Administration, Volume III; The Standards Relating to Appellate Courts, 1994 Edition,* Copyright © 1977, 1995 American Bar Association

This project came about through the efforts of CCJ and COSCA. At the request of those organizations' Joint Court Management Committee, NCSC sought and obtained grant funding from the State Justice Institute (SJI) and recruited project committee participants from CCJ and COSCA, as well as the Council of Chief Judges of the State Courts of Appeal (CCJSCA), the National Conference of Appellate Court Clerks (NCACC) and the ABA.

Although most appellate courts are subject to various rules or statutory directives specifying that certain case types should receive priority in docketing and scheduling, these directives frequently do not include a quantifiable time period during which such cases should be decided. Cases involving child custody, civil cases with particular election-related issues and appeals of certain types of decisions by administrative agencies are examples of the types of cases that are typically affected by such requirements. In the 2000s, the federally funded Court Improvement Program (CIP), encouraged courts at all levels to expedite cases involving foster care and permanent placements of children. Some states developed appellate rules with reduced time periods for filing a notice of appeal, preparing the trial court record and transcripts, and submitting briefs in appeals involving the termination of parental rights and child placement issues. Most appellate courts now expedite, or "fast track" such designated cases; however, the rules and statutes often do not provide for specific time-related goals for deciding such cases. However, this project focuses on "primary" time standards which are applicable to the general caseload of the court through issuance of a dispositional order or decision, rather than the "specially expedited" time requirements which apply only to certain case types or particular issues or circumstances.

***Most appellate courts now expedite, or "fast track" such designated cases; however, the rules and statutes often do not provide for specific time-related goals for deciding such cases.***

As the first phase of this effort, the project committee conducted preliminary research to ascertain which state appellate courts currently have time standards in place. Subsequent to that research, the committee developed and distributed surveys to all state and U.S. territory appellate courts, based on whether those courts had time standards in place. Among those states with multiple appellate districts or circuits, separate surveys were distributed to each individual court.

The goals of this project are 1) to develop a set of model time standards for both state intermediate appellate courts (IAC) and state supreme courts or courts of last resort (COLR); and 2) to discuss the impact that time to disposition goals have had on the courts that have individually developed and adopted them.

The model time standards are designed to allow appellate courts throughout the United States to adopt them as presented in this document, or to modify the model standards and establish time standards based on their own particular circumstances. Modifying the model standards to local circumstances will create variation from one state to the next, making interstate comparisons less meaningful. However, the process of adjusting time standards to local conditions is necessary for realistic implementation of the standards throughout a nation of diverse courts. Consequently, any substantial deviations from the model time standards should be based on the requirements for doing justice in an individual state and not merely on disagreement with the concept of a national time standard. States with multiple intermediate appellate courts having the same case type jurisdiction should agree upon and adopt a common set of time standards.

Use of the term "standards" does not imply that the model times presented in this document are intended to serve as overarching requirements that all state appellate courts would be expected to achieve. Many factors impact an individual court's ability to decide cases in accordance with any established timeline. It is imperative that this document not be seen as a single national standard that should be imposed upon the appellate courts. Achievement of the standards proposed here presumes that appellate courts are adequately staffed and funded, which is not the case in many states, and that courts are utilizing their available resources effectively. At present, the model time standards presented in this document are likely to be fully achievable in a modest number of appellate courts, partially achievable in most others, and unattainable in the remainder. However, simply because an appellate court is not presently in a position to achieve these model time standards is not to say that they are without value. Use of these model time standards can provide appellate courts with a set of aspirational goals, inform legislatures in providing sufficient funding to enable courts to achieve those goals, and guide future revisions of applicable court rules and operating procedures that can have an impact on how long appellate courts take to resolve the cases before them.

Ideally, these model appellate court time standards will provide the courts with the information and impetus to implement their own time standards or reexamine their previously established time to disposition goals. Such efforts should be undertaken in accordance with Section VII of this document and be led by the chief justice of the COLR and the chief judge of the IAC who are in the best position to understand the effects of implementing the standards, including necessary procedural changes and resource requirements.

## II. Why Should Appellate Courts Establish Time Standards?

*"Time standards should be used as an administrative goal to assist in achieving caseflow management that is efficient, productive, and produces quality results."* [5]

Appellate courts, both as public institutions and as leaders within the judicial branch, are accountable to the litigants and the public at large for achieving the goals of productivity and efficiency while maintaining the highest quality in resolving cases before them. These goals help to shape many of the values held by appellate courts. A white paper[6] published by the CCJSCA and the NCSC identified a set of "shared values" common to many intermediate appellate courts. These include:

- Adopting effective internal management and operational structures that maximize public resources;
- Implementing case management processes that promote the timely and efficient disposition of cases;
- Promoting public awareness about the judicial system and avenues for access to the courts;
- Maintaining judicial integrity by promoting transparency regarding court processes; and
- Producing high quality work product in the form of well-reasoned, clearly written decisions that respond to the issues before the court.

COLRs would likely express similar concepts as values that the highest state courts have in common with the intermediate appellate courts. These shared values clearly express the concepts of accountability, efficiency and timeliness, productivity, and quality. These values, in conjunction with the responsibilities of all appellate courts, serve to form a foundation upon which time standards can be established.

In an era of limited funding for state courts, it is increasingly important to demonstrate how well courts are operating relative to achieving their mission and goals, and accountability for their use of public resources. The timely resolution of cases is probably the most widely accepted objective measure of court operations and is also, fairly or otherwise, a primary concern of the other branches of government and the public regarding the courts. In fact, the

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5 *Standards Relating to Appellate Courts, at* §3.52 (a).

6 Doerner, J. and Markman, C., "*The Role of Intermediate Appellate Courts: Principles for Adapting to Change*"; Council of Chief Judges of the State Courts of Appeal and National Center for State Courts, Williamsburg, VA, (2012): p. 6

timely resolution of cases in court is a key element used by businesses considering whether to relocate to another state or remain in their current location.[7] Cases in the appellate courts are no exception to the focus on timely resolution. Former Chief Judge Lawrence Winthrop of the Arizona Court of Appeals, Division 1, says *"Annual reporting of performance against our case resolution reference points is critical to our dealings with the legislature and in showing businesses how well the courts are operating in Arizona."*

In addition, the appellate courts, as leaders within the Judicial Branch, are expected to lead by example. Institutional accountability of the Judicial Branch can be undermined when the leadership does not demonstrate its willingness to establish time-based goals for the resolution of appellate cases. Both the Minnesota Supreme Court and Court of Appeals have established time standards and publicly report their performance annually to the Minnesota Judicial Council. Honorable Lorie Gildea, Chief Justice of the Minnesota Supreme Court, puts it this way, *"We need to study our results against our time standards and report them to the Judicial Council to model accountability to the trial courts. This also puts the Judicial Branch on a stronger footing with the state legislature and citizens in terms of accountability and transparency."*

Data has not been collected demonstrating conclusively that appellate courts with time standards necessarily resolve cases more quickly than those without time standards. However, it is self-evident that when an appellate court establishes time standards for itself, it is also making a commitment toward ensuring efficiency and timeliness in the resolution of appellate cases. This commitment is enhanced by the regular measurement of actual case resolution times with comparisons to the time standards. The court's evaluation of such comparisons can often provide insight into the factors that may inordinately contribute to the amount of time cases take to resolve. This is particularly true when the standards and measurement process account for distinctive case types as well as specified interim stages of an appellate case. If insufficient resources are a contributing factor, measuring the achievement of

***… it is self-evident that when an appellate court establishes time standards for itself, it is also making a commitment toward ensuring efficiency and timeliness in the resolution of appellate cases.***

[7] *2012 Legal Climate Overall Rankings by State*; U.S. Chamber Institute for Legal Reform, Washington D.C. In this study, 1,125 general counsel/senior litigators were asked, "How likely would you say it is that the litigation environment in a state could affect an important business decision at your company such as where to locate or do business?" 70% of respondents said "somewhat likely" or "very likely." "Slow process/Delays" was the second most frequently mentioned issue (tied with "Corrupt/Unfair system") in creating the least fair and reasonable litigation environment.

established time standards can serve as a critical foundation for building evidence-based requests for additional resources.

In addition to strengthening an appellate court's commitment to the timely and efficient resolution of cases, publishing the actual results of a comparison between actual time to resolution and the time standards also demonstrates organizational accountability and a dedication to leading the Judicial Branch by example. Releasing this information may sometimes require an appellate court to acknowledge or explain a result that falls below the established standard and, if appropriate, make efforts to address the cause. However, when managed effectively, the response to such a temporary distress can build the court's credibility and engender public trust and confidence.

## III. Selected Survey Results

Surveys were distributed in November 2012 and responses were collected over the next several months, resulting in good response rates from both IACs and COLRs. Because some information regarding time standards was known before distributing the surveys, different versions were provided to those courts with known information and those for which time standard information was not known. Copies of the surveys are included in Appendix A.

A brief summary of the survey responses follows -

### A. Response Rate:

| | Respondents | Maximum | Response Rate |
|---|---|---|---|
| Intermediate Appellate Courts (IAC) | 71 | 87 | 82% |
| Courts of Last Resort (COLR) | 40 | 56 | 71% |
| Total | 111 | 143 | 78% |

### B. Establishment of Primary Time Standards:

| | Respondents | Yes | Percentage |
|---|---|---|---|
| Intermediate Appellate Courts (IAC) | 71 | 35 | 49% |
| Courts of Last Resort (COLR) | 40 | 12 | 30% |
| Total | 111 | 47 | 42% |

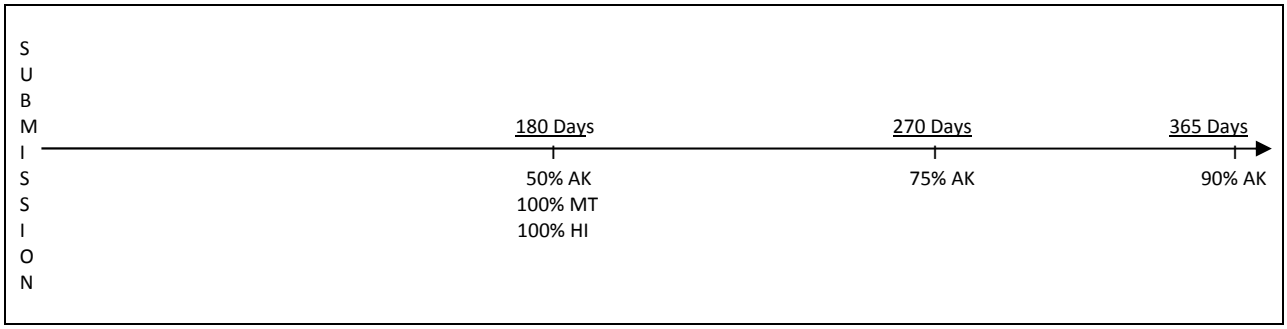
### C. Variation of Established Appellate Time Standards:

Among the responding courts, both IACs and COLRs, that have established standards, most include a percentage with a time limit; i.e. 75% of cases should be resolved within 270 days. Some courts apply the percentage and time limit standards to their entire caseload while several others vary the percentage and time limit standards based on case type.

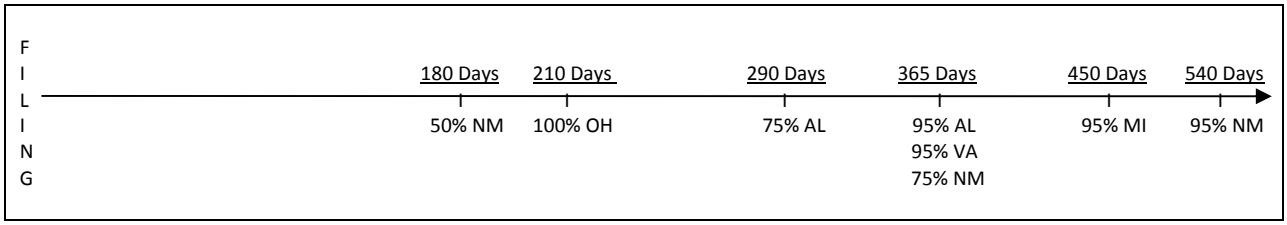
### D. Example Time Standards

The length of time stated in the appellate courts' existing time to disposition standards also varied widely. The following examples demonstrate the variation in standards applicable to the general caseload (measured from either filing or submission to resolution).

Courts of Last Resort




Intermediate Appellate Courts




Established time standards sometimes also include interim times to various significant milestone events such as filing of the appeal to filing of the record, close of briefing to oral argument or submission of the case, etc. Some courts reported establishing internal standards applicable only to a particular phase of the case, usually from case assignment to circulation of a draft opinion. Such standards are useful case management tools but do not encompass the full life of the case and time to disposition.

### E. Starting Point for Counting Time:

There were also substantial differences reported in the point at which the time starts being counted, as illustrated in the table below.

| | Filing NOA or comparable document | Filing or Lodging the Record | Close of Briefing | Oral Argument/ Submission |
|---|---|---|---|---|
| IACs | 21 | 3 | 1 | 10 |
| COLRs | 3 | 1 | 1 | 7 |

### F. Process Used to Establish Time Standards

Among those responding courts with time standards, the state Supreme Courts have generally been the driving force behind their establishment. Among IACs, eleven reported that the standards were established by order or rule of the Supreme Court, six reported that the time standards were developed internally (one with Supreme Court prompting), and fourteen worked with the Supreme Court and a task force to develop time standards, some of which were in conjunction with implementing portions of the Appellate CourTools.[8] One responding IAC indicated that the standards were statutorily imposed and another did not know what the process was since the time standards have been in place for many years and all involved parties have since left the court.

Among COLRs, nine established standards by their own rule or order, two reportedly were by statute, one formed a task force in conjunction with implementing the Appellate CourTools and one did not know the process used to establish its time standards.

### G. Case Stages Contributing to Delay

The responding courts were also asked to identify particular stages in an appeal that inordinately contribute to delay by making selections from a list. Respondents were allowed to select multiple items and a total of 198 individual selections were made. When "Other'" was selected, the reason for delay was variously described as: “court-appointed attorney process,”

[8] The Appellate CourTools, designed by the NCSC, is a set of six metrics that can be used by any appellate court to measure its performance. The Appellate CourTools is available at: http://www.courtools.org/

"self-represented litigants," and "substitution of counsel." Not all respondents explained their selection of "other" as contributing to delay.

| Case Stage | Selections | % of Total |
|---|---|---|
| **Filing of the Record** | 38 | 19% |
| **Transcript Preparation** | 55 | 28% |
| **Briefing** | 44 | 22% |
| **Setting Argument or Assignment** | 8 | 4% |
| **Opinion Preparation** | 19 | 10% |
| **Other:** | 23 | 12% |
| **None** | 11 | 6% |
| **Total** | 198 | 100.00% |

**H. Additional Results**

Among the forty-two responding courts with established time standards:

- 92% reported that the established time standards are appropriately set
- 85% reported that the court routinely meets the established standards
- 75% reported that the court regularly reviews the time standards
- 98% regularly prepare a report, of which 81% include time between various milestones or events (although fewer actually include those events in their standards)
- 54% prepare some type of external report on court performance relative to time standards

## IV. Analyzing Actual Time to Disposition Data

In addition to the survey responses, the project committee reviewed data from two major studies studying civil and criminal appeals in the state courts. Civil appeals data was obtained through the 2005 Civil Justice Survey of State Courts, which tracked 26,950 general civil (i.e., tort, contract, and real property) cases that were disposed by bench or jury trials in 156 participating counties. Subsequently, 3,970 of those cases were appealed to eighty-four appellate courts in thirty-five states.[9] Criminal appeals data includes 2,978 appeals concluded in calendar year 2010 from one hundred forty three appellate courts (IACs and COLRs) in all fifty states and the District of Columbia. As part of each study, the collected data was compiled with the actual time between various events within the appeal process and from filing to disposition being calculated for each participating court.

These data showed:

| **Civil Appeals Data** | | | | |
|---|---|---|---|---|
| | Time to Disposition | Times for Interim Events (in Days) | | |
| | | Case Filing to Transcript | Transcript to Close of Briefing | Submission to Disposition |
| **IACs** | | | | |
| 75% of Cases | 452 | 149 | 198 | 187 |
| 95% of Cases | 546 | 201 | 249 | 269 |
| **COLRs** | | | | |
| 75% of Cases | 422 | 91 | 191 | 215 |
| 95% of Cases | Not available | Not available | Not available | Not available |
| **Criminal Appeals Data** | | | | |
| | Time to Disposition | Times for Interim Events (in Days) | | |
| | | Case Filing to Transcript | Transcript to Close of Briefing | Submission to Disposition |
| **IACs** | | | | |
| 75% of Cases | 521 | 164 | 152 | 177 |
| 95% of Cases | 818 | 456 | 314 | 298 |
| **COLRs** | | | | |
| 75% of Cases | 204 | 80 | 194 | 175 |
| 95% of Cases | 571 | 305 | 391 | 331 |

[9] This data collection examined civil bench and jury trials concluded in state trial courts in 2005 that were appealed to an intermediate appellate court or court of last resort. The Bureau of Justice Statistics' (BJS) Civil Justice Survey of Trials on Appeal (CJSTA) included information from those civil trials concluded in 2005 and tracked the subsequent appeals from 2005 through March 2010.

## V. Structure of Appellate Time Standards

Time standards currently in use by appellate courts around the country vary significantly, not only in the time lengths established, but also in their form. Some courts have simply established an overall time standard that is generally applicable to all types of cases in the court. For example, "all cases should be decided within 270 days." This form of standard sometimes includes a percentage, such as 75% or 90%, of cases that should be resolved within the indicated length of time. The ABA Overall Time Standards, as amended in 1994, are an example of this form. Those standards, measured from the date of initial filing, are listed in Table 1 below:

**Table 1 - ABA Overall Appellate Time Standards**

| Court Type | 50th Percentile | 75th Percentile | 90th Percentile | 95th Percentile | 100% |
|---|---|---|---|---|---|
| COLR [10] | 290 Days | | 365 Days | | As expeditiously as possible |
| IAC [11] | | 290 Days | | 365 Days | |

Other courts have established standards with different time lengths for different case types. The time reference point standards for the Arizona Court of Appeals, for example, state that 75% of general civil cases should be resolved within 400 days and that 75% of criminal cases should be resolved within 375 days from the date of filing in the appellate court.

In addition, some appellate courts include interim time standards for the various administrative and attorney or judge driven stages of an appellate case, along with an overall standard for the total time to disposition. The common stages for which time standards are developed include:

- Filing of the notice of appeal or other originating document to the filing of the trial court record (additionally, there may be a discrete time standard pertaining to filing the transcript, depending on applicable procedures)
- Filing of the trial court record to close of briefing or 'at issue' date
- Close of briefing to oral argument or submission on the briefs
- Oral argument or submission to issuance of a decision

[10] ABA time standards for courts of last resort are based upon the number of days from the filing of the petition for certiorari or the notice of appeal.

[11] ABA time standards for intermediate courts of appeal are based upon the number of days from the filing of the notice of appeal.

These discrete stages in the life cycle of an appeal or certiorari proceeding are also patterned similarly to the ABA standards which are listed in Table 2 below:

| Table 2 - ABA Appellate Time Standards for Discrete Stages of an Appeal | | | |
|---|---|---|---|
| | **Administrative Functions** | **Attorney Functions** | **Judicial Functions** |
| **Record** | 30 days from filing Notice of Appeal | | |
| **Transcript** | 30 days from filing Notice of Appeal | | |
| **Appellant's Brief** | | 50 days from filing record & transcript | |
| **Appellee's Brief** | | 50 days from receipt appellant's brief | |
| **Reply Brief** | | 10 days from receipt appellee's brief | |
| **Oral Argument** | | | 55 days from filing appellee's brief |
| **Submission on Briefs** | | | 35 days from filing appellee's brief |
| **Opinion Preparation (most cases)** | | | 55 days from oral argument or case assignment |
| **Opinion Preparation (Death Penalty & cases of extraordinary complexity)** | | | 90 days from oral argument or case assignment |
| **Voting on Circulating Draft Opinions** | | | 20 (COLR)/15 (IAC) days from receipt of draft opinion |
| **File Dissenting Opinions** | | | 30 days from receipt of draft opinion |
| **Memorandum Opinions** | | | 30 days from oral argument or case assignment |

Establishing specific time standards for various case types and interim time standards within each of those case types provides court leadership with a wide range of objective data that can be used to focus in on the discrete stages that might consume more time than expected. This, in turn, enables the court to develop targeted strategies for improvement within specific stages to ensure the timely resolution of appellate cases.

As a part of establishing any overall time standards, a critical decision must be made with respect to when to start counting appellate case processing time. Based on the survey responses from those appellate courts that have adopted time standards, there are currently four distinct points at which those courts begin counting the time to disposition. Each of these four starting points was reported by both intermediate courts and courts of last resort:

- Date of filing the notice of appeal or other initiating document;
- Date of lodging the trial court record;
- Date of the close of briefing; and
- Date of oral argument or, if no argument, submission to the court.

Those courts with time standards that begin counting at lodging of the record, close of briefing or submission of the case, commonly consider the time period from initiation of the appellate proceeding to one of those latter stages to be outside the court's control. For example, the clerk of the trial court and one or more court reporters are responsible for the preparation and filing of the record and the transcripts, counsel for the various parties to the appeal are responsible for filing their respective briefs, and appellate court control begins after one of those particular events. While it is true that significant responsibility for the completion of the record, transcript and briefs is assigned to persons outside of the appellate court, it is also evident that the primary responsibility for case management and efficient processing of appeals must reside with the appellate court. According to the ABA, the first and most important contributing factor to appellate delay *"… is that an appellate court has exercised inadequate supervision of the movement of cases coming before it. Only the appellate court itself can provide such supervision."*[12] Neither the trial court nor counsel for the litigants is in a position to reliably give the necessary attention to appellate case management as the appellate court itself is.

***… the primary responsibility for case management and efficient processing of appeals must reside with the appellate court.***

[12] *Standards Relating to Appellate Courts at* page 89.

As a matter of fact, one of the most persistent factors contributing to lengthy times to disposition in appellate courts is the preparation of the trial transcripts. Many jurisdictions are now contending with a shortage of qualified court reporters whose principal duty is to make verbatim notes of the trial court proceedings. Preparation of appellate transcripts is often relegated by the court reporter to weekend and evening hours. In addition, heavy workloads in the offices of the appellate defender and the attorney general or appellate prosecutor are common in many states and are perceived to be a primary contributing factor to delays in briefing. When asked in the recent survey to identify whether particular stages of an appellate case contributed inordinately to delay in appellate cases, the most frequently selected were; transcript preparation (28%), briefing (22%) and filing the record (19%). (See Section II) These factors must be addressed in order to alleviate their impact on appellate court delay. In response, a number of state court systems have expanded the use of real-time reporting and digital audio recording of trial court proceedings, reducing the overall average time for transcript production. Appellate courts have also initiated discussions and worked in conjunction with their appellate defenders and attorneys general to improve case management procedures and reduce the overall length of briefing time in criminal cases.

## VI. Minimum Recommended Features of Appellate Court Time Standards

There are several beneficial features pertaining to the implementation and use of time standards in appellate courts that the project committee recommends as best practices. Including these features enables the appellate court to effectively monitor its actual appellate processing time on an ongoing basis and also ensures that the court is accountable for its performance.

These recommended best practices are:

***The minimum recommended features of Appellate Court Time Standards are:***

- ***Run from the case initiating event.***
- ***Measure discrete interim stages.***
- ***Publish the results.***

### A. Time Standards Should Run from the Case Initiating Event

Data over the full range of the life of a case is necessary for the appellate court and others to fully understand the amount of time it takes for cases to be resolved, what the contributing factors are to that amount of time, and whether specific procedural changes might be effective in resolving appeals more quickly. To obtain such data, appellate court time standards should start counting time at the earliest event, typically the filing of the notice of appeal, petition for review, or other comparable case initiating document[13]. This approach accounts for the entire life of an appellate proceeding and avoids the perception that the appellate court is not taking steps to manage the early stages of the case. It also corresponds with the public's perspective of when a case is considered to be on appeal. In order to provide accurate information however, time must not be included when a case is stayed due to bankruptcy proceedings, remand to the trial court, etc.

### B. Measure Time Within Discrete Interim Stages

Measuring the actual time within the interim stages of an appellate case helps to pinpoint the causes of excessive delay so that the court can target its resources and improvement efforts most effectively. This can also provide insightful information to the court's partners

[13] There are some appellate systems in which the notice of appeal is first filed in the trial court and forwarded to the appellate court at some later time. Ideally, the time standards should run during this period and the two courts work jointly to ensure timely forwarding of the notice of appeal. Alternatively, this period could be designated as a discrete interim stage and measured separately (see Section V. b.)

in the appellate process such as the trial courts, court reporters and counsel, highlighting how completion of their respective roles affect overall time to disposition.

The discrete interim stages should include:

By Permission Cases

- Initial Case Filing to Grant/Deny Decision

By Right Cases

- Initial Case Filing to Filing of Record/Transcript
- Filing of Record/Transcript to Close of Briefing
- Close of Briefing to Oral Argument/Submission
- Oral Argument/Submission to Disposition

### C. Publish the Results of Measurements to Time Standards

Disclosing summary results of a measurement of actual time to disposition statistics with a comparison to the established time standards provides a number of benefits to the appellate court. For example, publication of such objective data fosters accountability and transparency by encouraging courts to regularly review their performance, understand and explain their results, and consider operational improvements to address any shortfalls. This enables appellate courts to lead by example within the Judicial Branch, emphasize the importance of the timely resolution of cases, and ensure an ongoing commitment to the issue. It also builds the court's credibility with the public and other branches of state government, demonstrates accountability of the judicial branch, and helps to ensure that public resources are used effectively. Such public disclosure might typically include a press release, website posting, and reporting to legislatures or other public officials. For example, the Minnesota Court of Appeals and Supreme Court report their results directly to the Judicial Council at a public meeting, and the Arizona Court of Appeals, Division One, distributes copies to all legislators.

## VII. Model Time Standards for State Appellate Courts

The failure to resolve appellate cases in an appropriately expeditious timeframe undermines the ability of the appellate courts to efficiently manage their publicly provided resources, demonstrate effective leadership within the Judicial Branch and promote public confidence in the courts. State appellate courts should take the lead to ensure that they and their partners in the appellate process maintain a focus on eliminating delays while ensuring the ability to produce well-reasoned, clearly written decisions. The model time standards listed below provides appellate courts with a framework for these efforts.

### A. Establishing the Model Standards

In developing this model, the Appellate Time Standards Project Committee reviewed the survey responses and the actual filing to disposition data on civil and criminal appeals from a wide variety of appellate courts across the country. Based on this research and the broad experience of the committee members in litigating, processing, reviewing and deciding appellate cases, the committee designed a model which includes time standards for both reviews by permission and appeals by right in the civil and criminal case categories. This model provides reasonably achievable times to disposition for both intermediate appellate courts and courts of last resort.

*… there is a great deal; of variation in the current capacity of state appellate courts to review and decide cases expeditiously.*

It was critical to the process of developing these model time standards to acknowledge that there is a great deal of variation in the capacity of state appellate courts to review and decide cases expeditiously. This may be attributable to an insufficient number of judges or court staff, the inability of trial court personnel to prepare and submit the trial record and transcripts in the allotted time, inadequate attorney positions or excessive workload in the appellate public defender and prosecutor's offices, various provisions in the appellate rules, outdated procedures, a long-standing culture within the appellate system that does not place great value on the expeditious resolution of cases, or other reasons.

Regardless of the reasons for delays, establishing time standards and measuring court performance going forward is necessary in order to identify and make progress on the issues that impact an appellate court's ability to dispose of cases timely. Only the appellate courts themselves are capable of addressing the issues and driving reduction of delay in the appellate process.

It is important that these model time standards, which are generally applicable to all state appellate courts, provide a sufficient challenge for the courts to aspire to in improving their time to disposition, yet also be viewed as reasonable by the courts themselves. A set of overly aggressive time standards would likely be disheartening to many appellate courts. These proposed model time standards currently are at least partially achievable by about one-third of the state appellate courts. They also represent a reasonable challenge that all appellate courts should strive to attain.

The model provides discrete sets of time standards for both courts of last resort and intermediate appellate courts. The model time standards recognize the fact that the time for record preparation and transcript production generally occurs during the intermediate court case. However, there are a number of states that have a single level appellate system which includes only a court of last resort and no intermediate court. As a result, these "single level COLRs" encounter the same challenges with regard to record preparation and transcript production as intermediate appellate courts. To recognize this significant difference between COLRs in single and dual level appellate systems, the committee suggests that COLRs in a single level system consider applying the COLR standards as appropriate or the IAC time standards adapted as necessary to their particular circumstances.

The review by permission and appeal by right categories are structured to coincide with the State Court Guide to Statistical Reporting.[14] A review by permission is one that the appellate court can choose to review while an appeal by right is a case that the appellate court must review. Each state determines the particular aspects of the mandatory and discretionary jurisdictions of their appellate courts, which may be set by constitution, statute, or court rule.

When applying the model time standards to the review by permission case types, time begins running on the date the application, petition or comparable initiating document requesting review is filed and concludes when the decision to grant or deny the request is issued. When the decision is made to grant the request, the review granted time standards would then apply with time being counted from the date the decision to grant is issued through the disposition of the case. The review granted time standards assume that relevant portions of the lower court record and transcripts are available to the court prior to the grant/deny decision and that once review is granted these cases can proceed more quickly than a typical appeal by right.

[14] *State Court Guide to Statistical Reporting*, Conference of State Court Administrators and the National Center for State Courts, Williamsburg, VA. http://www.courtstatistics.org/~/media/Microsites/Files/CSP/DATA%20PDF/CSP%20StatisticsGuide%20v1%203.ashx

However, this is not true in all appellate courts, which impacts whether the time period specified in the model is appropriate for a particular court.

When applying the model time standards to the appeal by right case types, time begins running when the notice of appeal or comparable initiating document is filed and concludes upon the disposition of the case, typically on the issuance of a dispositive opinion or order closing the case or a mandate returning jurisdiction to the lower court. Time stops when a case is stayed due to bankruptcy proceedings, remand to the trial court, etc. restarting once the stay is lifted.

Within each of the general appellate case type categories (review by permission, review granted and appeal by right), the model includes separate time standards for civil and criminal cases (excluding death penalty). Depending upon a particular court's jurisdiction, makeup of caseload, and procedural distinctions, it may also be helpful to supplement the model time standards with additional case types such as juvenile, death penalty, administrative agency, attorney discipline, etc.

**MODEL APPELLATE TIME STANDARDS IN NUMBER OF DAYS**

| Court Type | Case Types | | Starting Event | Ending Event | Time Standards | |
|---|---|---|---|---|---|---|
| | | | | | 75% | 95% |
| COLR | Review By Permission | Civil | Filing Initial Document | Grant/Deny Decision | 150 | 180 |
| | | Criminal | Filing Initial Document | Grant/Deny Decision | 150 | 180 |
| | Review Granted | Civil | Grant/Deny Decision | Disposition | 180 | 240 |
| | | Criminal | Grant/Deny Decision | Disposition | 180 | 240 |
| | Appeal By Right | Civil | Filing Initial Document | Disposition | 270 | 390 |
| | | Criminal (exc. Death penalty) | Filing Initial Document | Disposition | 180 | 330 |
| IAC & single level COLRs | Review By Permission | Civil | Filing Initial Document | Grant/Deny Decision | 150 | 180 |
| | | Criminal | Filing Initial Document | Grant/Deny Decision | 150 | 180 |
| | Review Granted | Civil | Grant/Deny Decision | Disposition | 240 | 270 |
| | | Criminal | Grant/Deny Decision | Disposition | 300 | 420 |
| | Appeal By Right | Civil | Filing Initial Document | Disposition | 390 | 450 |
| | | Criminal (exc. Death penalty) | Filing Initial Document | Disposition | 450 | 600 |

As suggested throughout this document, there will be instances in which statutes, rules or other requirements necessitate individual courts to modify or adapt these model standards. Following are two actual examples of circumstances that could be addressed either by modifying the model time standards or, if appropriate, revising the underlying authority and making corresponding procedural changes.

- The Kentucky Supreme Court is constitutionally mandated to hear, as original appeals, all criminal cases in which a sentence of life imprisonment or imprisonment over twenty years has been imposed. These cases bypass the Kentucky Court of Appeals and, as a result, a significantly greater amount of time is consumed in record preparation and briefing as compared to a motion for discretionary review in which the record and transcripts have already been provided. In this type of circumstance, a COLR implementing time standards could consider establishing a separate case class designation with an appropriate amount of time, preferably not in excess of that provided in the model for IAC criminal appeals by right.
- In many permissive appeals, the Michigan Court of Appeals makes its decisions to grant or deny petitions for review without the benefit of the complete trial court record or transcripts. If review is granted by the court, the case proceeds in the normal manner and timeline as an appeal by right without any scheduling priority. In this type of circumstance, an appellate court implementing time standards could consider modifying the amount of time provided in the model with a more appropriate length, preferably not in excess of that provided in the model for IAC appeals by right.

### B. Suggested Progressive Benchmarks

In addition to the model appellate time standards, the committee has suggested a set of progressive benchmarks that are not as aggressive as the model time standards, but can nevertheless provide a target that less timely appellate courts could use to measure their progress as they seek to meet the model standards. The set of progressive benchmarks also provide an opportunity for these courts to establish both short-term and long-term objectives, identify the factors affecting their ability to achieve more timely dispositions, and to achieve interim successes as they progress in their efforts to reduce overall time to disposition.

| PROGRESSIVE BENCHMARKS IN NUMBER OF DAYS | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Court Type** | **Case Types** | | **Starting Event** | **Ending Event** | **Progressive Benchmark – Level 1** | | **Progressive Benchmark – Level 2** | |
| | | | | | **75%** | **95%** | **75%** | **95%** |
| COLR | Review By Permission | Civil | Filing Initial Document | Grant/Deny Decision | 210 | 240 | 180 | 210 |
| | | Criminal | Filing Initial Document | Grant/Deny Decision | 210 | 240 | 180 | 210 |
| | Review Granted | Civil | Grant/Deny Decision | Disposition | 300 | 360 | 240 | 300 |
| | | Criminal | Grant/Deny Decision | Disposition | 240 | 330 | 210 | 270 |
| | Appeal By Right | Civil | Filing Initial Document | Disposition | 360 | 510 | 300 | 450 |
| | | Criminal (exc. Death penalty) | Filing Initial Document | Disposition | 300 | 480 | 240 | 420 |
| COLRs & single level COLRs | Review By Permission | Civil | Filing Initial Document | Grant/Deny Decision | 210 | 240 | 180 | 210 |
| | | Criminal | Filing Initial Document | Grant/Deny Decision | 210 | 240 | 180 | 210 |
| | Review Granted | Civil | Grant/Deny Decision | Disposition | 330 | 390 | 270 | 330 |
| | | Criminal | Grant/Deny Decision | Disposition | 360 | 570 | 330 | 480 |
| | Appeal By Right | Civil | Filing Initial Document | Disposition | 510 | 600 | 450 | 570 |
| | | Criminal (exc. Death penalty) | Filing Initial Document | Disposition | 540 | 720 | 510 | 660 |

The Level 1 Progressive Benchmarks indicate a minimal level of timeliness that all state appellate courts should be currently capable of achieving. It is critical that any courts currently unable to meet the Level 1 benchmarks investigate the contributing factors and develop strategies to resolve cases more expeditiously. Like the Model Time Standards, the Level 2 Progressive Benchmarks are informed by the results of the BJS civil and criminal appeals studies. The Level 2 benchmarks should currently be at least partially achievable by about half of all state appellate courts.

### C. Standards for Interim Stages of an Appeal

In addition to overall model time to disposition standards, appellate courts can benefit by establishing separate time standards pertaining to the interim stages of an appeal. Such interim standards should be used internally by the appellate court for analyzing its own results. The length of time for the interim stages can vary significantly based on the allotment of time specified in each state's appellate rules for completing certain actions. For instance, California Rule 8.212 (b) allows the parties to extend each briefing period by stipulation for up to 60 days. While such a provision may reduce the impact of numerous motions for extension of time on court workload by eliminating the need for the court to rule on such motions, it can also negatively impair the court's ability to control briefing time. Because there are many such differences in appellate court rules among the states, the committee includes the following table as an example that appellate courts can use to establish their own standards for these interim stages. Results of measuring such interim standards would not necessarily be published in accordance with the recommended best practice in Section VI C, which focuses on the overall time to disposition.

This example is provided for four interim stages that typically occur in an appeal by right and the number of days is related to the model time standards provided above. The example days included here are considered reasonable by the committee. A court should carefully consider its own rules, procedures and practices regarding these stages of appeal and establish interim time standards appropriate to supporting its overall standards.

| **Example of Time Standards for Interim Stages of an Appeal - Civil Appeal By Right** | | | |
|---|---|---|---|
| **Starting Interim Event** | **Ending Interim Event** | **Example Days** | |
| | | 75% | 95% |
| Initial Filing | Filing of Record and Transcript(s) | 90 | 120 |
| Filing of Record and Transcript(s) | Close of Briefing | 150 | 180 |
| Close of Briefing | Oral Argument or Submission | 60 | 90 |
| Oral Argument or Submission | Issuance of Dispositional Order or Opinion | 90 | 120 |

## VIII. Implementing Appellate Court Time Standards

Time standards provide reference points for measuring court performance and management effectiveness, serving as benchmarks to determine whether appellate proceedings are being resolved at a reasonable and acceptable pace. However, simply adopting a set of time standards is not sufficient to ensure that appeals will be decided expeditiously. A number of additional management components of effective court administration should also be in place. First and foremost is a strong commitment on the part of the Chief Justice. Following is an outline that provides a general guide to the steps that an appellate court should consider when undertaking an effort to establish time standards and some additional discussion addressing the implementation process.

> ***… simply adopting a set of time standards is not sufficient … additional management components of effective court administration should also be in place.***

### A. Outline for Establishing Appellate Court Time Standards

1. The Chief Justice of the court of last resort, with the support of the Chief Judge of the intermediate appellate court if applicable, and the State Court Administrator, would take a leadership role and identify the establishment of appellate court time standards as a priority within the Judicial Branch. This would include shepherding the time standards through their initial analysis, development, review and final adoption. This can set the tone for the process with all businesses partners and inter-related departments or groups that the appellate courts work with. This phase is likely to require multiple meetings and discussions to obtain buy-in from justices and judges in the appellate courts and officials with appellate system partners.
2. Establish an internal committee or working group to guide the process. This body should include several justices/judges from the COLR and the IAC, the clerks of each court and other key staff members as appropriate. Particular areas for the working group to explore are:
    - Analyze the current time frames in which appellate cases are being decided for both civil and criminal cases and other case types as desired.

This could provide a baseline for determining the courts' actual times relative to the model standards.

- Evaluate any causes of delay at each stage of an appellate case.
- Review the appellate rules, applicable statutes and the appellate courts' internal operating procedures to identify any provisions that might result in unnecessarily long time requirements by limiting time-saving options such as the use of electronic records and transcripts, creating difficult scheduling or cumbersome workflows perhaps in opinion review and circulation procedures, etc. Develop feasible solutions and draft proposed new rules, statutes or procedures.

3. Broaden the effort by involving business partner representatives, (trial court judges and clerks, appellate practitioners, Attorney General, appellate defender, etc.). This broader group would review the recommendations of the internal working group and assist in seeking solutions and alternative business practices to eliminate delays. Selected alternatives may initially warrant a limited application or pilot study to ensure they bring about the desired effect and avoid unintended consequences
4. Establish and adopt the model appellate time standards, with modifications as needed to address local circumstances and standards for interim stages. Depending on how greatly the actual time frames vary from the standards, the appellate courts might also develop initial goals by which to chart their improvement (see the example of progressive benchmarks provided in Section VI B). Such goals can be helpful to achieve interim successes and in maintaining the commitment and focus on the overall time standards. For the overall time standards and any initial goals, the courts should designate time frames for achieving each.
5. Once time standards are established, overall times to disposition should be regularly reported and published and times through various interim stages of appellate cases analyzed by the court. The reports should be provided to all judges and staff within the appellate courts to ensure that they remain relevant to them. If appropriate, they can also be distributed to the appellate business partners that participated in developing the time standards.

### B. Adoption and Use of Model Time Standards

Establishing and measuring compliance with established time standards for the disposition of cases emphasizes the need for both judges and court personnel to recognize timely case processing as an essential expectation of their work. Doing so fosters the public's trust and confidence that the courts are committed to deciding cases expeditiously.

It is critical that an endeavor to establish appellate court time standards begin with a strong commitment from the chief justice, with support from the chief judge of the IAC. These leaders, along with other members of the appellate courts, will be jointly responsible for the vital leadership efforts and ongoing commitment for the implementation of the time standards. This includes shepherding the standards through an initial analysis, one or more pilot projects and the final adoption. In this way, they will set the tone for the process throughout the state with all businesses partners and inter-related departments and groups that the appellate courts work with. During this initial time period, the chief justice and chief judge will have to conduct discussions with all justices and judges regarding the effort. This may include overcoming any internal disagreements so that the project can go forward with as much majority support as possible.

When appellate court leaders embark on an effort to develop and adopt time standards, they should solicit discussion within the court as well as other groups that will be impacted. This can include judges, trial court clerks and court reporters, attorney general and appellate public defender offices, and appellate practitioners. The degree of participation in the process by these other groups may vary based on the culture and practices in a particular jurisdiction but their involvement is an essential ingredient. All participants should keep in mind that effective time standards are developed primarily to identify the length of time that provides both a deliberative and careful decision-making process as well as reasonable and appropriate timeliness in the resolution of cases. In addition, appellate courts must consider their own specific statutory mandates, rules and operating procedures. This process will result in implementing standards based on individual court circumstances and creating variations of the model from one state to another. However, any substantial variations from the model time standards should be based on the requirements for doing justice in an individual state; they should not result from disagreement with the concept of a nationally applicable model for time standards. Ideally, states with multiple intermediate appellate courts having the same case type jurisdiction would agree upon and adopt a common set of time standards for those courts.

Whatever the difference in circumstances may be from one appellate court to another, the provision of timely and affordable justice in compliance with time standards should be an

integral part of each court's management culture. The nature and importance of time standards as organizational goals should be communicated by the chief justice or chief judge and the court's executive management team to the judges and staff throughout the court, as well as to all of their appellate system partners.

Both in terms of overall public service and the court's own expectations of quality justice, appellate courts should consider the achievement of time standards as an important indicator of their performance.

### C. Measuring Achievement of Time Standards

Once an appellate court has adopted either these model time standards or a modified set, the court leadership should regularly measure their achievement with respect to the established standards. Many state appellate courts already have a process for measuring timeliness of case disposition. Most of those include measures of time between interim events. The results of these measurements should be distributed on a regular basis, at least quarterly, to all judges and staff throughout the court. Results should also be released publicly at a minimum frequency of once each year, more frequently would be preferable.

If the results of these measurements consistently indicate that the court is not achieving its goals, the court leadership must develop and implement appropriate steps designed to improve timeliness. Depending upon the case stages that contribute to delay, such steps can include working with trial court clerks and court reporters to streamline the filing of records and transcripts, or with appellate counsel, especially offices of the appellate defenders and attorneys general offices, with respect to briefing timeliness. In addition, it is critical that court leadership also evaluate its internal policies and procedures to ensure that they do not contribute to the court's failure to meet its objectives.

Many appellate courts have instituted some form of screening process that can help to determine how best to review and decide cases, and some have accelerated the assignment of cases in their efforts to improve timeliness. Others have taken more systemic approaches. For example, since July 2009, Utah trial courts digitally record all proceedings and the appellate clerk's office centrally manages all transcript requests. The previous average of 138 days from transcript request to filing the transcript in the appellate court was reduced to an average of twenty-two days after this function was centralized.[15]

[15] Suskin, L. *A Case Study: Reengineering Utah's Courts Through the Lens of the Principles for Judicial*

### D. Relationship Between Time Standards and Resources

Appellate courts must have adequate funding and staffing to effectively fulfill their constitutional and statutory duties. This includes an appropriate number of judges to hear and decide cases in accordance with the adopted time standards. The inability of an appellate court to achieve its time standards can be an indicator that the court has an insufficient number of judges or judicial staff (law clerks and staff attorneys). However, to justify a request for more judges or staff, judicial leaders must first be able to demonstrate that they have examined all of the other potential reasons for the court's lack of timeliness.

The judicial leaders should be able to demonstrate that they have thoroughly evaluated whether they are making the best use of their available staff, that court procedures are simple, clear and streamlined, and that they are efficiently using their equipment and technology before requesting additional resources to reduce a backlog or maintain timeliness. It may also be appropriate to conduct a workload study, estimating the average amount of time that is devoted to each type of case in order to identify the number of judges and staff members needed in providing quality and timely resolutions of the number and type of cases in the court.

***Measuring the achievement of established time standards is a critical foundation for building evidence-based requests for additional resources.***

Measuring the achievement of established time standards is a critical foundation for building evidence-based requests for additional resources. It ties budget proposals to the mission of meeting agreed-upon goals. Appellate courts that adopt model time standards, measure their degree of achievement, promote timeliness, and take steps to effectively govern, organize, administer and manage the appellate process are well positioned to request and justify the resources needed to enable them to hear and decide cases in a timely manner.

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*Administration*, NCSC, Denver, February 2012; http://www.ncsc.org/services-and-experts/~/media/Files/PDF/Services%20and%20Experts/Court%20reengineering/Utah%20Case%20Study%202%2027.ashx

**RENTAL HOUSING COMMISSION**

**NOTICE OF PROPOSED RULEMAKING**

Pursuant to the authority set forth in § 202(a)(1) of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3502.02(a)(1)) ("Act"), the Rental Housing Commission ("Commission") hereby gives notice of the intent to adopt the following rules related to the Rent Stabilization Program of the Act, registration requirements under the Act, requirements for notices to vacate a rental unit covered by the Act, other tenant rights provided by the Act, and procedures used by the Commission and the Rental Accommodations Division of the Department of Housing and Community Development ("RAD") to processes petitions and adjudicate cases arising under the Act.

The proposed rulemaking would amend all of the implementing rules under the Act in Title 14 (Housing) of the District of Columbia Municipal Regulations ("DCMR"), Chapters 38 through 44. The six core purposes of the proposed rules are as follows:

**1. Implement Statutory Changes in Determining Lawful Rents**

The proposed rules implement two major amendments enacted by the Council with respect to lawfulness of rents charged for rental units subject to the Rent Stabilization Program: (a) the Rent Control Reform Amendment Act of 2006, effective August 5, 2006 (D.C. Law 16-145; 53 DCR 4889) ("Rent Control Reform Act"); and (b) the Elderly Tenant and Tenant with a Disability Protection Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-239; 64 DCR 1588) ("Elderly and Disability Protection Act").

(a) The Rent Control Reform Act abolished "rent ceilings," the legal limit on rents for rental units covered by the Rent Stabilization Program and substituted the term "rent charged" throughout the Act. As amended, the Act uses the terms "rent," "rent charged," "allowable rent charged," and "applicable rent charged" in variety of contexts without clear distinction between money actually demanded or received from a tenant and the maximum, legal amount that a housing provider may be entitled to demand or receive, as filed with the RAD. As the Commission determined in *Fineman v. Smith Prop. Holdings Van Ness, LP*, RH-TP-16-30,842 (RHC Jan. 18, 2018), the legislative history of the Rent Control Reform Act shows that the intent of the Council was that the term "rent charged" should ordinarily be construed to refer to the actual rent, as the term "rent" is defined by the Act. *See* D.C. Official Code § 42-3501.03(28). The Council subsequently ratified this interpretation in the Rent Charged Definition Clarification Amendment Act of 2018, effective March 13, 2019 (D.C. Law 22-248; 66 DCR 973) (see accompanying committee report).

As the Commission noted in *Fineman*, several uses of the term "rent charged" nonetheless only make sense as referring to a legal limit; for example, the vacancy adjustment and the calculation of rent refunds and rollbacks. Accordingly, the proposed rules refer, as necessary, to the "amount of rent lawfully calculated and properly filed with the Rental Accommodations Division" or the "rent that may be charged" when determining the lawfulness of past or future rent levels, respectively.

(b) The Elderly and Disability Protection Act made two major changes to the determination of lawful rents that are implemented in the proposed rules. First, the proposed rules limit annual rent adjustments for protected tenants to the least of five percent (5%), the adjustment of general applicability (based on the Consumer Price Index) for the year, or the Social Security Cost of Living Adjustment for the year. Second, the proposed rules implement the conversion of certain rent adjustments (hardship petitions and substantial rehabilitation petitions and, for protected tenants, related services and facilities petitions and voluntary agreements) into "surcharges" that are not calculated as part of the legal rent that is or may be otherwise charged (previously, only capital improvement petitions operated this way). *See* D.C. Official Code § 42-3501.03(25C). The Act and the proposed rules provide exemptions for protected tenants from these rent surcharges, to the extent offsetting tax credits to housing providers are available (except for voluntary agreements).

**2. Implement and Clarify Transfer of Evidentiary Hearing Function**

The proposed rules conform the procedures of the Commission and RAD with § 6(b-1) of the Office of Administrative Hearings Establishment Act of 2001, effective December 7, 2004 (D.C. Law 14-76; D.C. Official Code § 2-1831.03(b-1)), which transferred jurisdiction over hearings arising under the Act from the former Rental Accommodations and Conversion Division of the Department of Consumer and Regulatory Affairs ("RACD") to the Office of Administrative Hearings ("OAH"). Accordingly, Chapter 40 (RACD Hearings) will be repealed, and those provisions of former Chapter 40 that remain relevant for the limited processing functions performed by RAD will be transferred to Chapter 39 (RAD).

Although in some sections of the current rules the only necessary change is to replace "Rent Administrator" or "hearing examiner" with "OAH" or "Administrative Law Judge," in many places substantial reorganization is required. For example, in § 4210.9 (Petitions Based on Capital Improvements), the current rules direct the Rent Administrator to "render a final decision . . . within sixty (60) days[.]" Under § 202(a)(1) of the Act (D.C. Official Code § 42-3502.02(a)(1), the Commission cannot promulgate rules directing OAH to act within a certain time; however, the statutory consequences of a failure to issue a decision in sixty (60) days, *i.e.*, that the housing provider may begin an improvement, remains the same irrespective of the agency tasked with issuing the decision. In some sections, the proposed rules effectuate the transfer of jurisdiction by establishing specific types of orders that OAH may issue under the Act. For examples, the proposed rules clarify the timing of orders and appeals of orders to pay attorney's fees, in § 3825, and also provide that an audit report on a hardship petition may be remanded to the Rent Administrator for correction, in § 4209 (Petitions Based on Claims of Hardship).

Moreover, in consultation with RAD and OAH, the Commission believes that greater efficiency in processing of housing provider petitions can be achieved by, with limited exceptions, transferring all service of notice, response, and review functions to OAH. In the event that a housing provider's petition is not contested by tenants, other than a hardship petition or if a housing provider seeks a substantial rehabilitation petition for vacant rental units, OAH will nonetheless review and rule on the petition to assure that the petitioner meets the legal and evidentiary burden.

Unlike standard petitions, however, the Commission, in consultation with RAD, OAH, the Office of the Tenant Advocate, and the Housing Provider Ombudsman, believes that Voluntary Agreements, in § 4213 (Rent Adjustments by Voluntary Agreement), should be subject to more thorough, pre-hearing oversight by the Rent Administrator in order to mitigate the possibility of confusion and coercion of tenants in the negotiation and signature-gathering process. The Commission has therefore incorporated OAH's hearing jurisdiction in a substantially different manner for Voluntary Agreement applications than the housing provider petitions that are enumerated in § 216(a) of the Act (D.C. Official Code § 42-3502.16(a)). *See* D.C. Official Code § 42-3502.15.

**3. Implementation of Other Statutory Changes**

The proposed rules conform to the numerous other amendments to the Act that have been enacted since the initial promulgation of implementing rules in 1986 and since the last rulemaking promulgated by the Commission in 1998. For example, the Definition of Persons with Disabilities A.D.A. Conforming Amendment Act of 2006, effective March 9, 2007 (D.C. Law 16-240; 54 DCR 597), changed the standard for determining whether a tenant's disability qualifies him or her for an exemption from capital improvement-based rent surcharges. As an additional example, the Right of Tenants to Organize Amendment Act of 2006, effective September 19, 2006 (D.C. Law 16-160; D.C. Official Code § 42-3505.06), established enhanced fines for interference with certain tenant rights, which are codified in new § 4304 (Tenant Rights to Organize).

The proposed rules further implement recent legislation including the Rental Housing Late Fee Fairness Amendment Act of 2016, effective December 8, 2016 (D.C. Law 21-172; 63 DCR 12959), and the Residential Lease Clarification Amendment Act of 2016, effective Feb. 18, 2017 (D.C. Law 21-210; 63 DCR 15302), specifically, by amending the definition of "rent" in § 3899 (Definitions) to clarify that mandatory fees, other than late fees, are treated as rent charged for a rental unit and therefore may not be imposed or increased except as provided by the Rent Stabilization Program (typically, through a services or facilities petition).

In addition, although not a direct amendment to the Act, the provisions that relate to housing code violations, § 4216 (Requirement to Maintain Substantial Compliance with Housing Regulations) are updated in the proposed rules to reflect the adoption of the 2013 District of Columbia Construction Codes (Title 12, Subtitles A-M, of the DCMR, published March 28, 2014, at 61 DCR 2782), specifically the Property Maintenance Code Supplement of 2013 (Title 12, Subtitle G, of the DCMR), which applies to existing buildings and includes the majority of the housing code violations that the current rules deem "substantial" as a matter of law. The proposed rules also update and amend the enumerated violations that are deemed "substantial" as a matter of law to reflect the language and requirements of the Property Maintenance Code.

Several recent acts of the Council are subject to inclusion in an approved budget and financial plan, as certified by the Chief Financial Officer. *See, e.g.,* Rental Housing Affordability Re-establishment Amendment Act of 2018, effective February 22, 2019 (D.C. Law 22-202; 65 DCR 12333). The proposed rules incorporate these legislative changes in anticipation that a final rulemaking will be not be promulgated before the inclusion of their effects in the Fiscal Year 2020 budget.

**4. Codify and Conform to Existing Case Law**

The proposed rules codify interpretations of the Act and the existing rules established by Commission and D.C. Court of Appeals cases that have been decided in the 30 or more years since most of the existing rules or their predecessors were promulgated. For example, *Strand v. Frenkel*, 500 A.2d 1368 (D.C. 1985), and *Hanson v. District of Columbia Rental Hous. Comm'n*, 584 A.2d 592 (D.C. 1991), effectively overruled the existing rules at 14 DCMR § 3805 (Stay Pending Appeal) regarding the enforceability and stays of orders to pay rent refunds while an appeal is pending before the Commission. The Commission believes that the fairest and most efficient way to revise its rules is therefore to automatically stay all final orders that are appealed to the Commission in order to preserve the status quo until all legal issues are resolved.

As an additional example, cases including *Quality Mgmt., Inc. v. District of Columbia Rental Hous. Comm'n*, 505 A.2d 73 (D.C. 1986), and *Miller v. District of Columbia Rental Hous. Comm'n*, 870 A.2d 556 (D.C. 2005), provide definitions for the terms "knowingly," "willfully," and "bad faith," as used in § 901 of the Act (D.C. Official Code § 42-3509.01), which are added to 14 DCMR § 4217 (Enforcement, Remedies, and Penalties) in the proposed rules.

With regard to the Act's statute of limitations, D.C. Official Code § 42-3502.06(e), the proposed rules, in § 4214.10, codify several decisions on the meaning of the "effective date" of a rent adjustment. In *United Dominion Mgmt. Co. v. Hinman*, RH-TP-06-28,728 (RHC June 5, 2013), *aff'd, United Dominion Mgmt. Co. v. District of Columbia Rental Hous. Comm'n*, 101 A.3d 426 (D.C. 2014), the Commission held that the perfection of a rent ceiling adjustment could be challenged more than three years after it was taken, if that rent ceiling adjustment formed the basis for a later increase in the rent charged. To the extent any previously taken and perfected rent ceiling adjustments remain as potential bases to increase the rent charged under § 206(a) of the Act (D.C. Official Code § 42-3502.06(a)), the proposed rules, in § 4214.10(b), make it explicit that those rent ceiling adjustments are subject to legal challenge. In *Pinnacle Realty Mgmt. Co. v. Voltz*, TP 25,092 (RHC Mar. 4, 2004), the Commission determined that the statute of limitations began to run from the date tenants had notice that a related facility would not be restored, rather than the date it was first blocked off. The proposed rules, in § 4214.10(c)(1), codify that actual or chargeable knowledge of the cause of action starts the running of the statute of limitations.

With regard to the existence of housing code violations, however, prior Commission decisions are in conflict on how to apply the statute of limitations. Some decisions have affirmed awards of rent refunds capped at three years, while others have held that all recovery is barred if a violation existed more than three years before a tenant petition was filed. *Compare Shapiro & Co. v. Poorazar*, TP 22,427 (RHC June 10, 1996) *with Borger Mgmt., Inc. v. Warren*, TP 23,909 (RHC July 22, 1998). However, in *Majerle Mgmt. v. District of Columbia Rental Hous. Comm'n*, 768 A.2d 1003, 1008 n.13 (D.C. 2001), *vacated in part*, 777 A.2d 785 (D.C. 2001), the D.C. Court of Appeals summarily rejected the "argument that the statute of limitations completely bars recovery" where "housing code violations may have initially occurred more than three years before the tenant filed her complaint." On a subsequent appeal in the same case, the D.C. Court of Appeals noted that its holding as to housing code violations was not vacated on rehearing and instead "conclusively resolved" the issue. *Majerle Mgmt. v. District of Columbia Rental Hous. Comm'n*, 866 A.2d 41, 44 n.6 (D.C. 2004). Nonetheless, some later Commission decisions

appear not to have acknowledged this holding by the D.C. Court of Appeals and have determined that all recovery is barred. *See, e.g., Willoughby Real Estate Co., Inc. v. Shuler*, TP 28,266 (RHC Nov. 7, 2008); *Amiri v. Gelman Mgmt. Co.*, TP 27,501 (RHC Oct. 20, 2003).

The proposed rules, in § 4214.10(c)(2), clarify that recovery for housing code violations is not completely barred by the statute of limitations and a tenant may obtain a refund for a reduction in related services up to three years prior to the filing of a petition, in accordance with the holding in *Majerle*. The Commission also believes this to be the better interpretation because it is more consistent with the applicability of the housing code generally, *see* 14 DCMR § 102.7 ("every day such violation continues shall constitute a separate offense"), and it does not produce the bizarre result that a housing provider's extended failure to abate substantial violations, such as rodent or insect infestations, would be shielded from liability. Reductions in related services or facilities that are required by lease agreement, but not required by the housing code, remain subject to the complete bar of the statute of limitations. *See, e.g., Kuratu v. Ahmed, Inc.*, RH-TP-07-28,985 (RHC Jan. 29, 2012); *Peerless Properties v. Hashim*, TP 21,159 (RHC Oct. 26, 1992).

**5. Update and Improve Operations and Procedures**

The proposed rules update operational and adjudicative procedures of the Commission and RAD for greater efficiency and fairness to parties, based on the experience of the agencies with established roles and duties under the Act. For example, the filing and service of pleadings by parties with the Commission will, with prior consent, be permitted by email, and appellants will be provided a limited opportunity to amend a notice of appeal after its filing. The proposed rules also eliminate the Appendix of Forms published with the current rules, which were intended as model filings for appeals before the Commission, in favor of the updated (and easily updatable) publication of model forms online.

As an additional example, the existing rules in § 3816 (Calculation of Deadlines) are clarified by eliminating the rule that "business days" are used for periods of 10 days or less; the proposed rules, accordingly, extend those deadlines, typically to 15 calendar days. However, the Commission has not changed the use of "business days" for the time to file a notice of appeal. The Commission recognizes that the 10-day period set by § 216(h) of the Act (D.C. Official Code § 42-3502.16(h)) is substantially shorter than the period for filing of appeals to the D.C. Court of Appeals and may create difficulties for parties deciding whether to appeal and on what grounds, and therefore the Commission has endeavored to provide as much procedural latitude as possible within the statutory requirement.

More substantively, after consultation with RAD and OAH, the Commission believes that the rule in § 4101.6 for giving notice to tenants of a registration or claim of exemption should be modified. The existing rule requires that a copy of a Registration/Claim of Exemption Form shall be posted or mailed to tenants "prior to or simultaneously with" the filing of by a housing provider, which has been a source of confusion for housing providers and fails to give tenants complete information. The proposed rule requires that tenants shall be given a copy of the form that has been date-stamped and assigned a registration or exemption number by RAD, within 15 days of RAD's date-stamp. The proposed rule also implements legislative changes to section 205(h)(2) of the Act (D.C. Official Code § 42-3502.05(h)(2)), made by the Rental Housing Registration Update Amendment Act of 2018, effective October 30, 2018 (D.C. Law 22-168; 65

DCR 9388), to clarify the requirements for posting notice at a housing accommodation or mailing notice to tenants when posting is not practicable.

**6. Clarify Language and Increase Specificity**

The proposed rules clarify the language and, in some cases, the organization, of the existing rules for readability and ease of application. The proposed rules, in general, maintain the organization of subjects by section within each chapter, with the goal that citations in prior decisions will remain easily usable for legal research.

For example, the proposed rules provide an expanded explanation of rent refunds, trebled rent refunds, and rent rollbacks in 14 DCMR §§ 3899 (Definitions) & 4217 (Enforcement, Remedies, and Penalties). In part, this change reflects the impact of the abolition of rent ceilings on the calculation of unlawful rent, and in part it merely clarifies the difference between rollbacks, as adjustments to the lawful amount of rent that may be charged from the date of an order, and rent refunds, as monetary damages for past time periods in which excess rent was charged. As an additional example, the proposed rules clarify, in § 4216 (Requirement to Maintain Substantial Compliance with Housing Regulations), the necessary timing for proving compliance with the housing code when a housing provider files a petition for a rent adjustment, in accordance with § 208(a)(1) of the Act (D.C. Official Code § 42-3502.08(a)(1)). Further, because tenant petitions to challenge the "base rent" established in 1985 are no longer relevant (*see* D.C. Official Code § 42-3502.06(e), providing that such challenges must be brought within six months of the Act's effective date), § 4215 is repurposed to implement certain aspects of the Elderly and Disability Protection Act.

Although the proposed rules mostly retain the existing organization of subsections within each subject, some additions, deletions, and reordering are necessary or clarifying. Some sections, in particular the housing provider petition-based rent adjustments, the Commission determined were best clarified by total redrafting to explain in detail the filing requirements, applicable legal and evidentiary standards, and administrative review procedures. *See, e.g.,* §§ 4208 (Rent Adjustments by Housing Provider Petitions) & 4209 (Petitions Based on Claims of Hardship).

Except where the revised language of the proposed rules effectuates one of the other five purposes stated above or plainly requires a different result than would have been required under the existing rules, the Commission intends that amended provisions of the rules should be treated as clarifications and that its and the D.C. Court of Appeals' prior interpretations in decisions and orders should continue to serve as binding precedent.

**Strike Chapters 38-44 of Title 14 DCMR, HOUSING, in their entirety, and insert the following in their place:**