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September 12, 2011

Lizbeth Heyer
Michael Malamut
Department of Housing and Community Development
100 Cambridge Street
Boston, MA 02114

Re: Comments on HomeBASE Emergency Regulations – 760 C.M.R. 65.00

Dear Lizbeth and Michael,

On behalf of low-income families who we and our colleagues in legal services programs across the state serve on a daily basis, we submit these comments on the emergency HomeBASE regulations issued on or about July 28, 2011. The issues, other than the first, are discussed in the order that they appear in the emergency regulations.

We appreciate the great amount of work that obviously went into creating the emergency regulations for this new program in the short amount of time between enactment of the FY 12 state budget and filing of the regulations. And we appreciate that the Department has shown a willingness in the time since the regulations were issued to provide some helpful waivers and policy guidance that is less restrictive than what is prescribed by some of the regulations.

As a general matter, however, we believe that the regulations and the policies that are being implemented pursuant to them are much too onerous and based on unreasonable expectations for vulnerable homeless families with children. The regulations fail in our opinion to take adequately into consideration the fact that many of the children who the HomeBASE program was created to serve live in families facing great challenges which affect their parents' ability to comply with the myriad requirements that the regulations impose.

Such challenges include that many eligible families are living in the very deepest levels of poverty, with the average income of families eligible for Emergency Assistance and therefore HomeBASE being less than $700 per month. As a result, these families have very limited resources to pay for transportation to and from appointments and activities, to keep telephone service connected and to pay for the basic necessities of life in addition to keeping current with rent and utilities.

Common challenges also include that many if not most families are fleeing or trying to recover from the trauma of domestic or community violence. Many families include members with significant disabilities which negatively impact their ability to engage in work related activities or maintain an ideal school attendance record. And many families include parents with very low educational attainment or who have difficulty communicating in English.

Particularly given that an inability to comply with HomeBASE rules will lead to termination of HomeBASE assistance, a bar on further assistance for up to 2 years, and the return of innocent children

to homelessness, we urge you to revise the regulations substantially to reflect more realistic expectations. Indeed, unless substantial changes are made, we believe that the program may discriminate against and screen out families with the greatest challenges, including those with disabilities and linguistic barriers, in violation of the Americans with Disabilities Act, the Rehabilitation Act of 1974, Title VI of the Civil Rights Act of 1964 and similar state laws. And, just as importantly, without significant revisions to the regulations, HomeBASE may actually work to perpetuate family homelessness, instead of being a constructive part of ending it as is everyone's goal.

I. Preservation of Priorities.

Our first comment relates to something that is *not* in the regulations nor, as far as we can tell, yet in the DHCD tenant selection regulations at 760 C.M.R. 5.00 – the need for regulatory language ensuring that those who receive HomeBASE assistance retain any priorities or preferences they would have for state and/or federally subsidized housing but for receipt of HomeBASE. We appreciate the statement at the HomeBASE briefing at the State House that it is the Department's intention to ensure that families placed using HomeBASE assistance retain their priorities for long-term affordable housing. But we are unaware of any regulations that would ensure that result.

We have heard that the Department may be in the process of amending the tenant selection regulations to address this issue with respect to state housing resources. Such an amendment is urgently needed. Subsection (e) of the definition of "Homeless Applicant" in 760 C.M.R. 5.03, as revised last fiscal year, does not protect priorities for subsidized housing for those who receive HomeBASE assistance, given that last year's revision was written so narrowly as to cover only fiscal year 2011 and only temporary rental subsidies funded through item 7004-0101, MEOP or HPRP.

And nothing in the current version of 5.03 protects priorities for federally subsidized housing, which as we discussed at our meeting during the budget process, the Department has authority to require. This is a serious problem given, as the Department acknowledges, HomeBASE is not providing long-term affordable housing but rather a short-term alternative to emergency shelter. It would be truly unfortunate – and inconsistent with the goal of ending family homelessness – if families served through HomeBASE rather than EA ended up having *fewer* long-term housing options. We urge the Department to take prompt regulatory action to require that any otherwise applicable priorities for both state and federal housing resources be preserved for those temporarily housed through HomeBASE.

II. Definitions – 65.02.

A. **Hearing Officer.** As discussed more in Part VI below, the definition of Hearing Officer is inconsistent with FY 12 line item language that requires that appeals of any denial (including an approval of one kind of HomeBASE assistance but a denial of another) or any termination of HomeBASE assistance be pursuant to G.L. c. 23B, section 30(F). This statute provides for appeals to independent hearing officers employed by DHCD and other statutory protections (e.g. right to an in-person hearing). Without the protections in section 30(F), a hearing officer employed by the same agency rendering the challenged decision cannot be adequately impartial.

But even if the appeal structure in the emergency regulations is retained, more guidance is needed as to the intended indicia of impartiality by a designated hearing officer. Such indicia, at a minimum, should include that the person is not otherwise employed or subject to control by the HomeBASE administering agency or any subcontracting agency involved in the decision making.

Moreover, the regulations do not adequately describe the elements of a hearings procedure that will be "approved" as referenced in the emergency regulation. Such elements should include at least: a) that the hearing officer be authorized and required to administer oaths to any and all witnesses presenting testimony and to conduct the hearing in accordance with other elements in 106 C.M.R. 343.450; b) that, in advance of the hearing, the appellant (or her/his authorized representative) has the right to review all records in the possession of the administering agency or its agents or subcontractors or the department relating to the appellant and her/his household, 106 C.M.R. 343.340, as well as the other rights set forth in 106 C.M.R. 343.410; and c) that the appellant have a right to subpoena witnesses and documents as is authorized for other hearing relating to subsistence benefits in 106 C.M.R. 343.360. In addition, there needs to be some provision for allowing rescheduling of the hearing for good cause reasons, such as those in 106 C.M.R. 343.320(D), which the emergency regulations cite in 65.05(1)(d) as the good cause reasons for missing an appointment with a stabilization worker but not in conjunction with rescheduling of appeals.

B. **Imminently at Risk of Becoming Homeless.** The definition in the emergency regulations is too restrictive in a variety of ways and we urge you to expand it.

1). **48 Hour Notice.** The Administration represented throughout the FY 12 budget process that HomeBASE would be available to help keep families in their current housing. However, the definition in the emergency regulations is so restrictive that it will almost never allow HomeBASE to be used to prevent an eviction. For one thing, the requirement of "a 48-hour notice of levy on execution in the context of a summary process action for eviction" is too restrictive. Indeed, it is more restrictive than the EA shelter eligibility rule, which, as we have often discussed, does not require a 48 hour notice of a levy on the execution. Instead the EA rule requires documentation "that the judgment for possession of the current resident has been executed." 106 C.M.R. 309.040(A)(5)(b). Application of this rule instead of one requiring the notice of levy to have issued will allow a little bit more time (between the issuance of execution and service of the notice of levy) to try to save the tenancy and the fact that the landlord will not have had to pay for the levy (including sheriff/constable fees and truck cancellation fees) will increase the odds of preserving the tenancy. So, at a minimum, we urge you to revise the regulation to conform to the EA regulation which confers eligibility as of the court's issuance of the execution and to do better education of those involved as to the distinction. *But, we strongly urge you to back the date up even more, at least to the date of entry of a judgment for possession, which is typically 10 days before issuance of the execution, so that there is more of an opportunity to save the tenancy.*

In addition, for the same reasons articulated on pages 9-10 of Housing Stabilization Notice 2010-02 and in a recent email to providers from Ita Mullarkey, the regulations must be revised to provide that a family must be considered at imminent risk of homelessness if they are within 48 hours (or hopefully longer) of the "vacate" date in an agreement for judgment. [1]

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[1] We have heard that an email or other communication from DHCD to providers may have directed DHCD staff and/or HomeBASE providers to use the issuance date of execution rather than the date of levy. But neither the email just referred to nor a document waiving the requirement of the 48 hour notice has been posted on the Housing Stabilization website. This guidance is therefore not available to families, their advocates or other concerned members of the public. We urge you to post such policy changes or guidance on the website to promote transparency and consistency of administration throughout the state.

2). **Copy of Kick-Out Letter to Landlord.** Subpart (b) of the definition requires those who are being asked to leave a double-up situation to produce a letter from the primary tenant "with a copy to the Owner or the Owner's agent" that the homeless family must leave within 48 hours and will be barred from re-entry "except as a daytime guest." This is counterproductive in several ways. For one thing, providing notice to the landlord that a primary tenant has allowed another family to stay may place the primary tenant's tenancy in jeopardy and create an additional homeless household. For another, requiring such notice and the promise of a future bar on the homeless family returning there even temporarily in the future may foreclose a viable, short-term option and increase the odds that the family will need to rely on state-funded resources if they become homeless again after HomeBASE assistance runs out. Also, as written, the regulation suggests that the homeless family must be barred from even visiting during evening hours regardless of whether or not they are staying overnight. This would preclude visiting for dinner, to share child care or to do laundry after sunset. And, since such an onerous verification requirement is NOT applicable to EA shelter, this provision creates a situation in which placement in HomeBASE temporary accommodations or other HomeBASE arrangements will be precluded, but a right to EA shelter remains, which seems inconsistent with the Administration's goals. Finally, because many families will not be able to get such a letter since their hosts will not write them, the regulation creates a situation in which HomeBASE assistance cannot become available until the family is actually barred from returning and has nowhere to go that night, which increases stress and pressure on the children, the families, DHCD and providers to arrange a placement in a 1-day time frame.

In addition, the regulations should clarify that where an occupant receives a "kick out" letter which provides more than 48 hours notice for the person to vacate, the eligibility criteria will be met once there is only 48 hours left under the notice. Additionally, the regulation should be broadened to include property owners as well as primary tenants. For example, we have encountered situations where owners (of single family houses and condominiums) live in their homes and allow someone to stay with them for a short time but then send a "kick out" letter. The use of the words "primary tenant" would not necessarily include these property owners.

3). **No Provision for Those Who Have Access to Housing but Whose Housing Does Not Qualify or No Longer Qualifies as Feasible, Alternative Housing.** By including a definition of who is *imminently* homeless but not a definition of who is *already* homeless, the regulations imply that no family can get HomeBASE assistance unless they have one of the two kinds of "48 hour notice" just discussed. Accordingly, since August 1, we have regularly heard of HomeBASE providers and DHCD staff telling families whose current housing is not or is no longer feasible due to safety and other issues as specified in 106 C.M.R. 309.040(A)(5)(c)-(f) that they must have a 48 hour notice in order to be eligible for any HomeBASE *or* EA assistance. Such erroneous advice has been provided to families who have fled their housing due to active domestic violence or have left a double-up situation that does not meet Sanitary Code requirements. This is especially perverse because the Legislature included the category of imminently at risk families with the intention of making a broader range of families eligible for HomeBASE than are eligible for EA shelter. But in practice, this 48 hour notice language is being used to make the pool of families who are eligible for HomeBASE and EA *narrower* than what is authorized by the EA regulations. The HomeBASE regulations (and training materials) therefore need some reminder, perhaps at the end of the definition of Imminently At Risk of Homelessness that there is another entire category of eligible families for whom such notices are not required. Indeed, unless this definition is broadened as discussed above, the only families who would meet the very narrow definition of a family imminently at risk of homelessness would also meet the definition of a family who is actually homeless. Thus, it might be best simply to eliminate the category of Imminently at Risk of Homelessness and provide that any family approved for EA is eligible for HomeBASE (with the

exception of the young parents). This would help prevent HomeBASE screeners and other personnel from telling families that there is some new but unauthorized requirement for EA and HomeBASE eligibility.

C. **Suitable Unit.** The emergency regulations contain the 80% FMR requirement; say that it may be waived by DHCD where "cost-effective"; and go on to say that "In no case shall the rent for a unit subject to a waiver under this provision exceed one hundred percent (100%) of the fair market rent for such a unit." First, there is no standard for determining when a placement above 80% FMR is "cost effective." Second, and more importantly, you have already issued a "universal waiver" in Notice 2010-03 providing that units can rent for up to 100% FMR *and* that individualized waivers are available to go over 100% FMR. We believe that the policies in the waiver are more reasonable and that they should be incorporated into the regulations. This would obviate the need for further defining cost effectiveness.

We also think that the definition of a Suitable Unit should include language ensuring that a family must pay no more than 35% of its income for rent and utilities and that it should reflect the Legislature's intention, as set forth in the FY 12 EA line item, that a HomeBASE unit is not suitable unless it accommodates disabilities of family members and will not result in job loss. *See* St. 2011, c. 68, § 2, item 7004-0101 (to result in loss of EA eligibility HomeBASE housing placement must "adequately accommodate[] the size and disabilities of the family and the housing placement shall not result in job loss for the client").

III. Eligibility for Program Participation – 65.03.

A. **Presumptive Ineligibility for HomeBASE for families in shelter.** We are very concerned to see that in 65.03(2)(ii) the regulations actually make families in shelter INELIGIBLE for HomeBASE unless they have a referral from their provider and have "been in full compliance with the requirements of the Emergency Assistance program, including any program shelter rules and re-housing plan requirements" within the past 6 months. This, like the other very restrictive provisions in the regulations, seems inconsistent with a "housing first" strategy and is a provision that will screen out families who may be able to be more successful in housing than in a shelter-based environment for reasons relating to disabilities and other barriers. Fortunately, we understand that shelter providers and families have been advised that – notwithstanding this provision of the regulations – families in shelter are eligible for placement with HomeBASE rental assistance so long as they have not been *terminated* from EA shelter. *See also* HomeBASE Notice 2011-01 stating that families in shelter, including motels, are eligible for HomeBASE. Since families will no longer be in EA shelter if they have been terminated from EA, this provision seems unnecessary and we urge you simply to remove 65.03(2) from the regulations except as it applies to young parents who must have a referral and "a determination that the family has successfully completed a young parents congregate shelter program …."

B. **Clarification of Language in 65.03(3) Concerning the Age of 18.**

The first and last sentences of 65.03(3) state, as required by line item language requested by the Administration, that a family cannot receive HomeBASE assistance beyond 36 months from the date assistance is first received (excluding temporary accommodations), unless and until 12 months have passed from the date assistance was last provided. St. 2011, c. 68, § 2, item 7004-0108. But the second and third sentences of this subsection of the emergency regulations imply that the only families eligible for HomeBASE are those with a child under the age of 18, even though a family is eligible for EA shelter so long as it has a child under the age of 21 and meets other EA rules. It is our understanding that when this provision was described to DHCD personnel soon after the regulations came out and concerns

were expressed about its impact on families whose only dependent children are between the ages of 18 and 21, the Department indicated that there was no intent to render such families ineligible for HomeBASE. But the meaning of these sentences is very unclear. We urge that the second and third sentences be eliminated.

In addition, to the extent that this provision is intended to say that a family headed by a parent who received HomeBASE assistance as a child is ineligible for HomeBASE for her own family and children, we urge you to reconsider, keeping in mind that poverty is often intergenerational due to no fault of anyone involved and keeping in mind that the next generation of children also need to be protected from the ravages of homelessness.

C. **Scope of 24-Month and 12-Month Bars in 65.03(4).**

In 65.03(4), the regulations purport to impose 24-month or 12-month post-assistance bars on families terminated from HomeBASE "for cause." As discussed below under part V. J. concerning 65.05, we do not think that the Department's conflation of a termination for cause and a finding of no good faith effort to secure housing or to comply with a stabilization plan (which is the standard set by the Legislature in the line item) is valid. Many families who will be subject to termination under the very restrictive HomeBASE rules may well have made a "good faith effort to secure an apartment or … follow their housing stabilization plan during the term of their assistance." St. 2011, c. 68, § 2, item 7004-0108. But they may have been unable, e.g., to make 2 appointments or comply with the letter of their plans for good reasons not covered by the narrow good cause rules or because they have been tripped up by the conduct of guests or others over whom they have no control. Because of the grave consequences of these post-assistance bars on homeless children and their families, to justify imposition of these measures and comply with the line item and due process, there needs to be a separate determination as to whether someone did not make a "good faith effort to secure an apartment or … follow their housing stabilization plan during the term of their assistance."

Also, the inclusion in 65.03(4) of a post-assistance bar on Emergency Assistance shelter is invalid, since the EA line item specifically provides that "notwithstanding any general or special law to the contrary," the Department cannot promulgate eligibility restrictions on EA except after a declaration of a deficit and 60 days advance notice to the Legislature. St. 2011, c. 68, § 2, item 7004-0101.

Further, as discussed more in Part V. concerning 65.05, we are very concerned that the Department apparently intends to impose these bars on additional assistance on families who are terminated *solely because they have temporarily lost custody of their children* (perhaps because of false accusations by an abuser or the need to obtain some health care treatment). In addition to being unreasonable and inconsistent with the need for a finding of no "good faith effort," this approach will simply put more pressure on DCF to use its already strained funding to fulfill its statutory obligation to provide shelter to families for whom lack of housing is the barrier to reunification of parents and their children. If the Department persists in conflating a termination for cause and the required finding of no good faith effort, which as discussed above, we think is invalid, we urge you at least to add an exception in the last sentence of 65.05(1), like the one applicable to those who are terminated for exceeding the income limit, for those who are terminated due to loss of custody of a dependent child. The proposed revised sentence at the end of 65.05(1) would then read: "Termination for cause pursuant to 760 CMR 65.05(1)(r), except for termination pursuant to (r) for exceeding maximum income requirements or loss of custody of a dependent child, shall constitute failure to make a good faith effort to follow a Participant's housing stabilization plan."

Finally, we note that the HomeBASE line item authorizes the Department to impose post-assistance bars of "no more than" 24 and 12 months. St. 2011, c. 68, § 2, item 7004-0108. This construction allows the Department discretion to impose no bar or a lesser bar on further assistance where imposition of any or a longer bar would place a family at risk or where the conduct that led to termination from the program was by a family member or guest who is no longer part of the family unit seeking further assistance. For the sake of homeless children for whose protection the Emergency Assistance and HomeBASE programs were created, we urge you to add a new subsection 3. to 65.03(4)(a) which provides: "3. Notwithstanding the provisions of 1. and 2., a family that is terminated from receipt of benefits under 760 CMR 65.00 for cause and would otherwise be ineligible for additional assistance for a period of time may obtain a waiver from the period of ineligibility if: a) the health or safety of a family member is at imminent risk if the waiver is not granted; b) the person whose conduct led to the termination is not part of the assistance unit seeking additional assistance; c) a child would be removed from a parent's custody but for provision of a waiver; or d) other extraordinary circumstances or undue hardships exist."

D. **Definition of Disability – 65.03(5).**

Subsection (5) says in the last sentence that a person with a disability will not receive the protection mandated by the Legislature in the line item from the 24-month and 12-month bars unless that person is in "receipt of benefits based on disability from the United States Social Security Administration or the Department of Transitional Assistance." This definition is too narrow. For one thing, this definition is inconsistent with the language used by the Legislature. In line item 7004-0108, the Legislature created an exception for all those who are "disabled" and not for only those persons who are disabled and in receipt of particular benefits. A similar attempt by DTA under a prior Administration to restrict the TAFDC exemption from the time limit and work requirements for those caring for a disabled child only to those caring for a disabled child who is in receipt of SSI was declared inconsistent with the statutory language. *See Minnefield v. McIntire,* Civil Action No. 99-3349G (Suffolk Superior Court 2000)(Gants, J.). For another, it often takes the Social Security Administration and DTA a long time to determine eligibility for disability-based benefits and those with applications for such assistance pending are just as disabled before they are approved as they are after. In addition, the formulation in the regulations may not even protect parents with a TAFDC disability exemption given that, although parents may receive TAFDC on behalf of themselves and/or their children and have an exemption from work requirements due to their own disability, that does not mean that they are in "receipt of benefits based on disability" since TAFDC is a benefit based on having a dependent child in the home. Also, this provision is inconsistent with the Americans with Disabilities Act in that it will have the effect of screening out qualified persons with disabilities who have not managed to navigate the complicated processes for applying for and receiving these benefits or who are trying to survive without accessing tax-payer funded benefits. *See* 28 C.F.R. § 35.130(b)(8). Moreover, many persons with disabilities, including our veterans, receive benefits not through these 2 agencies but through the Veterans Administration, the Mass. Rehabilitation Commission and other agencies or private long-term insurance. For all these reasons this provision is too narrow.

We therefore urge you to replace this sentence with something along the lines of: "Disability under this Subsection may be verified by receipt of benefits based on disability from any local, state or federal agency or private insurer, eligibility for an exemption from TAFDC work requirements and the time limit based on disability, or a letter from a qualified medical provider that the person is a person with a disability that has existed or is expected to exist for 30 days or more and that substantially reduces his or her ability to support himself or herself or satisfy the otherwise applicable obligations of the HomeBASE program." *Cf.* 106 C.M.R. 203.530.

E. **Contents of Stabilization Plans – 65.03(6).**

We are very concerned – particularly but not only because ratios of stabilization workers to families will be in excess of 1 to 60 and reportedly in some areas as high as 1 to 120 – that the mandate that "each Stabilization Plan must include at least the following elements" (i-vi) is too rigid and unrealistic for families. Moreover, by saying all Plans must include all these elements the regulations fail to encourage the kind of individualized determination that is necessary to address the needs of persons with disabilities and create a real risk of screening out persons with disabilities in violation of the ADA, Rehabilitation Act and comparable state laws.

We are also concerned that in 65.03(6)(c) the regulations require children age 12 and under to be supervised at all times by someone over age 18. In all types of families, older teenage siblings routinely supervise younger children when parents are at medical appointments, job interviews, work, an adult education program, etc. This is often during the few hours between the end of the school day and the parent's work day. As drafted, the regulation would greatly hinder parents in seeking or retaining work. We think this provision should be eliminated (or alternatively, reduced from 18-years-old to 14-years-old).

We particularly think that imposing requirements "to comply with the service plans of any other state agency providing services to the family" and "requirements to address … financial responsibility; job training, work search and employment; educational attainment; and well-being of children in the family" ON TOP OF requirements that all family members over age 18 engage in 30 hours per week of work-related activities, see 65.03(6)(i)(incorporating the 30 hour activity requirement from 106 CMR 309.040(D)(2)), is simply excessive. This is especially true since these conditions are and will be applied at the same time the family must be searching for long-term affordable housing and given that a failure to be able to comply with one or two of these myriad obligations on one or two occasions will lead to termination of HomeBASE and a return to homelessness for the family.

We urge you to revise the introduction to this list to read "each Stabilization Plan may include the following elements depending on an individualized determination of the capabilities and most urgent needs of each family: …."

We also urge you to revise the regulation to include an explicit provision in this section setting forth that any otherwise applicable requirement to be included in a Stabilization Plan is subject to reasonable modification to accommodate the needs of a person with a disability, similar to the provision in 106 C.M.R. 309.040(D)(2)(h). It is important that the providers have a duty to make such accommodations and that such modifications not be subject to prior DHCD approval, given that the alternative creates a method of administration that is likely to screen out persons with disabilities. 28 C.F.R. 35.130(b)(8).

We are also concerned about the lack of any express provision for accommodations of persons whose primary language is other than English. We have asked for but, as of yet, have received no evidence that the regulations, policy documents or Stabilization Plan documents have been translated into languages other than English. Nor have we seen any evidence of capacity of HomeBASE providers to serve families whose primary language is other than English.

In general, we urge the Department to implement with respect to HomeBASE the guidelines in its Language Access Plan for compliance with Title VI of the Civil Rights Act of 1964, including

making sure that program documents are appropriately translated and interpreter services provided as indicated in the LAP and Title VI requirements. And somewhere in the regulations should be a reference to the fact that no family is subject to the rules or requirements if their primary language is other than English and they have not been provided with relevant documents and services in their primary language.

Finally, the Department should add a general provision that all Stabilization Plan must be reasonable in light of a family's individual circumstances.

F. **Separation of Family Members – 65.03(8).**

This subsection of the regulations says that if a family includes 2 persons over the age of 21, the Department may refer one of them to "alternative adult sheltering arrangements." This is a regulation borrowed from EA which was originally adopted to address the fact that some contracted shelters did not allow males over a certain age to stay there – a situation that should not continue to exist under current contracts. In EA, the provision often places a family on the horns of a horrible dilemma between pursuing an EA application to provide a safe place for their children to stay and causing the family to be split up. This provision is counterproductive in terms of helping families gain stability and encouraging 2 parent families. We urge you to remove this provision.[2]

IV. **Determination of Benefits – 65.04.**

A. **Inadequate Standards for Determining Type and Level of Benefits – 65.04(1).**

We are very concerned by the lack of a clear standard to govern how DHCD or HomeBASE providers must determine what form and amount of assistance will be provided to EA and HomeBASE-eligible families. Certainly the provision in 65.04(1) suggesting that administrators have complete discretion to determine that Non-Rental Assistance or possibly no assistance will "best serve the family in obtaining safe, permanent housing" is so vague as to be meaningless and perhaps inconsistent with the requirements of due process and standards for lawful delegation of authority.

Particularly given that a family cannot receive Non-Rental Assistance in an amount of more than $4,000 in any 12 month period, we urge the Department to amend the regulations to provide that Rental Assistance will not be denied unless there is a substantiated basis for concluding that the provision of

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[2] Also related to separation or threatened separation of family members, since the launch of HomeBASE we have heard several reports of families being told by DHCD and/or HomeBASE staff to go away and come back another day without regard to whether the family has a place to stay. Some families have objected and pointed out that they do not know where they are going to stay that night. In more than one case, families have reported that DHCD staff, including DHCD supervisory personnel, have told parents that, if they have nowhere to go, DHCD will call the Department of Children and Families (DCF) who will come and take their children and place them for the night while the parents go to shelters for adults without children. This is separate from but not inconsistent with the fairly common reports of families who have been asked to leave a double-up situation being told about the DCF health and safety assessments in words and tone that suggest that if they pursue their applications for EA/HomeBASE DCF might take custody of their children. We urge you to issue explicit written guidance that such explicit or implicit threats will not be tolerated.

only Non-Rental Assistance will enable the family to become and remain stably housed for at least 12 months. Alternatively, since, as you indicated in your September 2 letter responding to various implementation issues, Non-Rental Assistance (or "household assistance") is valuable because many families prefer to receive it to be able to stay in place, we encourage you to revise the regulations to make a family's preference for Rental Assistance or Non-Rental Assistance a strong factor in the decision, since a family will often know whether Non-Rental Assistance will or will not best serve their needs.

In addition, and very importantly, the regulations need to reflect that those provided only Non-Rental Assistance will not have to pay more than 35% of their incomes at the time of the provision of Non-Rental Assistance for rent and utilities. As currently written, the regulations apply this protection mandated by the Legislature only to families provided the more valuable Rental Assistance. But the HomeBASE line item clearly states that this protection applies to all "eligible families" and not, as some other provisions do, only to those receiving "assistance towards a portion of the household's monthly rent." St. 2011, c. 68, §2, item 7004-0108. It is our understanding that some providers are approving only Non-Rental Assistance in the form of "Moving Cost Assistance" under 65.04(3)(f) and telling families to go rent an apartment with no rental assistance even though the only available apartments would cost them far in excess of 35% of their income for rent and utilities, in some cases as much as 75% or more. This is inconsistent with the line item.

B. **Rent Adjustments – 65.04(2)(e) and (f).**

We applaud the Department's inclusion of the provision saying that those who are receiving Rental Assistance and who experience an increase in income shall not have their rent shares adjusted upward during the period of the existing certification. This removes an important disincentive to the increase of income and to parents trying employment arrangements that may not be sustainable for a longer term.

We also appreciate the Department's decision to require that rent shares must be adjusted downward if income declines during the certification period. But we think the regulations need to be revised to: (1) require providers to tell families of this right both initially and upon any reporting of a change in income; (2) treat any report of an income decrease as a request for recertification unless the family affirmatively says, upon being given the option in writing by the provider, that it does not want to recertify; and (3) require that the decrease in rent be effective on the first day of the next rental period following the report of the income decrease or such earlier time as the provider finds warranted in the event that circumstances delayed reporting of the information. This latter provision is similar to DHCD's state public housing regulations at 760 C.M.R. 6.04(5).

The emergency HomeBASE regulations provide that family income is to be recertified annually with the rent adjusted (up or down) as of the first of the new one-year period. In case there is a delay in processing the annual recertification (due to competing demands on the provider or otherwise) Participant Families must receive at least 30 days advance notice of any rent increase. This prevents a family from being subject to retroactive increases that they may not be able to afford without advance notice and an opportunity to prepare.

Note that in 65.04(2)(f) the regulations refer to a 14-day period to appeal a determination of rent share. This 14 day reference is inconsistent with the very short 7-day appeal period referenced in 65.07. As discussed more in VI. below, we urge you to revise the regulations (as we think is required by law) to give families 21 days to appeal any adverse determination. We also note that, unless the intention is to

notify families of an adjusted rent share with a Notice of Type and Level of Benefits, which is not made clear in 65.04(2), the appeal portion of the regulations would appear to make a rent adjustment determination unappealable. We hope this is not your intent since it is inconsistent with the fact that any such notice is a denial of a higher amount of assistance and with the requirement in the line item that any denials are appealable.

C. **Time to Relocate for Good Cause – 65.04(2)(j).**

The emergency regulations provide only 30 days for a family who for good cause leaves a HomeBASE unit funded with Rental Assistance to find another unit to rent. Although the period "may" be extended for an additional 60 days for good cause, this is left solely to the discretion of the provider. We think this is inconsistent with the real world experience of how long it can take to find another unit, even with much more valuable rental subsidies such as Section 8 vouchers which often have a higher payment standard than 100% FMR. We urge you to revise the regulations to give all families at least an initial 60 days and to say that the provider "shall" give an additional 60 days for good cause reasons.[3]

D. **Non-Rental Assistance Issues – 65.04(3).**[4]

1). **Declining Assistance – 65.04(3)(a).** The second sentence should be changed to provide that "Such amount shall be reduced by $200 per year or 5% of the prior year's annual assistance, whichever is less, in each succeeding twelve-month period."

2). **Moving Assistance to Move to Permanent Housing – 65.04(3)(b)(iii).** We urge you to create an exception to the prohibition on receiving moving assistance more than once in a 12 month period when a family has secured long-term affordable housing during the 12 months and needs to move again. Without this, families will be delayed in being able to exit the program for safe, permanent housing.

3). **Limitations on Temporary Accommodations – 65.04(3)(c).** The Legislature mandated that HomeBASE provide temporary accommodations to families eligible for housing who have no feasible, alternative housing while they look for slightly longer term housing. Item 7004-0108. (The Legislature also mandated that families who do not have feasible, alternative housing and are not provided it

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[3] We have begun to receive reports of families, including families in EA motels, HomeBASE temporary accommodations, or in a temporary double-up situation, being approved for Rental Assistance but not being provided with any housing search assistance by HomeBASE providers and being told that they have only 30 days to find an apartment. Families have not been told what will happen if they are unable to find an apartment and are very anxious given the difficulties of finding a unit on their own. We urge you to issue and post on your website explicit written guidance that families are not required to find a unit within 30 days and that families must be provided with assistance in finding units, particularly since one of the selling points of the administrative structure proposed for HomeBASE was that the regional housing agencies were in a position to help families identify and lease available rental units.

[4] The regulations use the term Non-Rental Assistance while DHCD officials often refer to these forms of assistance as "household assistance." We encourage the Department to develop a consistent way of referring to this category of assistance so as to minimize confusion among families, advocates and providers.

through HomeBASE remain eligible for EA shelter. 7004-0101.) Nonetheless, the emergency regulations say in (3)(c)(1) only that such a family "may receive" temporary accommodations. This language might be contributing to the instances of families being wrongly turned away without a placement either in EA shelter or a HomeBASE temporary accommodation that we have identified and is inconsistent with the line item. We urge you to change "may receive" to "shall be offered".

Moreover, 65.04(3)(c)(2) and (3) purport to limit a family's stay in temporary accommodations to only 5 days (at least temporarily extended to 10 days through a waiver in Notice 2011-03) unless there is a showing that the family has a "substantial likelihood of qualifying for and securing rental housing using STHT rental assistance or non-rental assistance benefits." This is problematic on several levels. First of all, this limitation is not authorized by the line item under which temporary accommodations "shall" be provided to anyone who does not have "alternative feasible housing." Although Revised Notice 2011-03 and your letter of September 2, 2011 to Ruth Bourquin indicate that this limitation is intended to apply only to those who have been placed in temporary accommodations on a "conditional" basis pending a final determination of their eligibility for HomeBASE (presumably pending receipt of verifications to establish EA eligibility), revised Notice 2011-03 also repeats the standard of proof contained in the regulation which is very unclear with regard to what must be shown. A homeless family unfamiliar with the ins and outs of this program cannot know in 5 or 10 days whether there is a likelihood that they will be able to secure rental housing using HomeBASE. If it means that the family must have actually found an apartment to rent in 5 or 10 days, it will screen out families with the greatest barriers to housing – those for whom it will take a longer time to find a landlord willing to rent to them. As written, this provision establishes a method of administration that is likely to screen out qualified persons with disabilities in violation of federal ADA regulations, 28 C.F.R. § 35.130(b)(8), given that they will often have a harder and longer time finding units that accommodate their disabilities. Finally, this provision is simply short-sighted if in fact you want people to be in temporary accommodations through HomeBASE instead of in EA shelter. Given that there remains a right to EA shelter for eligible families with no feasible, alternative housing, if you throw families out of temporary accommodations before they are actually housed, they will still have a right to enter the EA shelter system.

As noted, in the September 2, 2011 letter (item 7), the Department indicates that the 5 or 10 day period is the time during which a family must submit outstanding verifications establishing EA eligibility. But revised Notice 2011-03 says that the family must also satisfy the standard in the regulation. Providing remaining verifications of EA eligibility is something different from showing that families have a substantial likelihood of securing housing with HomeBASE assistance, so if the former is all that is intended, the language should be revised. [5]

[5] HomeBASE providers have expressed concern that they do not have enough capacity to provide temporary accommodations for all those who qualify for them. In some cases, this is leading to families being wrongly told that there is no space to place them while they look for housing with HomeBASE. This is of course unlawful. Given that the number of people eligible for an emergency placement may be exceeding the Department's and providers' expectations, we urge you to consider placing families entitled to presumptive or conditional placement through the EA system instead of using limited HomeBASE accommodations for this purpose, particularly given that HomeBASE providers are already using motels and even some shelter spaces as HomeBASE temporary accommodations.

Moreover, it is worth noting that EA line item language says that families have a right to be placed presumptively for up to 30 days to provide needed verifications, with the result that if families initially placed in HomeBASE temporary accommodations on a conditional basis have not been able to secure all required verifications within 5 (or 10) days but still do not have feasible, alternative housing through HomeBASE or otherwise, they would retain a right to be in EA shelter presumptively for a longer period.

For all these reasons we strongly urge you to remove (3)(b) and (c). As the regulations already provide in 65.05(A)(o), a family becomes ineligible for temporary accommodations when a Suitable HomeBASE rental unit becomes available to them. Alternatively, and at a minimum, we urge you to revise the regulations to make clearer what it is that must be shown within the 5 or 10 days period in order to retain eligibility for a HomeBASE temporary accommodation.

4). **Incentive Payments – 65.04(3)(d).** We are very concerned that too many families will be pressured to double-up with other families through the use of Incentive Payments and then find themselves homeless again within 12 months when those arrangements prove unsustainable and more Non-Rental Assistance may not be available. Some HomeBASE subcontractor staff have reported that it is their understanding that every effort is to be made to provide only Non-Rental Assistance. But it is the exception and not the rule that someone would be willing and able to allow an entire family to live with them for an entire year. For that reason, and even though we recognize that it will mean that some temporary double-ups cannot be facilitated through HomeBASE, we appreciated the assurances placed in the regulations that incentive payments would be provided to a host family only if the arrangement is approved by the host's landlord and made official through addition to the lease or entry into subleases.

We also and/or in the alternative urge you to address the problem of Non-Rental Assistance not being available beyond $4,000 in a 12-month period by construing Incentive Payments that will in fact be provided to the hosts or their vendors as not counting as Non-Rental Assistance to the homeless family. This will allow the homeless family to obtain other assistance when the Incentive Payments on behalf of the host family runs out and the family once again becomes homeless during the 12-month period. Without some provision for additional assistance in these situations, the homeless families will be eligible again for temporary accommodations unless they have been found not to have made a good faith effort and/or for emergency shelter so long as they have not received EA shelter benefits in the past 12 months.

Finally, we appreciate the effort to package Incentive Payments in such a way that they are not income to the host family that could cause an increase in rent or a decrease in various benefits. But it is not at all clear that the structure in the second paragraph of 65.04(3)(d) actually accomplishes this goal. For one thing, when a non-legally responsible party pays for certain expenses in a month, the payment can be treated as in-kind income for certain DTA-administered benefits. 106 C.M.R. 204.510. Similarly, with respect to federal housing programs, such regular (in kind) contributions will likely count as income to the host family. 24 C.F.R. 5.609(a) and (b)(7). In addition, such contributions could also be considered "in kind support and maintenance" causing a decrease in a host family's SSI benefits. 24 C.F.R. 416.1130. For these reasons, we urge you to add language to the regulations providing that prior to provision of Incentive Payments, the host family should be advised of the potential negative consequences to them.

5). **Transitional Moving Related Aid – 65.04(3)(g).**

We do not understand the wording "to defer the cost of benefits reductions." Families who leave shelter and who are receiving TAFDC actually experience an increase in benefits due to the reversal of the $148.50 reduction. Clarification would therefore be helpful.

6). **Stabilization Services – 65.04(3)(i).**

We urge you to revise the regulations to make explicit that the very highest priority is for stabilization workers to assist families placed through HomeBASE to secure long-term affordable housing. Needed assistance includes helping families get in their applications for all relevant long-term subsidized housing along with documentation of their eligibility for any and all priorities and ensuring that housing providers to whom families have applied have their current addresses so that they do not miss notices and fall off the lists as we have seen occur with Flex Funds and HPRP.

Help with long-term housing search has been one of the greatest strengths of EA shelter providers. As more families skip this step and move directly into temporary housing, and given the unlikelihood that many families will be able to move from under 115% of FPL to a position of affording private housing in 3 years or less, long-term housing search assistance must be a top priority to prevent the families served by HomeBASE from ending up homeless again when HomeBASE assistance runs out.

We also urge this prioritization because with proposed caseloads of at least 60 to 1(and even if caseloads were expected to be half of that) stabilization workers will simply not have time to focus on other aspects of the proposed stabilization plans in a way that is meaningful and supportive of families. See above comments on Stabilization Plans in III.E.

V. **Requirements for Continuing Participation – 65.05.**

In general, we think the provisions within this section are excessively restrictive and inconsistent with a true "housing first" approach that recognizes that those who are homeless face many challenges and cannot be expected to be perfect. We urge you to substantially revise each piece to more realistically reflect the enormous challenges faced by these families with children – who are living in very deep poverty, are often headed by one parent raising children on her own, and are often survivors of horrific trauma, violence or a life of deprivation, of limited educational attainment and/or impacted by hidden or not so hidden disabilities. In several ways, these rules are more onerous than the very restrictive Uniform Flex Funds rules that were put in place earlier this year. We urge you to make these at least no more restrictive than those. We also urge you to say that each and every provision is subject to a determination of whether good cause exists for an inability to fulfill any obligation imposed. It is not sufficient that 65.08 says that any provision of the regulations "may" be waived to the extent allowed by law but only by DHCD. Providers don't and won't know which provisions are and are not required by law and requiring that a provider or family seek a waiver from DHCD before good cause can be found will screen out families who in fact have a good reason but who cannot navigate that process and whose providers fail to ask for a waiver. Express good cause, including for disability-related reasons, is minimally necessary for these rules not to violate the ADA by having the tendency to screen out qualified persons with disabilities and others who have good reasons for not being able to comply with every expectation.

In addition, to satisfy basic fairness and due process, the rules need to require providers to give families timely notice of any conduct that will be used as one of the 2 or more instances of noncompliance and later used to justify a termination under (a) through (e) as was provided in the Flex Funds Program.

A. **Unqualified Obligation to Repay Arrearages and Damages – 65.05(1)(a) and (b).** These provisions require, as a condition of children and their families not being thrown back into homelessness with no hope for additional services for 2 years, that every stabilization plan "must include" provisions that these extremely low income families must repay "fully" any and all arrearages and damages owed to any owner regardless of whether the outstanding debts are an impediment to securing HomeBASE or permanent housing now, regardless of whether the debts were incurred as a result of an erroneous rental calculation or claim or whether collection of the debts are barred by bankruptcy or otherwise applicable statutes of limitations. Coming on top of the fact that these extremely low income families will have to pay 35% of their incomes for rent and utilities, leaving very little else for other basic necessities, this is too much. This "one size fits all" approach, which turns the HomeBASE program into a debt collection service for housing providers without regard to such providers being willing to provide housing for these families now, is unjustified. We urge you to revise these regulations to say that a stabilization plan "may include" these provisions but only to the extent that such provisions are necessary for the family to secure housing now and will not impede the family's prospective ability to stay current with rent, utilities and basic necessities of daily living.

B. **Lease Compliance – 65.05(1)(d).** As written, by referring to any failure to pay rent or utilities "on a timely basis," the regulations would make a payment for rent or utilities that is even one or a few days late a substantial and material violation of the lease without regard to the reason for the late payment or whether the landlord has complained or the utility company has threatened shut off or otherwise raised concerns. This standard is too high for anyone (indeed, weren't DHCD's Flex Funds rents paid late to landlords in July and August?) but certainly it is to high for these extremely low-income families who must juggle which bills to pay at which time in order to keep their families housed, fed, clothed and provided with school supplies. We urge you to delete this provision and simply rely on subsection (p) that makes nonpayment of rent a termination-worthy offense but not if a landlord is willing not to evict in exchange for adherence to a rental payment agreement. (But see suggestions for (p) in H. below). At a minimum, we urge revision to provide that the only late payments that constitute substantial and material violations are those that are more than 15 days late and are part of a pattern of chronic lateness defined as 6 or more late payments in a year.

C. **Stabilization Plan Compliance – 65.05(1)(e).** It is extremely concerning that the regulations governing a program created to protect homeless children would call for termination of all assistance and the barring of children from any further help for 2 full years because their parent missed 2 appointments. The potential harm of this provision is compounded by the fact that the importance of the appointment is not taken into account. It is further compounded by the fact that in many cases the families likely will have received no actual notice, given that the regulations allow only 2 days for mailing of any such notice and the mail often takes longer than that and families may not receive or read their mail for several days due to mis-delivery or attention to other obligations. The regulations also problematically deem notice sent by text or email sufficient (where a family has earlier agreed to receive notice in that format) without regard to whether the family has actually received such notice. Cell phones and internet service of homeless families often are cut off for periods of time, given that families are often unable to pay their phone or internet bills, particularly since where they will have to be paying their rent, utilities, arrears, damages and other household expenses on a "timely basis." This provision is also perverse given that so often families in Flex Funds, where caseloads were "only" 35 to 1 as opposed

to 60 (or more) to 1, report having been unable to get through to their stabilization workers whose mail boxes are full or who simply do not return messages. We urge you to revise the regulations to make clear that missing an appointment does not constitute a violation of a stabilization plan unless the family had at least 7 days actual notice of the appointment and failure to attend the appointment caused the family to lose an immediate opportunity for long-term affordable housing or attendance at the appointment would have prevented the HomeBASE landlord from filing an eviction action.

D. **Conduct by Other Persons – 65.05(1)(f) - (j).** These provisions make certain forms of conduct by household members or guests the basis for termination from HomeBASE and a bar on further assistance for 2 full years. But, unlike the rules in Flex Funds and other subsidized housing programs and the rules governing when past conduct is disqualifying for EA, they contain no provision for exceptions where the offending household member or guest has left, is removed from the lease and/or not allowed to return, including in instances when the remaining family members are the victims of the conduct in whole or in part. The absence of such provisions is unreasonable and, with regard to victims of domestic violence, inconsistent with the concerns that led to protections in the Violence Against Women Act. 42 U.S.C. § 1437k and 24 C.F.R. 5.2005(4)(c). We urge the Department to apply similar protections to HomeBASE. In addition, we believe that the provision for terminating HomeBASE for "abusive language" should be deleted. This standard is too vague and actual threats are covered separately by the regulation.

E. **Abandonment – 65.05(1)(l).** The provisions in subsections (2), (3) and (4) -- which deem a family to have abandoned if they don't respond to a notice asking about their status in 3 days (from mailing?), if they are absent from the unit for more than 5 consecutive days without notifying both the landlord and the administering agency, or if they are absent for more than 14 consecutive days without the approval of the administering agency -- are unreasonable. In addition, applying these presumptions without regard to the actual facts raises serious due process concerns.

These units are these families HOMES. Part of the purpose of HomeBASE is to acclimate families to life as tenants. For a family to have to notify a representative of the State whenever they want to visit relatives or friends for more than 5 days and get State permission in order to attend to the health of an ill family member in a different location for more than 14 days is simply unreasonable. We urge you to revise this rule simply to refer to reasonable indicia that the family has left the unit with no intent to return and to provide that any termination notice under this rule will be withdrawn upon the family's provision of a reasonable explanation for an extended absence.

F. **Unauthorized Residence – 65.05(1)(m).** This regulation provides that any guest who stays overnight for more than 12 nights in an entire year will be determined to be an unauthorized resident which may result in the family's immediate termination from the program. This is simply unreasonable. It will, for example, prevent a child from having her best friend stay over more than one night each month, a grandmother from coming to visit for 2 weeks during the summer to help provide child care, and a non-custodial father coming and staying with his children a night or two each week while their mother works an overnight shift – all extremely reasonable scenarios which should be encouraged, not made punishable by a return to extended homelessness. This sentence should be removed.

G. **Accurate Reporting – 65.05(1)(n).** The regulations should be amended to provide that the addition of a child (by birth or adoption) should be reported but is not subject to approval and that changes to household composition which do not affect the amount of the assistance payment should not unreasonably be denied. Given that changes in income do not require an upward adjustment of income,

it is not clear why such changes have to be reported in 10 days. We urge you to revise this rule accordingly.

H. **Nonpayment of Rent – 65.05(1)(p).** As written, this section of the regulations would authorize termination of HomeBASE assistance based on a single late payment of rent without regard to whether there is a pattern of nonpayment that has led the landlord to commence an eviction action. The second sentence, however, implies that the section is intended to be triggered only when a summary process action has been commenced, as is the case under the Flex Funds rules. We urge you, at a minimum, to revise this section to make explicit that this provision can be invoked only when there is a court determination that the landlord is entitled to a judgment for possession because the tenant exhibited a pattern of late payment of rent.

I. **Categorical Ineligibility – 65.05(1)(r).** This section provides that a family who becomes categorically ineligible for EA shelter "shall be immediately terminated from STHT benefits." The only exception is where families have gone over the 115% FPL income limit (as families must be allowed to stay until their incomes exceed 50% AMI if otherwise eligible). This means that a family who only temporarily loses or voluntarily gives up custody of their dependent child, perhaps because the parent must be hospitalized or otherwise obtain health care treatment or in response to false accusations of neglect that are not ultimately substantiated, must be terminated from HomeBASE, without regard to any inquiry of the best interests of the child. To make matters worse, the regulation later provides that families terminated for this reason will be deemed to have been terminated "for cause" and not to have made a "good faith effort" to secure housing or comply with their stabilization plans (without regard to whether this is in fact the case or not) and thus barred from assistance for 2 full years even if the child would otherwise be returned to them within that time period.

This is inconsistent with wise child welfare policy and will unduly extend the separation of children and their responsible and fit parents and lead to unnecessary expenditures in the child welfare system. So long as the goal of the Department of Children and Families (DCF) is reunification of the parent and child, the parent should be allowed to remain in the unit for at least 90 days (subject to extension if a return seems imminent) to provide a stable location for visits and continuity and prevent the terrible disruption that a return to homelessness will engender.

Although the EA regulations also and unfortunately call for termination of EA shelter benefits upon the loss of custody of the only dependent child or children, in contrast to the HomeBASE emergency regulations, the EA regulations at 106 C.M.R. 309.040(A)(4)(d) at least provide an exception to the rule against the family returning to shelter where the Department approved the family being in other housing accommodations instead of shelter for some period of time. This is known as a Temporary Emergency Shelter Interruption or TESI and is a process that can be used when custody is temporarily lost but reunification of the family is reasonably expected.

We urge the Department substantially to revise this HomeBASE regulation to: i) exempt from the categorical ineligibility rule for at least 90 days a family who would otherwise lose eligibility due to loss of custody but for whom the goal is reunification; and ii) exempt from the deeming of a lack of a good faith effort those families who are terminated for loss of custody of the dependent child(ren) but who obtain custody of a dependent child within the otherwise applicable period of ineligibility. In addition or in the alternative, we urge you to treat families who lose eligibility for HomeBASE due to loss of custody of a child not as terminated but in being in a period of temporary HomeBASE suspension so that they can regain eligibility as soon as their children are returned.

Failure to make these revisions will cause harm to children and result in unnecessary increased child welfare costs to the state.

J. **Two Minor Strikes and Kids Are Out for 2 Full Years.** Language at the end of 65.05(1) says that only 2 violations of rules (a) through (e), which, as noted above, may be only a few missed telephone calls or a couple of slightly late payments of rent or utility bills, create grounds for termination of a family from HomeBASE assistance. This expands and makes more onerous the rules that have been applied in Flex Funds which require 3 instances of noncompliance, including 2 timely warnings, to trigger a termination. The other rules in 65.05(1) trigger termination upon only one occurrence, even of a failure to report a non-material change in income within 10 days and a short interruption of custody. This is too rigid and completely inconsistent with ending family homelessness, as opposed to merely curtailing the State's responsibility to help homeless families in need.

To make matters worse, such terminations, according to the emergency regulations, will be deemed to trigger the ban on any further assistance for 2 full years because all such terminations will be deemed to constitute a finding of a complete lack of any good faith effort to comply with a Stabilization Plan, regardless of the actual facts. Committing struggling families to another 2 full years of homelessness is extremely harsh punishment for what in many cases is very minor conduct or even responsible conduct on the family's part and may in fact be caused by unreasonable rules or lack of communication by over-worked "stabilization" staff. As discussed in Part III. C., this conflation of a termination from HomeBASE under restrictive rules with a failure to make a "good faith effort" is unwarranted and in violation with the language of the line item.

Accordingly, we request that, in this regard and at a minimum, the HomeBASE regulations, like the Flex Funds rules, require at least 3 instances of noncompliance and, whether the standard is 2 or 3, that the qualifying noncompliances be only that those are truly substantial and directly and materially affect the family's ability to remain housed.

K. **No Appeal of Calculation of 36 Months – 65.05(2).** Under the line item, families are eligible to receive HomeBASE assistance over no more than 36 months until a 12-month period of interruption has occurred. The Legislature mandated that the 36-month period does not include time spent in temporary accommodations. The 36 months run from when assistance was first received, not when it was applied for, authorized or approved. So there are several factual determinations to be made as to when the 36 months began to run and therefore several opportunities to get the facts wrong. For instance, a provider may mistakenly calculate the period as having started when the family first entered temporary accommodations or when the family was approved for HomeBASE Rental Assistance, as opposed to when the family actually started using the assistance. Yet the emergency regulations say that there "shall be no appeal" from the decision of the administering agency as to when the 36 months has run. This does not comport with basic due process or line item language that says terminations shall be subject to appeal and aid pending a timely filed appeal. As evidenced with regard to the 24-month time limit on TAFDC benefits, there are often situations in which the administering agency miscalculates when the time limit started and has run out and failure to allow appeals of these decisions is unlawful.

VI. Appeals Procedures – 65.07.

As you are aware, the HomeBASE line item mandates that families whose benefits are terminated be afforded a right to appeal and receive aid pending that appeal pursuant to G.L. c. 23B. The appeals procedures in G.L. c. 23B are in Section 30(F) and require that such appeals go to independent hearing officers at DHCD and include various other protections for appellants, including the right to an

in-person hearing. Similarly, the line item mandates that families be afforded the right to appeal pursuant to G.L. c. 23B, section 30(F) with respect to any denials of assistance, which include a decision to deny one form of assistance while granting another. And the regulations implementing this statutory provision require that appellants be given 21 days to appeal and be afforded aid pending an appeal of a termination or reduction of benefits if the appeal is filed within 10 days.

The hearing procedures in 65.07, which allow appeals of Notices of Level and Type of Benefits and Terminations only to the provider who has made the decision being appealed, followed only by a paper review by someone at DHCD, and which allow only an incredibly abbreviated 7 days to appeal, are in violation of these provisions.

Even if the Department chooses to ignore the plain language and intent of the line item mandates, providing families only 7 days from receipt or presumed receipt of the Notice to file an appeal is simply too short and will screen out persons with valid grounds for appeal who have not focused on the notice in time or who were dealing with competing demands during that short period, as well as persons with disabilities or language barriers for whom getting in the appeal may be more difficult. The difficulty is compounded because most of these families will not be in emergency shelter at the time of receipt and therefore will not have access to a fax machine to send in the appeal. As a matter of basic fairness, we urge you to apply the standard of 21 days in the EA regulations or, at a minimum, extend the 7 day periods to 14.

The provision for a further appeal to DHCD is also too restrictive. In particular, having this appeal be based solely on written submissions is certainly a method of administration that will screen out qualified persons with disabilities, limited English proficiency or low educational attainment who may be able to communicate their position orally but not in writing. *See, e.g.* 28 C.F.R. 35.130 and 28 C.F.R. 42.405(d)(1) and (2). In addition, there is no description of with whom at the Department an appeal should be filed and no guarantee of independence or impartiality, contrary to basic due process requirements.

Furthermore, the provision in 65.07(6) that says that if DHCD on a further appeal does not render a decision within 15 days, "the decision of the hearing officer shall be upheld" is very troubling and deprives families of the promised appeal and aid pending the appeal being decided. Although we appreciate that it may be intended to give appellants a right to appeal to court in cases of delay, very few families are in fact able to access judicial review and this provision essentially deprives affected families of the benefit of the DHCD review. It also creates a situation in which DHCD can simply wait out the 15 days, make no substantive ruling, but still have the provider's decision deemed to be a final decision of the agency with the various presumptions of regularity that go along with that under 30A. We urge you to instead provide that, if a written decision upholding the provider's decision is not rendered within 15 days and the appellant is not receiving aid pending an appeal, the provider's decision will be deemed reversed. Where families are receiving aid pending appeal, DHCD's failure to act within 15 days should not deprive them of their rights to have that appeal actually decided by DHCD.

Also needed, as discussed in II above, is more guidance as to what constitutes "an impartial person appointed by the administering agency." We have seen appeals notices directing the appeal to the very same person who made the challenged decision. And, as also discussed in connection with the definition of "hearing officer," the required attributes of the initial hearing need to be spelled out in more detail.

As communicated earlier, there are some internal inconsistencies in the appeal provisions of the regulations. On the one hand, the introduction to 65.07 says that only notices of level and type of benefits and terminations can be appealed, but in the same section there is a reference to the appeal of Notices of Denial of STHT Benefits (notices that we understand are intended to be sent to families in shelter who are denied access to HomeBASE). And elsewhere in the regulations there are references to appeals of redeterminations of rent shares that can be filed within 14 days.

In any event, it is a violation of basic due process and/or basic fairness not to allow appeals of: a) terminations based on the 36 month time limit, which may be miscalculated in some cases; and b) refusals of a request to modify a Stabilization Plan.

VII. **Incorporation of sub-regulatory materials.** Throughout the emergency regulations there are references to various provisions of the regulations being subject to sub-regulatory guidance that might be issued from time to time by DHCD. Particularly given the general inaccessibility and lack of notice of such guidance for affected families and community based organizations who are not HomeBASE contractors or subcontractors, we urge you to qualify such references by limiting such guidance to guidance that has been posted on the DHCD/DHS website and has been provided in appropriate languages to the affected families prior to application to a particular family.

Thank you for your anticipated attention to these comments and suggestions for revisions to the emergency regulations.

Sincerely,

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