DISTRICT OF COLUMBIA 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) (2012 Repl.)) ("Act" or "Rental Housing Act"), the Rental Housing Commission ("Commission") hereby gives notice of the intent to adopt the following amendments to Chapter 43 (Evictions, Retaliation, and Tenant Rights) of Title 14 (Housing), of the District of Columbia Municipal Regulations ("DCMR") in not less than fifty (50) days from the date of publication of this notice in the *District of Columbia Register*.

The proposed amendments relate to § 3 of the Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022, effective May 18, 2022 (D.C. Law 24-115; 69 D.C.R. 006199) ("ERSA-FIRA"). The ERSA-FIRA, in relevant part, amends § 501 and creates new § 510 of the Act (D.C. Official Code §§ 42-3505.01 & 42-3505.10). The amendments to § 501 of the Act place evictions for nonpayment of rent under the Act's jurisdiction by requiring notices to vacate before the filing of an action in court and modify the requirements for service of notices to vacate for all reasons. New § 510 of the Act establishes several requirements and prohibitions for housing providers that screen tenant applications based on consumer reports. The Commission is not proposing rules related to new § 509 of the Act, the eviction record sealing provisions, because implementation of that section appears to be entirely within the jurisdiction of the District of Columbia Superior Court.

Before preparing this proposed rulemaking, the Commission contacted public stakeholders who had commented on the rulemaking that was completed in 2021. The Commission requested proposals related to the ERSA-FIRA and noted several potential ambiguities in amended § 501 of the Act that might be resolved by rulemaking. The Commission received responses from the Office of the Tenant Advocate ("OTA") and Legal Aid Society of the District of Columbia supporting the clarifications noted by the Commission, making other suggestions, and recommending that the Commission include rules related to the tenant screening provisions of new § 510 of the Act.

Based on the Commission's review of the relevant provisions of the ERSA-FIRA, related laws, and the recommendations of stakeholders, the Commission proposes substantial implementing rules for the reasons below.

Section 501 – Notices to Vacate and Evictions

The proposed rules would update the existing rules at 14 DCMR §§ 4300, 4301, and 4302 related to notices to vacate to reflect the ERSA-FIRA and would clarify the applicability of several provisions of that act, namely:

- **Terminology:** The existing regulations refer to two (2) types of required notices before an eviction for reasons other than nonpayment of rent: "notices to correct or vacate" for lease violations under D.C. Official Code § 42-3505.01(b), and "notices

to vacate" for all other reasons under the Act. The temporary amendment acts that preceded the ERSA-FIRA also required "notice of past due rent" and "notice of the housing provider's intent to file a claim," the latter of which is also contained in amended, permanent D.C. Official Code § 42-3505.01(a-1). To simplify the terminology and clarify the nature of the single notice that must be served under the permanently enacted version, the proposed rules use the term "notice of nonpayment and possible eviction." See below § 4300.

- **$600 threshold:** Under amended D.C. Official Code § 16-1501(b), a housing provider may not file an action seeking possession of a rental unit unless at least six hundred dollars ($600) in rent is past due. In the Commission's view, this limitation must also apply to the initial notice that is required under D.C. Official Code § 42-3505.01(a-1). A notice of nonpayment and possible eviction is, effectively, a threat to file a lawsuit, and the Commission concludes that housing providers should not be permitted to issue threats to do things that are legally futile. Although this proposed rule is based on the permanently enacted law, the Commission also notes that the Council has recently approved and the Mayor had signed temporary legislation clarifying that the six hundred dollar ($600) limit is incorporated in D.C. Official Code § 42-3505.01(a-1). *See* D.C. Act 24-575. Moreover, a tenant is entitled to notice of the entire factual basis of a housing provider's notice of nonpayment and possible eviction. A housing provider should therefore not be permitted to send a notice of nonpayment and possible eviction in anticipation that a tenant with some smaller amount of past due rent will, at a future time, owe more than six hundred dollars ($600). Nothing in the proposed rules prohibits a housing provider from issuing any other kind of demand for past due rent of less than six hundred dollars ($600), provided that the demand does not state or imply an intent to file a claim for possession based on less than six hundred dollars ($600) in back rent. See below § 4300.5.

- **License and registration:** Under amended D.C. Official Code §§ 16-1501(c) and 42-3505.01(q), a housing provider may not file an action seeking possession of a rental unit or ultimately obtain possession unless he or she has a valid business license and rental housing registration. The Commission concludes, as with the six hundred dollar ($600) threshold, that housing providers should not be permitted to send any notice to vacate if the housing provider does not meet the substantive requirements for filing (or prevailing on) an eventual claim for possession in Superior Court. See below §§ 4300.7(g) & (h), 4301.4(d) & (e), & 4302.1(c) & (d).

- **Subtenants:** Amended D.C. Official Code §§ 16-1501(c) and 42-3505.01(q) provide that the license and registration requirements described above "shall not apply to complaints involving subtenants." The Commission understands this exception as being intended to apply in situations where a rental unit has been sublet by an individual who was originally a resident of the unit, but not to all possible situations where an apparent landlord might technically be a subtenant because of a complex business arrangement such as a ground lease for the underlying real property. The Commission therefore interprets the phrase "involving subtenants"

to mean only cases where the sublessor is a natural person not affiliated with the property owner. See below §§ 4300.8, 4301.5, & 4302.2.

- **Language access – English & Spanish:** Amended D.C. Official Code § 42-3505.01(a)(3) and (4)(D) require that all notices to vacate be served on a tenant in the tenant's primary language if it is a language "that is covered under [D.C. Official Code] § 2-1933," part of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; 51 DCR 4688) ("LAA"). The amended section requires use of an LAA language if the tenant's language is "other than English or Spanish," which appears to assume that service of a notice to vacate must, in all cases, be in both English and Spanish, as is already required by D.C. Official Code § 16-1501(a) for the issuance of a summons in claims for possession brought in Superior Court. The Commission believes that the intent of the Council, implicit in the text, is that any notice to vacate under the Act must also be served in both English and Spanish in all cases.

- **Language access – additional "covered" languages:** As described above, when serving a notice to vacate, "[i]f the landlord knows the tenant speaks a primary language other than English or Spanish that is covered under § 2-1933, the landlord must provide the notice in that language." Whether a landlord is required to translate a notice into a particular language presents interpretive questions about the applicable law and could present practical difficulties in its implementation. After reviewing the matter with the Office of Human Rights ("OHR"), the agency charged with monitoring LAA compliance, the Commission interprets the Rental Housing Act's reference to languages "covered under" LAA as follows.

  The portion of the LAA made applicable to notices to vacate, D.C. Official Code § 2-1933(a) reads as follows:

  > A covered entity shall provide translations of vital documents into any non-English language spoken by a limited or no-English proficient ["LEP/NEP"] population that constitutes 3% or 500 individuals, whichever is less, of the population served or encountered, or likely to be served or encountered, by the covered entity in the District of Columbia.

  As an initial matter, the LAA does not generally "cover" languages, but rather "entities," primarily District government agencies and their contracted service providers. *See* D.C. Official Code § 2-1931(2). Landlords (other than the District of Columbia Housing Authority) are not "covered entities" under the LAA, nor is it clear whether notices to vacate would be "vital documents" within the meaning of the LAA. Without applying any other requirement from the LAA on private landlords, the Commission understands new D.C. Official Code § 42-3505.01(a)(3) and (4)(D) as requiring landlords to translate notices to vacate into any non-English language if the language meets the demographic threshold spelled out in § 2-1933(a).

Whether a language meets the LAA's demographic threshold is ordinarily determined on a case-by-case basis for each covered entity. A covered entity must first determine its "population served or encountered, or likely to be served or encountered." That determination must also be made for the LAA's oral interpretation requirement under D.C. Official Code § 2-1932(b) and (c), although for those purposes other factors and data sources must also be considered. Therefore, a covered entity is required to collect and maintain public contact and demographic data that a private landlord would likely not collect. The Commission does not believe that it was intended by the Council or that it is advisable to require every landlord in the District of Columbia, from single-unit owners to providers of hundreds of units, to collect and maintain the kinds of records required to make individualized demographic determinations about their "population served or encountered."

The committee report to the ERSA-FIRA does not include any significant discussion that sheds light on what a "language . . . that is covered under § 2-1933" was intended or understood to mean by the Council. The most discussion is found in the Racial Equity Impact Statement by the Council Office on Racial Equity ("CORE"), which states that:

> In addition to English and Spanish, Chinese, Vietnamese, Korean, and Amharic are languages commonly spoken in the District [citing information from the Department of Consumer and Regulatory Affairs]. By requiring landlords to provide notice in a tenant's first language, this provision has the potential to improve housing outcomes for Black residents, Indigenous residents, and other residents of color.

Council of the District of Columbia, Committee on Housing and Neighborhood Revitalization [sic], Committee Report on B24-0096 (Dec. 1, 2021) ("Committee Report") at 61. That discussion by CORE describes the proposed requirement as: "If the landlord knows that a tenant's first language is not English or Spanish, the landlord must alert the tenant in their language." *Id*. However, CORE's description is plainly different from the enacted requirement to notify a tenant in a language "that is covered under § 2-1933." Moreover, the prefatory section of the ERSA-FIRA describes the translation requirement as applying if "*a tenant speaks a covered language*." The requirement therefore cannot be that a landlord must translate notices to vacate into *any* non-English language, but only those languages that meet the LAA's demographic threshold. Nonetheless, CORE's apparent, more general understanding, reflected in the Committee Report, was that a finite list of identifiable "languages commonly spoken in the District" would be implicated by the legislation.

The Commission concludes that a finite, generally applicable list of "covered languages" for the purposes of the Rental Housing Act can be developed that incorporates the demographic threshold of the LAA and that it is preferable to do so by rulemaking, rather than by imposing significant record keeping and data analysis requirements on private landlords. Given that District agencies have had

difficulty in the nearly twenty (20) years of the LAA in meeting their obligations to make these determinations and provide required language access services, imposing extensive record-keeping requirements as a prerequisite to serving notices to vacate would present a major obstacle to landlords seeking repossession of their property when they are otherwise entitled to do so. Landlords would likely encounter significant difficulties in determining whether their existing or prospective tenants both: (1) primarily speak a language other than English or Spanish, and (2) are LEP/NEP. Further, for landlords with only one or a few tenants, any LEP/NEP tenant who primarily speaks any non-English language would trigger the LAA's three percent (3%) threshold. But it does not appear to have been the Council's intent that any language should be required regardless of prevalence (and the practical difficulties and expense of obtaining translation for relatively rare languages); if that were the case, new D.C. Official Code § 42-3505.01(a)(3) and (4)(D) could have simply required notice in the tenant's primarily language, without reference to the LAA. Instead, § 2-1933 sets, effectively, a cost/benefit test for when a LEP/NEP population is large enough to justify mandatory translation of certain documents.

In applying the LAA's demographic threshold, the Commission believes that the "population served or encountered or likely to be served or encountered" by landlords for purposes of D.C. Official Code § 42-3505.01(a)(3) and (4)(D) should be interpreted to mean the population of the District of Columbia as a whole. Statistics about spoken languages in the District of Columbia are regularly published by the U.S. Census Bureau's American Community Survey ("ACS"). By using the whole population of the District of Columbia as the "population served or encountered" by landlords, the Commission will be able to issue clear, easily followed rules that do not require extensive, case-by-case demographic research into neighborhoods, income cohorts, or other potentially identifiable submarkets for rental housing. Although it may be more accurate to define the "population served or encountered" as renters in the District of Columbia, the ACS does not appear to publish specific data on languages spoken at home by renters, only languages spoken by the whole of the District of Columbia over age five. The Commission welcomes public comment on how more specific, District-wide data could be obtained. In either case, the "500 individuals" threshold becomes the relevant metric, because using any District-wide definition puts the "3%" threshold on the order of tens of thousands of individuals, and the LAA requires the use of the lesser metric.

With assistance from OHR in locating relevant ACS demographic data, the Commission has determined that six additional languages (other than Spanish, which, as noted above, is required in all cases) are spoken by at least 500 LEP/NEP individuals in the District of Columbia: Amharic, Arabic, Chinese (Mandarin), French, Tagalog, and Vietnamese. Although the full data covers thirty eight (38) languages or language groups, only those six (6) languages meet the 500-individual threshold:

Languages Spoken at Home	Total Number (age 5+)	Speak English "very well"	Speak English less than "very well" (LEP/NEP)	Number of LEP/NEP Home Speakers of Language
Amharic, Somali, or Other Afro-Asiatic Languages	6154	46.5%	53.5%	3295
Chinese (including Mandarin, Cantonese)	5050	64.1%	35.9%	1811
French	8516	79.3%	20.7%	1763
Tagalog (including Filipino)	1799	59.4%	40.6%	731
Arabic	2472	71.4%	28.6%	706
Vietnamese	1229	46.6%	53.4%	656

The original data, collected by the ACS and tabulated and published by the Migration Policy Institute, is available at https://www.migrationpolicy.org/data/state-profiles/state/language/DC. Although this is the best available data source, it is not perfect, and the exact numbers of LEP/NEP speakers may be more or less. *See* Urban Institute, "Ten Years of Language Access in Washington, DC" (April 2014), https://www.urban.org/sites/default/files/publication/22536/413097-ten-years-of-language-access-in-washington-dc_0.pdf, at 15 ("While the ACS is the best source of secondary data for providing an overview of the LEP/NEP population at the local level, the sample sizes are too small to permit a ranking of the top six (6) or ten (10) languages spoken in the District among LEP/NEP individuals with any great certainty."). For the data entries where multiple languages are listed as a single group, the Commission has referred to OHR's regular performance reporting, *see* https://www.ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/OHRLAR19_FINAL_121820.pdf, which shows that the contacts of covered entities in the relevant language groups are in Amharic, Mandarin, and Tagalog. OHR also advised the Commission that data available after the 2019 ACS is not fully reliable due to "experimental" survey methods employed because of the COVID-19 pandemic. Therefore, 2019 ACS data was used to make the determination of covered languages. Future rulemakings by the Commission, in order to meet changing demographics of the District of Columbia, should be based on the best available data at the time. See below § 4300.23.

Additionally, although the Commission believes that extensive record keeping and population analysis is not required of landlords, the proposed rules include a safe harbor provision, suggested by the OTA, to encourage housing providers to ask about tenants' language access needs. If a housing provider drafts a lease or lease addendum with a space for a tenant to indicate that he or she speaks a particular

language, the housing provider will be excused from failing to serve a notice to vacate in one of the covered languages if the tenant does not indicate that he or she primarily speaks one of those languages. The Commission believes this provision will help assure housing providers are aware of their obligations and help reduce potential pitfalls, while assuring that tenants receive notice they can understand. OHR noted that a space for tenants to indicate a covered language must be in the language spoken to be effective, and suggested that "I Speak" cards, *see* https://ohr.dc.gov/page/LAportal/toolkit, are a useful model for developing a standard-form lease addendum. The Commission expects that a standard-form lease addendum could be developed and published by any relevant District agency as well as any private housing provider or trade association, but no mandate for a single, standardized form is proposed. See below § 4300.24.

- **Service of notices:** Generally, service of any document under the Act must be done in accordance with § 904 of the Act (D.C. Official Code § 42-3509.04), except where the Commission has provided for other methods of service by rulemaking. *See, e.g.,* 14 DCMR § 4200.16. Amended D.C. Official Code § 42-3505.01(a)(2), however, provides requirements for how to effectuate service by posting, a method that is not otherwise required or permitted under the Act or the existing regulations. Service by posting is, however, permitted under certain conditions for a summons in a suit for possession, under D.C. Official Code § 16-1502, as amended by the ERSA-FIRA. Similarly, service by posting was previously permitted for notices to quit in landlord-tenant cases under certain conditions by D.C. Official Code § 42-3206. The Commission believes that the intent of the Council is that notices to vacate under the Act should be served in the same manner as allowed for a summons as prescribed in the ERSA-FIRA. Because neither D.C. Official Code §§ 16-1502 or 42-3206 contemplate service by mailing, which is otherwise permitted under the Act by D.C. Official Code § 42-3509.04, the Commission also believes that the intent of the Council is that notices to vacate should not be served by mail. See below § 4300.24.

Section 510 – Tenant Applications and Screening

The proposed rules would also add a new § 4307 (Tenant Applications and Screening) to 14 DCMR Chapter 43 and would add new definitions in 14 DCMR § 4399.2 to reflect the provisions of new § 510 of the Act (D.C. Official Code § 42-3505.10). The new statutory provisions parallel several aspects of the federal Fair Credit Reporting Act (15 U.S.C. § 1681 *et seq.*) ("FCRA"). The Commission believes that the Council's intent is that the tenant screening provisions should be applied as complimentary obligations to the requirements that housing providers and tenant screening businesses already have under the FCRA. The proposed rules in §§ 4307 and 4399.2 largely restate the detailed provisions of D.C. Official Code § 42-3505.10, but they also clarify several points and incorporate several related provisions FCRA, namely:

- **Definitions:** New D.C. Official Code § 42-3505.10(j) includes definitions for the terms "adverse action" and "tenant screening." The definition of "adverse action" is substantially similar to the definition used in the FCRA, 15 U.S.C. § 1681a(k), but more specific to rental housing issues. The proposed rules copy the statutory

definition and add several illustrative examples, which are taken from guidance published by the Federal Trade Commission. *See* https://www.ftc.gov/business-guidance/resources/using-consumer-reports-what-landlords-need-know.

New D.C. Official Code § 42-3505.10 also uses the terms "consumer report," "consumer reporting agency," and "credit score," which are defined in the FCRA but not in the Rental Housing Act. The proposed rules reproduce the FCRA definition of "consumer report" in relevant part but omit several exceptions and qualifications that are related to employment, to the handling of medical information, and to substantive restrictions on sharing information with affiliates, as those do not appear relevant to the Rental Housing Act's tenant screening provisions. The Commission has similarly omitted references to mortgages and to underwriting decisions from the FCRA definition of "credit score." The Commission does not intend these omissions to substantively alter the definitions, and any resulting ambiguity should be resolved in favor of a report or score being covered by the Rental Housing Act. The Commission does intend, however, that the omission of the "interstate commerce" jurisdictional hook from the FCRA's definition of "consumer reporting agency" should have substantive effect because, unlike national Congressional enactments, the District may exercise general police powers within its jurisdiction without an interstate commerce connection. See below § 4399.2.

- **Disputing information:** New D.C. Official Code § 42-3505.10(a)(8) requires housing providers to inform prospective tenants of the right to receive, dispute, and receive a response regarding information received by a housing provider as part of consumer report. This appears to refer to the rights provided by new D.C. Official Code § 42-3505.10(g). The Commission observes that prospective tenants also have the right as consumers under the FCRA to dispute any information with a consumer reporting agency and must be notified of that right by the user of the information (i.e., a housing provider) in the event of an adverse action. *See* 15 U.S.C. § 1681m. The federal Consumer Financial Protection Bureau publishes online guidance that is intended to be referenced by disclosure forms, *see* https://www.consumerfinance.gov/learnmore/, and the Commission has added a reference to this website as a part of a housing provider's required initial disclosures to prospective tenants. See below § 4307.2(h)(C).

- **Timing of fee returns:** New D.C. Official Code § 42-3505.10(c) requires a housing provider to refund a prospective tenant's application fee if no tenant screening is done. The refund must be made in a reasonable time of fourteen (14) days or less, but the statute does not specify when that time starts to run. The Commission believes the intent of the Council was to require the refund within fourteen (14) days of the fee being paid to the housing provider. The enacted version of the ERSA-FIRA merged the provisions of several bills that had been introduced in the Council, including Bill 24-119. *See* Committee Report (B24-096) at 7-8. Bill 24-119, as introduced, required a fee refund to be made within fourteen (14) days of "a decision about whether to offer the vacant rental unit to the prospective tenant." *Id*. at 46. This specific timing provision does not appear in the enacted law, and the

Commission believes this removal was intentional. Moreover, by starting the clock when the fee is paid, prospective tenants can objectively know when the deadline runs, rather than guessing at when a housing provider has subjectively decided on an application. See below § 4307.6.

- **Receipt of prohibited information:** New D.C. Official Code § 42-3505.10(e)(2) provides that a housing provider will not be held liable for basing an adverse action on certain, prohibited information simply because the housing provider received such information without specifically requesting it and did not base the decision on such information ("non-reliance defense"). The FCRA requires consumer reporting agencies to "follow reasonable procedures to assure maximum possible accuracy of the information" provided to a business about a consumer (i.e., to a housing provider about a prospective tenant). A review of cases brought under the FCRA shows that businesses are nonetheless sometimes provided with inaccurate or incomplete information by reporting agencies, and information involving court records of eviction cases may be especially problematic or misleading. *See, e.g.,* McIntyre v. RentGrow, Inc., 34 F.4th 87, 97-98 (1st Cir. 2022) ("Although RentGrow did engage in an ad hoc filtering process, it did not have procedures in place to verify whether the court-records information it received from [TransUnion] was either correct or complete. Nor did it independently spot-check or otherwise review the underlying dockets."). A housing provider may have no way to know at the time he or she makes a decision on a prospective tenant's application that the information relied on was related to a prohibited basis for adverse action, such as suits for possession that were dismissed but are not clearly shown as such in public dockets or proprietary databases. The Commission has therefore clarified that the non-reliance defense includes situations where the housing provider was not at fault for receiving inaccurate information from a consumer reporting agency or for not knowing that the information provided was related to a protected trait. See below § 4307.9.

All persons desiring to comment on these proposed regulations should submit comments in writing to:

Daniel Mayer, General Counsel
Rental Housing Commission
441 Fourth Street, N.W., Suite 1140-B North
Washington, D.C. 20001

Or, via email to: daniel.mayer@dc.gov.

Prospective commenters are strongly encouraged to submit comments via email. Persons with questions concerning this notice of proposed rulemaking should call (202) 442-8949. To be considered, all comments must be received or postmarked no later than Friday, January 27, 2023. The Commission has extended the ordinary thirty (30) day comment period in light of the approaching holiday season.

Title 14, HOUSING, of the DCMR is amended as follows:

Chapter 41, COVERAGE AND REGISTRATION, is amended as follows:

Section 4111, DISCLOSURES TO PROSPECTIVE AND CURRENT TENANTS, is amended as follows:

Subsection 4111.5 is amended to read as follows:

4111.5 At the time a prospective tenant files an application to lease any rental unit covered by the Act, or, if no application is required, prior to the execution of or agreement to a lease or rental agreement, the housing provider shall provide the tenant with:

(a) A completed copy of the form described in § 4111.3;

(b) A copy of each record or document listed in § 4111.2; provided, that where petitions, forms, or other applications require supporting documentation such as financial statements, the supporting documentation need not be provided so long as it is made available as required by § 4111.4; and

(c) Written documentation of all information required by § 4307.2 as to whether and how the housing provider will conduct any tenant screening, which shall be provided either directly to the tenant or by posting in accordance with § 4307.3.

Chapter 43, EVICTIONS, RETALIATION, AND TENANT RIGHTS, is amended as follows:

Section 4300, GROUNDS FOR EVICTION, is amended as follows:

The caption of section 4300 is amended to read as follows:

4300 NONPAYMENT OF RENT AND OTHER GROUNDS FOR EVICTION GENERALLY

Existing subsections 4300.1 through 4300.5 are amended to read as follows:

4300.1 Except as provided by § 4300.2, a tenant of any rental unit covered by the Act, as provided in § 4100.3, shall not be evicted from the rental unit except:

(a) For nonpayment of rent, pursuant to § 501(a-1) of the Act (D.C. Official Code § 42-3505.01(a-1)), after the service of a notice that complies with this section and the opportunity to pay all rent lawfully owed;

(b) For violation of an obligation of tenancy, pursuant to § 501(b) of the Act (D.C. Official Code § 42-3505.01(b)), after service of a notice that complies with § 4301 and the opportunity to correct the violation; or

(c) For the following reasons, after the service of a notice that complies with § 4302:

(1) For performance of an illegal act on the premises, pursuant to § 501(c) of the Act (D.C. Official Code § 42-3505.01(c));

(2) For personal use and occupancy by the owner of the rental unit, pursuant to § 501(d) of the Act (D.C. Official Code § 42-3505.01(e));

(3) For personal use and occupancy of a purchaser of the rental unit, pursuant to § 501(e) of the Act (D.C. Official Code § 42-3505.01(e));

(4) For unsafe alterations or renovations, pursuant to § 501(f) of the Act (D.C. Official Code § 42-3505.01(f));

(5) For demolition of the housing accommodation, pursuant to § 501(g) of the Act (D.C. Official Code § 42-3505.01(g));

(6) For substantial rehabilitation, pursuant to §§ 214 and 501(h) of the Act (D.C. Official Code §§ 42-3502.14 & 42-3505.01(h));

(7) For discontinuation of housing use and occupancy, pursuant to § 501(i) of the Act (D.C. Official Code § 42-3505.01(i)); or

(8) For closure of a building by order of the Department of Buildings, pursuant to § 501(n) of the Act (D.C. Official Code § 42-3505.01(n)) and § 103 of this title or § 108 of the District of Columbia Property Maintenance Code (12-G DCMR § 108).

4300.2 Nothing in this section or §§ 4301 or 4302 shall apply to the eviction of a tenant:

(a) In an action brought in accordance with the Residential Drug-related Evictions Re-enactment Act of 2000 (D.C. Law 13-172; D.C. Official Code §§ 42-3601 *et seq.*); or

(b) For the purpose of converting the rental unit or housing accommodation to condominium or cooperative housing use, which is subject to the requirements of the Conversion of Rental Housing to Condominium or Cooperative Status Act of 1980 (D.C. Law 3-86; D.C. Official Code §§ 42-3402.01 *et seq.*) and § 4705 of this title.

4300.3 The expiration of the term of a lease for a rental unit covered by the Act shall not, by itself, entitle a housing provider to evict a tenant from the rental unit.

4300.4 No action or proceeding to evict a tenant shall be filed by a housing provider until the expiration of the time required for the grounds for eviction being sought by the applicable subsections of § 501(a-1) through (i) of the Act (D.C. Official Code § 42-3505.01(a-1)-(i)) and unless stated in a notice served in accordance with this section, §§ 4301, or 4302.

4300.5 A notice that a housing provider intends to file a claim for possession of a rental unit because of the nonpayment of rent pursuant to § 501(a-1) of the Act (D.C. Official Code § 42-3505.01(a-1) ("Notice of Nonpayment and Possible Eviction") shall not be served on a tenant if the amount of unpaid, past due rent is less than six hundred dollars ($600).

4300.6 A housing provider shall not file an action in court to evict a tenant for nonpayment of rent until no less than thirty (30) days after the date of service of a Notice of Nonpayment and Possible Eviction that complies with § 4300.7.

4300.7 In order to be valid, a Notice of Nonpayment and Possible Eviction shall state:

(a) The total amount of rent owed as of the date of the notice;

(b) The date of the rent charges and payments, if any, for the period of delinquency, in a ledger included in or attached to the notice;

(c) That the tenant has the right to remain in the rental unit if the total balance of unpaid rent is paid in full before a court orders the tenant's eviction;

(d) That housing provider may file a case in court to evict the tenant if the tenant does not pay the balance of unpaid rent in full within thirty (30) days of service of the notice;

(e) That the tenant has the right to defend against an eviction in court and that only a court can order the tenant's eviction;

(f) That further help or free legal services may be available by contacting the Office of the Tenant Advocate at (202) 719-6560 or the Landlord Tenant Legal Assistance Network at (202) 780-2575;

(g) The registration or exemption number for the rental unit or housing accommodation, as provided by the Rent Administrator in accordance with §§ 4102.10 and 4102.11 and, if the rental unit or housing accommodation is exempt from the Rent Stabilization Program, the basis for the exemption; and

(h) The housing business license number issued to the housing provider for the premises, if one has been issued.

4300.8 A Notice of Nonpayment and Possible Eviction shall not be deemed invalid because of a failure to include the information required by § 4300.7(g) or (h) if the notice has been issued to a subtenant by a sublessor who is a natural person and who has no business relationship with the owner/landlord other than as a tenant of the subject rental unit.

4300.9 Any notice served on a tenant for any reason other than the nonpayment of rent shall also be filed with the Rent Administrator, in accordance with § 3901, no later than five (5) days after service on the tenant and shall include a certification that the tenant was served in accordance with § 4300.24 and by what means. The Rent Administrator shall review each notice promptly and may:

(a) Issue an order disapproving and voiding the notice if he or she finds that the notice is defective on its face or in conjunction with any supporting documentation; or

(b) Issue a show cause order in accordance with § 3926 if he or she finds substantial grounds to believe that a possible violation of the Act or this chapter has occurred.

Existing subsections 4300.6 through 4300.18 are renumbered as subsections 4300.10 through 4300.22.

New subsections 4300.23, 4300.24, and 4300.25 are added as follows:

4300.23 Any notice required to be served on a tenant under this section, §§ 4301, or 4302 shall be written in:

(a) Both English and Spanish; and

(b) The tenant's primary language if the housing provider knows or reasonably should know that the tenant's primary language is: Amharic, Arabic, Chinese, French, Tagalog, or Vietnamese.

4300.24 A housing provider shall not be held to have failed to comply with § 4300.23(b) if the written lease for the subject rental unit, or a signed addendum thereto, includes space for the tenant to optionally indicate his or her primary language, written in at least each covered language, and the tenant has not indicated that he or she primarily speaks a covered language.

4300.25 Notwithstanding § 904(a) of the Act (D.C. Official Code § 42-3509.04(a)), for the purposes of this section, §§ 4301, and 4302, service of a required notice upon any person (other than the Rent Administrator) shall be completed only:

(a) By handing the notice to the person or by leaving it at the subject rental unit with a person of at least sixteen (16) years of age residing at the subject rental unit; or

(b) If the person has left the District of Columbia or cannot be found, or no person of suitable age can be found at the subject rental unit, by both:

(1) Posting a copy of the notice on the premises of the rental unit where it may be conveniently read and capturing timestamped, photographic evidence of the posting for the housing provider's records; and

(2) Mailing a copy to the person by postage-paid U.S. mail to the rental unit within three (3) calendar days of the posting.

Section 4301, NOTICES TO CORRECT VIOLATION OF TENANCY OR TO VACATE, is amended as follows:

Subsection 4301.4 is amended to read as follows:

4301.4 A Notice to Correct or Vacate shall state:

(a) The factual basis for the housing provider's belief that the tenant is violating an obligation of tenancy, in sufficient detail to allow a reasonable person in the circumstances to know what allegedly occurred, including specific reference to the provision of the lease or Housing Regulations that create the obligation and to § 501(b) of the Act (D.C. Official Code § 42-3505.01(b));

(b) The specific action(s) the tenant needs to take to correct the violation, in sufficient detail to allow a reasonable person in the circumstances to know how to comply with the directive(s);

(c) That the housing provider may file an action in court to evict the tenant if the violation has not been corrected thirty (30) days after the service of the Notice to Correct or Vacate;

(d) The registration or exemption number for the rental unit or housing accommodation, as provided by the Rent Administrator in accordance with §§ 4102.10 and 4102.11 and, if the rental unit or housing accommodation is exempt from the Rent Stabilization Program, the basis for the exemption;

(e) The housing business license number issued to the housing provider for the premises, if one has been issued; and

(f) That a copy of the Notice to Correct or Vacate is being filed with the Rent Administrator, including the address and telephone number of the Rental Accommodations Division.

Section 4301.5 is amended to read as follows:

4301.5 A Notice to Correct or Vacate shall not be deemed invalid because of a failure to include the information required by § 4301.4(d) or (e) if the notice has been issued to a subtenant by a sublessor who is a natural person, as defined in § 4107.3, and who has no business relationship with the owner/landlord other than as a tenant of the subject rental unit.

Existing subsections 4301.5 through 4301.8 are renumbered as subsections 4301.6 through 4301.8.

Section 4302, NOTICES TO VACATE FOR OTHER REASONS, is amended as follows:

Subsection 4302.1 is amended to read as follows:

4302.1 In order to be valid, a notice to vacate for any reason listed in §§ 501(c) through (i) of the Act (D.C. Official Code § 42-3505.01(c)-(i)) ("Notice to Vacate") shall state:

(a) The factual basis the housing provider relies on, in sufficient detail to allow a reasonable person in the circumstances to know what allegedly occurred or the planned use or changes to the premises, and the specific subsection of § 501 of the Act (D.C. Official Code § 42-3505.01) that the eviction is based on;

(b) That the housing provider may file an action in court to evict the tenant if the tenant does not vacate within the time provided by § 4302.2 after the service of the notice;

(c) The registration or exemption number for the housing accommodation, as provided by the Rent Administrator in accordance with §§ 4102.10 and 4102.11 and, if the rental unit or housing accommodation is exempt from the Rent Stabilization Program, the basis for the exemption;

(d) The housing business license number issued to the housing provider for the premises, if one has been issued; and

(e) That a copy of the Notice to Vacate is being filed with the Rent Administrator, including the address and telephone number of the Rental Accommodations Division.

Subsection 4302.2 is amended to read as follows:

4302.2 A Notice to Vacate shall not be deemed invalid because of a failure to include the information required by § 4302.1(c) or (d) if the notice has been issued to a subtenant by a sublessor who is a natural person and who has no business relationship with the owner/landlord other than as a tenant of the subject rental unit.

Existing subsections 4302.2 through 4302.8 are renumbered as subsections 4302.3 through 4302.9.

There is added a new section 4307 as follows:

4307 TENANT APPLICATIONS AND SCREENING

4307.1 Any housing provider that requires an application from a prospective tenant or otherwise engages in any tenant screening shall comply with § 510 of the Act (D.C. Official Code § 42-3505.10) and this section.

4307.2 Before requesting any information or fees from a prospective tenant as part of tenant screening, a housing provider shall notify the prospective tenant of the following:

(a) The amount and purpose of any application fee, mandatory fee, optional fee, security deposit, or other fee or deposit that will or may be charged to a tenant or prospective tenant, the timing of the charge, and whether each fee is refundable and under what conditions a refund, in whole or in part, will be issued, in accordance with all applicable law;

(b) The types of information that will be accessed to conduct a tenant screening;

(c) The specific criteria, if any, that will result in an automatic denial of the application;

(d) Any additional criteria that may result in the denial of the application;

(e) If a credit score or consumer report will be used for tenant screening, the name and contact information of the consumer reporting agency;

(f) Either:

(1) The approximate number of rental units that become available for rent in the housing accommodation each calendar year, specifying the number of bedrooms; or

(2) If the number of rental units in subparagraph (1) cannot reasonably be estimated, the number of rental units in the housing accommodation that became available for rent in each calendar month of the housing provider's prior fiscal year;

(g) The number of days after receipt of a prospective tenant's application that the housing provider will respond with an approval or denial decision;

(h) That the prospective tenant has a right:

(A) To dispute whether any information that may form the basis for an adverse action is inaccurate, incorrectly attributed to the prospective tenant, or prohibited by §§ 4307.7, 4307.8, or 4307.10;

(B) To receive a response from the housing provider regarding any disputed information, in accordance with § 4307.12; and

(C) To dispute inaccurate or incomplete information with and have the dispute investigated by the consumer reporting agency under the Fair Credit Reporting Act, as described at https://consumerfinance.gov/learnmore;

(i) That the prospective tenant has a right to a refund of any application fee in accordance with § 4307.6 if it is not used by the housing provider; and

(j) That the prospective tenant may file either a complaint with the Office of Human Rights or a civil action in the Superior Court of the District of Columbia if he or she believes the housing provider has violated § 510 of the Act (D.C. Official Code § 42-3505.10) or this section.

4307.3 A prospective tenant shall be notified of the information listed in § 4307.2 in writing provided either directly to the prospective tenant or by posting the information in a manner reasonably likely to be found and read by a prospective tenant, including, for example, an office where rental applications are received, on a website describing the housing accommodation, or in an advertisement for the rental unit.

4307.4 A housing provider shall not charge an application fee more than fifty dollars ($50) after May 18, 2022.

4307.5 On and after January 1, 2024, a housing provider shall not charge an application fee more than the product of:

(a) Fifty dollars ($50); multiplied by

(b) The quotient of:

(1) The CPI-U for the calendar year preceding the submission of the application; divided by

(2) The CPI-U for year 2022.

4307.6 If a housing provider receives an application fee and does not conduct any tenant screening for any reason, the housing provider shall refund the application fee to the tenant within fourteen (14) days of receiving the fee.

4307.7 A housing provider shall not, as part of any tenant screening, inquire about, require a prospective tenant to disclose or reveal, or base an adverse action, in whole or in part, on whether a previous housing provider has filed a claim for possession against the tenant for possession of a rental unit if the action:

(a) Did not result in a judgment for possession in favor of the housing provider; or

(b) Was filed more than three (3) years before the date of the application.

4307.8 A housing provider shall not, as part of any tenant screening, inquire about, require a prospective tenant to disclose or reveal, or base an adverse action, in whole or in part, on whether a previous housing provider has filed any claim alleging a breach of lease against the tenant that:

(a) Stemmed from an incident that the prospective tenant demonstrates may constitute a defense to an action for possession under § 501(c-1) of the Act (D.C. Official Code § 42-3505.01(c-1)) or a federal law pertaining to domestic violence, dating violence, sexual assault, or stalking, including records of civil or criminal protection orders sought or obtained by the prospective tenant or of criminal matters in which the prospective tenant is a witness;

(b) Stemmed from an incident in which the prospective tenant was a victim of a crime in the rental unit for which the lease was allegedly breached;

(c) Was related to a disability of the prospective tenant or a member of the prospective tenant's household at the time; or

(d) Occurred more than three (3) years before the date of the application.

4307.9 A housing provider shall not be found to have violated §§ 4207.7 or 4307.8 solely by reason of having received, without specifically requesting, any information described in those subsections in a consumer report; provided, that if such information was received, the housing provider shall bear the burden in a case under § 4307.14 to demonstrate that the adverse action was not taken, in whole or in part, based on that information, which may include that the housing provider relied on incomplete or inaccurate information received from the consumer reporting agency or that the housing provider could not have reasonably known that the information received related to prohibited criteria.

4307.10 A housing provider shall not, as part of any tenant screening, base an adverse action solely on a prospective tenant's credit score or lack thereof; provided, that it shall not be a violation of this subsection for a housing provider to rely on information other than a credit score that is directly relevant to the fitness of a prospective tenant, specifically excluding information described in §§ 4307.7 and 4307.8, that has been disclosed in a credit or consumer report.

4307.11 If a housing provider takes an adverse action on a prospective tenant's application because of any tenant screening conducted, the housing provider shall give a written notice of the adverse action to the prospective tenant no later than the response date provided to the tenant in accordance with § 4307.2(g), which shall include:

(a) The specific basis or bases for the adverse action;

(b) A copy or summary, free of charge, of any information obtained from a third party that formed any basis for the adverse action;

(c) A statement informing the prospective tenant of his or her rights to dispute any basis of the adverse action in accordance with § 4307.12; and

(d) A statement informing the prospective tenant of his or her right to file a complaint with the Office of Human Rights or the Superior Court if he or she believes the housing provider has violated § 510 of the Act (D.C. Official Code § 42-3505.10) or this section.

4307.12 If a prospective tenant, after receiving notice of an adverse action by a housing provider based on tenant screening, notifies the housing provider that any information forming a basis for the adverse action was inaccurate, incorrectly attributed to the prospective tenant, or prohibited by §§ 4307.7, 4307.8, or 4307.10, the housing provider shall respond in writing, by mail, email, or personal delivery, within ten (10) days after receipt of the notice from the prospective tenant.

4307.13 Nothing in § 4307.12 shall be construed to prohibit a housing provider from considering debts owed to a housing authority, any other criteria established in federal law, or from leasing a housing rental unit to other prospective tenants.

4307.14 A prospective tenant who believes that a housing provider has violated § 510 of the Act (D.C. Official Code § 42-3505.10) or this section may either:

(a) File a complaint with the Office of Human Rights to seek the imposition of fines, half of which shall be awarded to the prospective tenant; or

(b) Bring a civil action in the Superior Court within one (1) year of the alleged violation to seek damages, attorney's fees, and equitable relief.

Section 4399, DEFINITIONS, is amended as follows:

Subsection 4399.2 is amended to read as follows:

4399.2 In addition to § 4399.1, the following terms shall have the meanings set forth below:

Adverse action –

(a) Denial of a prospective tenant's rental application; or

(b) Approval of a prospective tenant's rental application, subject to terms or conditions different and less-favorable to the prospective tenant than those included in any written notice, statement, or advertisement for the rental unit, including written communication sent directly from the housing provider to the prospective tenant, including:

(1) Requiring a co-signer on the lease;

(2) Requiring a deposit that would not be required for another applicant;

(3) Requiring a larger deposit than would be required for another applicant; and

(4) Demanding more rent than would be charged to another applicant.

Consumer report – in accordance with § 603(d) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(d)), in relevant part:

(a) In general: any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for rental housing purposes.

(b) Exclusions: the term "consumer report" does not include:

(1) Any:

(A) Report containing information solely as to transactions or experiences between the consumer and the person making the report;

(B) Communications of that information among persons related by common ownership or affiliated by corporate control; or

(C) Communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons;

(2) Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(3) Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under § 615 of the Fair Credit Reporting Act (15 U.S.C. § 1681m).

Consumer reporting agency – in accordance with § 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

CPI-U – the average of the bi-monthly publications of the Consumer Price Index for All Urban Consumers for All Items for the Washington-Arlington-Alexandria, DC-MD-VA-WV, Core Based Statistical Area during the twelve (12) month period ending on November 30 of a given year, as published by the United States Department of Labor, Bureau of Labor Statistics.

Credit score – in accordance with § 609(f)(2)(A) of the Fair Credit Reporting Act (15 U.S.C. § 1681g(f)(2)(A)), in relevant part, a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain

credit behaviors, including default (and the numerical value or the categorization derived from such analysis may also be referred to as a "risk predictor" or "risk score").

Multifamily housing accommodation – a housing accommodation covered by the Act, as provided in § 4100.3, consisting of two (2) or more rental units that is owned or operated by a single housing provider.

Tenant organization – a tenant association, the tenants of a housing accommodation acting jointly as provided by § 410 of the Tenant Opportunity to Purchase Act of 1980 (D.C. Law 3-86; D.C. Official Code § 42-3404.10) ("TOPA"), a tenant organization as provided in § 411 of TOPA (D.C. Official Code § 42-3404.11), or any other continuing agreement between the tenants of two (2) or more rental units covered by the Act to support the exercise of any legal rights as tenants.

Tenant organizer – a person, who may or may not be a tenant, who assists tenants of a multifamily housing accommodation in establishing and operating a tenant organization, and who is not an employee, representative, or other agent of the housing provider, or of a prospective housing provider or owner of the property.

Tenant screening – any process used by a housing provider to evaluate the fitness of a prospective tenant.

Qualified third party – any of the following persons acting in their official capacity:

(1) A sworn officer of the Metropolitan Police Department of the District of Columbia, in accordance with D.C. Official Code § 4-1301.02(15);

(2) A sworn officer of the District of Columbia Housing Authority Office of Public Safety;

(3) A health professional licensed under or permitted by District of Columbia law to practice a health occupation in the District of Columbia in accordance with D.C. Official Code § 3-1201.01(8); or

(4) A domestic violence counselor who is an employee, contractor, or volunteer of a domestic violence program, in accordance with D.C. Official Code § 14-310(2).