April 16, 2021

D.C. Office of the Tenant Advocate
Comments on Emergency and Proposed Rulemaking by
the District of Columbia Water and Sewer Authority:
"DC Water Cares: Multifamily Assistance Program"

I. OVERVIEW

The COVID-19 pandemic has had a drastic impact on tenants in the District, leaving many without jobs and financially insecure. Through the DC Water Cares: Multifamily Assistance Program (MAP), the District of Columbia Water and Sewer Authority (DC Water) has created an innovative assistance program to assist tenants who have been struggling financially during the COVID-19 pandemic, irrespective of whether they directly pay a DC Water bill. The OTA appreciates DC Water's efforts to support District residents, some of whom have been impacted the most.

The OTA also appreciates the opportunity to provide input on this important matter. Our suggestions and comments are primarily aimed at better ensuring that tenants (1) understand the benefits and requirements of MAP, (2) receive sufficient notice as part of MAP, and (3) are able to access the program.

II. OTA CONCERNS AND RECOMMENDATIONS

1. The term "affordable housing unit" should be defined to include rent-controlled units in addition to those fitting under AMI caps.

Concern: § 4102.10(f)(2) provides that an occupant is eligible for MAP if the occupant lives in an "affordable housing unit." However, the term "affordable housing unit" is not defined under §4102.

Recommendation: OTA recommends that DC Water define the term "affordable housing unit" to include rent control buildings in addition to buildings fitting under a strict AMI cap.

2. The MAP should incorporate education and outreach initiatives to reach tenants and explain the benefits of the program.

The proposed regulations do not incorporate initiatives to educate tenants about the MAP program. Since the intended beneficiaries of the program are tenants, the proposed regulations should include education and outreach initiatives directed at informing tenants in the District about the program. In particular, tenants should be educated about the purpose of the program; who is eligible and how the amount of the benefit is determined; the source of the funds; how credits are to be applied, and how tenants can apply. Doing so would discourage the misuse of the program by bad actors who could take advantage of a lack of information available to tenants.

3. **The regulations should require DC Water to directly provide the following notices:**

    a. **A notice to all tenants in the building upon the owner's approval for MAP, irrespective of whether a given tenant's unit is specifically being considered for a credit pass-through; and**

    b. **Once DOEE and DC Water have processed a direct tenant application for a credit pass-through, notice to the tenant detailing whether or not the application was approved including the rationale if the decision is a denial. For tenant denials under MAP, a grievance procedure should be provided and the denial notice should provide instructions for disputing the denial.**

Concern: The proposed regulations do not provide sufficient notice to all tenants of a building owner's involvement in the MAP program nor provide sufficient notice in the event of a denial of a direct tenant application. By the letter of the regulations, the first notice that an occupant receives regarding their landlord's participation in the program would be the notice under § 4102.10(e)(5) and § 4102.10(h)(2) that a credit was applied to the tenant's rental account.

This means an occupant could be wrongfully excluded from the program, whether intentionally or otherwise, and never have been put on notice in order to even dispute their exclusion. This concern could potentially apply across the board, whether the tenant (1) might have resided in an "Affordable Housing Unit," (2) might have been at or below 80% AMI and deemed categorically eligible by another agency, or (3) might have been at or below 80% AMI and applied on their own directly. For each of these eligibility categories, where all occupants do not receive a general notice at the beginning of the process that the owner is participating and how eligibility is determined, occupants could lose the opportunity to apply on their own under § 4102.10(f)(3)(a) or dispute another agency's failure to determine that they were categorically eligible under § 4102.10(f)(3)(b) and (c).

Relatedly, no notice is explicitly required in the circumstance that the occupant personally applies through DOEE and DC Water and the application is denied.

Recommendation: The regulations should require DC Water to timely notify all occupants on the property upon the customer's approval for MAP. This notice should include basic information about the MAP program including occupant eligibility requirements; a description of categorical eligibility; associated opt-in/opt-out procedures under § 4102.10(f); and instructions as to how occupants may obtain and submit an application.

Once an application has been processed for a unit, DC Water should directly send the occupant of that unit a notice detailing whether or not the application was approved and include reason(s) for any denial. If there was a denial, the MAP program should allow tenants access to a grievance process, and instructions for accessing this process should be included in the aforementioned notice.

The OTA understands that in the operation of the program, DC Water does provide notice to occupants if they are deemed *eligible* (per slide 6, "Tenant Program Design," of the presentation describing the program shown at the April 7, 2021 hearing on these proposed regulations). Nonetheless, we strongly recommend that an additional up-front notice to all occupants as described above should be codified in the regulations. This is also true for notices currently given in practice to occupants who are deemed eligible.

4. **The owner should be required to submit documentation proving that the appropriate credit was applied to occupants' accounts as a condition of eligibility, and not merely at the request of DC Water.**

   Concern: A given customer may not be required to provide any documentation proving that the required credit was actually applied to eligible occupants' accounts. § 4102.10(h)(6) only requires such documentation be provided upon DC Water's request. Our concern is that the appearance of a less than rigorous enforcement mechanism may encourage customers to disregard the credit obligation they owe to their tenants.

   Recommendation: Under § 4102.10(h)(6), *all* participating customers should be required to provide proof that the rental credit was posted to eligible occupants' accounts as a condition of continued eligibility, rather than only upon DC Water's request. This will encourage compliance by customers and facilitate enforcement by DC Water.

5. **By requiring landlords to enter into a payment plan in order to participate, certain landlords may be disincentivized to participate in MAP which could leave the affected tenants in an inequitable position.**

   Concern: Pursuant to § 4102.10(e)(6), in order to participate in MAP, the "customer" is required to enter into a payment plan to pay any outstanding arrears on the account. Incorporating this requirement could disincentivize certain landlords from participating in the program, especially in instances where the 10% credit amounts to less than the landlord's arrears.

   Thus, if the landlord chooses not to participate, perhaps due to the payment plan requirement, the intended beneficiaries – including those tenants that experience the most hardship – will be unable to participate in the program. This would likely result in some of the most marginalized tenants being put in the inequitable position of being disqualified from the program outright through no fault of their own.

   Recommendation: Although we do not have a specific recommendation given the structure of the program, we suggest DC Water consider ways to maximize opportunities for tenants to participate in MAP in instances when a landlord refuses to participate.

6. **Instead of revoking the MAP Credits in the event that the landlord fails to comply with the terms outlined in § 4102.10(g)(2), DC Water should fine the landlord.**

   Concern: Pursuant to § 4102.10(g)(2), DC Water is able to revoke the credits awarded under the MAP program if the landlord does not comply with the terms outlined in this section. That would effectively punish the affected tenants for the landlord's failure to comply with programmatic requirements.

   Recommendation: If DC Water has the ability to impose fines on landlords instead of revoking the credit, we suggest that DC Water do so and include a provision stating that the landlord is prohibited from imposing or transferring the fines onto the tenant, whether by revoking tenant credits or otherwise.

   In the alternative, if DC Water is not able to do so, we recommend that DC Water at minimum alert tenants to the possibility that the landlord's failure to comply could result in revocation of credits pertaining to both the landlord and the tenants.

7. **The MAP should incorporate a grievance mechanism for tenants in the event that disputes arise.**

   Concern: Given the programmatic design, tenants are reliant on landlord participation in the program to begin with. In the event the landlord does participate thus entitling tenants to program benefits, there is no grievance mechanism for tenants whose rights are infringed due a landlord malfeasance.

   Recommendation: OTA recommends that DC Water include a grievance procedure to hear tenant grievances should they arise.

8. **DC Water should clarify whether the $2,000 cap is per "eligible occupant" or per "eligible occupant unit" and restructure the rulemaking so that there is a consistent use and definition for these phrases.**

   Concern: The leading text in § 4102.10(g) and § 4102.10(g)(1) use "eligible occupant" and "eligible unit" seemingly interchangeably. Further, the introductory summary of the rulemaking uses the term "eligible occupant unit." Whether the owner is eligible for $2,000 per *unit* or per *occupant* in most cases would be a significant difference.

   Recommendation: OTA recommends that DC Water clarify whether the $2,000 cap is per "eligible occupant" or per "eligible occupant unit," as we believe is intended, and restructure the rulemaking so that there is a consistent use and definition for these phrases.