SECTION 7

SUMMARY OF ALL PUBLIC COMMENTS

Filotto, Amy

From: Filotto, Amy
Sent: Thursday, January 16, 2014 4:44 PM
To: 'Rafie Podolsky'
Cc: 'jeffa@vernonhousing.org'; Santoro, Michael C; Durand, Kathleen
Subject: RE: revised regulations-Tenant Grievance Procedures

Rafi,
Many thanks for sending this extensive write up. I understand and agree with all of your changes. I have incorporated them all into the revised document which is currently at the AG's office for approval.

Amy

Amy J.K. Filotto
Legal Counsel
State of Connecticut DOH

From: Rafie Podolsky [mailto:RPodolsky@larcc.org]
Sent: Friday, December 27, 2013 4:37 PM
To: Filotto, Amy
Cc: 'jeffa@vernonhousing.org'; Santoro, Michael C
Subject: RE: revised regulations-Tenant Grievance Procedures

Amy –

Thanks very much for sending me the draft. I think you've done a great job under difficult circumstances and, with a handful of exceptions, we have no problem with either the changes you have made or the places where you have chosen not to make changes. There are, however, a couple of places in which we believe changes that are meant to be technical are actually substantive. In those cases, we ask that you make some adjustments before finalization of the revised draft. I have listed below those items for which we request a change:

Section 8-68f-1(8) [Definition of "guest"]: In moving this definition from Sec. 8-68f-5(a) to its new location, the word "and" has been inserted in a way that unintentionally changes the meaning of the definition by raising questions as to what the word "consent" refers. A guest is supposed to be an occupant staying in the unit temporarily with the consent of the tenant or someone with the authority of the tenant to consent to the occupancy. The insertion of "and" makes it unclear to whom the word "who" refers and can be read to mean that a guest has the authority to give consent on behalf of the tenant (e.g., to a search of the apartment). I don't think that this is intended. To avoid this misunderstanding, at the least the word "and" should be deleted; but, for greater clarity, we think it would also be good to add the phrase "to the guest's occupancy" later in the definition. The definition should therefore read:

> "Guest" means a person temporarily staying in the dwelling unit with the consent of a tenant or other member of the household ~~and~~ who has express or implied authority to consent to the guest's occupancy on behalf of the tenant.

(2) Sec. 8-68f-1(16) [Definition of "live-in aide"]: Because of the renumbering of the definitions, the reference to the definition of "near-elderly" should be to (17), not (15). This change is entirely technical.

(3) Sec. 8-68f-1(17) [Definition of "near-elderly"]: The new definition omits the comma that appears in the federal regulations after the phrase "age of 62." The comma should be inserted for both consistency and clarity. Without the comma, the definition could be misinterpreted to mean that a "near-elderly" person must be disabled.

(4) Sec. 8-68f-7(a)(13) [tenant maintenance]: We object to the deletion of the phrase "The lease may provide that," which is a significant substantive change in the proposed regulations. Contrary to the LCO Comment #40 under "Technical Corrections," this is not a technical change, because it changes a permissive provision to a mandatory one. The earlier draft allowed the housing authority, within certain limits, to require tenants to provide maintenance. The revised draft compels the lease to require such maintenance and thus to force housing authorities to transfer these maintenance duties, even if they would ordinary choose not to. It is our belief that housing authorities do not usually delegate maintenance duties to tenants, even in the narrow circumstances when the law permits it, probably because such delegation can lead to uneven and unreliable maintenance (and may be contrary to union rules as well). For that reason, requiring such a provision in the lease is in the interest of neither the tenant nor the housing authority and, in any event, is different from what all of us agreed to. The permissive language should be restored. We suggest that this can be done by converting (a)(13) into a separate subsection (b).

We also want to note that we support your addition of Paragraph (4) to 8-68f-11(a) (concerning the requirement that the landlord follow C.G.S. 47a-9 in adopting changes to the lease and the rules). It should be understood, however, that the Department will still at some future point need to address the requirement of C.G.S. 8-68f(3) that housing authorities solicit tenant comments before rules are changed.

Finally, there are two sections on which I have some additional thoughts (not necessarily suggestions for change) but cannot make a suggestion without speaking with others who are not in the office today. They have to do with the definition of class grievances in 8-68f-17 and the consequences of the failure to name a hearing officer in 8-68f-20(b)(3). If this leads to a suggestion, I will contact you on Monday.

Thanks again.

Rafie

From: Filotto, Amy [mailto:Amy.Filotto@ct.gov]
Sent: Tuesday, December 24, 2013 11:49 AM
To: Rafie Podolsky
Cc: 'jeffa@vernonhousing.org'; Santoro, Michael C
Subject: revised regulations-Tenant Grievance Procedures
Importance: High

Rafie,
Attached please find the revised draft of the regulations and the letter from regs review with our draft agency responses included. These are also being sent to the AG's Office for review.

I also included a redline that shows the changes that I made.

If you have questions or concerns, please let me know. Thanks for your patience while I worked on these.

I'll be out of the office this afternoon , Wednesday and Thursday, but will be in on Friday.

Amy

Amy J.K. Filotto

Legal Counsel
State of Connecticut
Department of Housing

Filotto, Amy

From: Santoro, Michael C
Sent: Wednesday, February 27, 2013 11:54 AM
To: Filotto, Amy
Cc: Lundgren, Nick
Subject: RE: DECD Public Housing Regs
Attachments: Comments on Proposed Regulations Re Tenant Rights in State Public Housing.pdf; Comments by Legal Assistance.pdf; SUMMARY OF COMMENTS Tenant's Rights.doc; AG Comments on Grievance Regs.pdf; Final Comments on Grievance regs.pdf; Tenants Rights Comments - Various.pdf

Amy:

As we discussed, these regulations had originally been put out for public comment more than two years ago. As a result, DECD made the decision to revisit and solicit additional public comment. We published the draft and solicited comment from the general public as well as the housing advocacy community and the local housing authorities in Connecticut.

Attached are comments, both hard copy and electronic that were received pursuant to this solicitation for comment. As a result of the significant comments received, we held three work group sessions with participation by any organization that had provided significant or detailed comment and that wished to participate. Representatives of PHRN, CONN-NAHRO, Legal Assistance Resource Center, Inc. and the Connecticut Housing Coalition participated in these work groups, along with staff from DECD. The intention of these work groups was to work together to reach consensus on those issues which appeared to be contentious, and to provide staff with sufficient information to make reasoned and reasonable recommendations to Commissioner Smith with regard to those areas where a consensus could not be reached.

As a result of these detailed comments and the work group sessions, consensus was reached on all major issues.

Should you have any questions or require any additional information, please do not hesitate to contact me.

Michael C. Santoro
CD Specialist
Office of Housing and Community Development
DECD
505 Hudson Street
Hartford, CT 06106-7106

860-270-8171
860-706-5741 (fax)

Connecticut
still revolutionary

please don't print this e-mail unless you really need it!

MEMORANDUM

TO: James Watson, Communications Manager; Michael Lettieri, CD Director

FM: Michael Santoro, CD Specialist

RE: Summary of Comments: Tenant's Rights in State Public Housing

DATE: February 8, 2012

I am in receipt of eleven (11) separate comments pursuant to the promulgation of the Tenant's Rights in State Public Housing regulations.

I have summarized the various comments by section of the proposed regulation, as follows:

- Four (4) commenters are supportive of the draft as written. Five (5) are supportive with minor revision. One (1) is supportive with substantive revision. One (1) commenter expressed general dissatisfaction with the need for a grievance procedure at all.

- Section 8-68f-2(h) General Lease Provisions:
  - There is disagreement amongst commenter's with regard to "notice". ***Compromise language will be proposed.***
- Section 8-68f-3(c) Payments Due Under the Lease
  - Two commenters suggest incorporating a federal restriction into the regulation by both language and reference. ***Agency agrees, and will revise accordingly***
- Section 8-68f-3(e) Payments Due Under the Lease
  - Commenter suggests adding internal regulatory reference and "to the extent that they are permitted by Connecticut law". ***Agency Agrees and will revise accordingly.***
- Section 8-68f-3(f) Payments Due Under the Lease
  - Commenter believes information is repeated in Section 8-68f-6(i) and should be deleted here. ***Agency disagrees; information is not repeated and this is the only area of the regulation that has this information.***
- Section 8-68f-3(g)(b) Payments Due Under the Lease
  - Two commenters would eliminate repeat of statutory language and change to a reference. ***Agency agrees, and language reflecting this reference will be incorporated.***
  - Two (2) commenters believe that statutory interest rates in 47a-22 impose an undo burden and suggest a change in that statute or for the State to assume responsibility for payment.
  - One commenter believes interest rates in 47a-22 were already eliminated (they were not) ***Agency believes comments are not applicable to regulation under consideration; no change will be made.***
- Section 8-68f-5(a) and (b) Tenants Right to Use and Occupancy
  One commenter suggests the permissive language allowing for development of policies around guests, foster children and live-in aides be revised to "shall". One prefers the permissive language. ***OPEN FOR AGENCY DISCUSSION.***
- Section 8-68f-7(c) Tenant's Obligations
  - Commenter suggests moving portion of paragraph to Section 8-68f-5
    Agency agrees; language will be moved to Section 8-68f-5, with cross reference language added.
- Section 8-68f-7(d) and (f) Tenant's Obligations
  - Commenter suggests moving portion of paragraph to Section 8-68f-5

Agency agrees; language will be moved to Section 8-68f-5, with cross reference language added.

- Commenter suggests expanding language to reference "move in" condition.
  Agency disagrees; there are many circumstances which preclude a tenant from doing so, including but not limited to simple lapse of time; no change will be made.

- Section 8-68f-7(ℓ) Tenant's Obligations
  - Commenter suggests adding language from 8-68f-7(m)(iii) relative to "an abuse or pattern of alcohol…"
- Section 8-68f-7(ℓ) and (m) Tenant's Obligations
  - One commenter suggests substantive change; another suggests minimal clarification to prevent abuse; another is specifically opposed any revision, including those proposed.
    OPEN FOR AGENCY DISCUSSION
- Section 8-68f-7(n) Tenant's Obligations
  - Commenter suggests language relative to "seasonal maintenance….where customary". Another is opposed. *Compromise language will be proposed by the Agency.*
- Section 8-68f-10(b), (c), (e) Entry of Dwelling Unit during Tenancy
  - Commenter suggests substantive changes; another suggests minimal clarification to prevent abuse; another is directly opposed to proposed changes
    OPEN FOR AGENCY DISCUSSION.
- Section 8-68f-11 Notice Procedures
  - Commenter suggests adding language to make section consistent with federal reg under 24 CFR 966.413(ii) and 966.4(m).
    Agency agrees; language will be added as proposed.
- Section 8-68f-12(b) Termination of the Lease
  - Commenter suggests eliminating the limitations on a felony as written. Language in reg would allow for "white collar" felony's to be addressed differently than violent or drug related felonies. *Agency disagrees; no change will be made.*
  - Commenter suggests that language be added to include a requirement of at least 30 days notice for all grounds not specifically noted. *Agency disagrees; no change will be made.*
- Section 8-68f-12(c) Termination of the Lease
  - Commenter suggests adding language for clarity.
    Agency agrees; language will be added as proposed.
- Section 8-68f-12(f) Termination of the Lease
  - Commenter suggests adding language to make section (f).
    Agency agrees; language will be added as proposed.
- Section 8-68f-12(g) Termination of the Lease
  - Commenter suggests adding language to make section (g).
  - Other commenter is directly opposed as language is unnecessary, irrelevant and inappropriate. *OPEN FOR AGENCY DISCUSSION.*
- Section 8-68f-13 Provision for Modifications
  - Commenter suggests eliminating the waiver of the writing requirement.
  - Other commenter is directly opposed to elimination of the waiver of the writing requirement.
    Drafter supports elimination of the waiver; however this is OPEN FOR AGENCY DISCUSSION.
- Section 8-68f-14(b) Posting of Policies, Rules and Regulations
  - Commenter suggests that allowing tenants to comment on proposed changes is 'bad' and should be eliminated.
  - Three (3) commenters are concerned over requirement to summarize and respond to comments on revisions as an administrative burden and requests elimination of section.
  - Two (2) commenters believe language should be retained as is.
    OPEN FOR AGENCY DISCUSSION.

- Section 8-68f-13 & 14
  - Commenter suggests DECD review and approval all leases and lease modifications. **Agency disagrees; Agency believes that provision of a "sample" or "best practices" lease could be developed and provided by DECD; however review and approval of all modifications is unrealistic and would require DECD to usurp local control by the landlord. No change will be made.**
- Section 8-68f-15 Prohibited Lease Provisions
  - Commenter suggests repetition of state and federal prohibitions rather than reference to statute. *Agency disagrees; repetition of state and federal prohibitions is unnecessary.*
- Section 8-68f-16 Accommodation of Persons with Disabilities
  - Commenter recognizes that provision strictly mirrors federal regulation. Suggests language to clarify definition of "reasonable accommodation" and applicability. Also, commenter would like language that "encourages" landlords to develop a reasonable accommodation policy. *Agency disagrees; "reasonable accommodation" is a statutorily defined term and should not be modified here. Further, landlords are encouraged to develop a reasonable accommodation policy, but the Agency is not prepared to mandate such at this time.*
- Section 8-68f-17 Grievance Procedure
  - Commenter suggests eliminating definition of grievance from the Definition section and placing it here along with similar language that exists here. *Agency disagrees; no change will be made.*
- Section 8-68f-18 (b) Informal Settlement of Grievances
  - Commenter suggests adding language requiring summary to include date specific for requesting a hearing. *Agency agrees with additional modification; "within a reasonable time frame" will be included in the modified language.*
- Section 8-68f-19 Right to a Hearing
  - One commenter believes this section is duplicative and should be deleted; another commenter believes this section is completely unnecessary; another commenter is directly opposed to the elimination of this section. *Agency is comfortable with language as exists, so no change will be made.*
- Section 8-68f-20 (a) Procedures to Obtain a Hearing
  - One commenter suggests language clarifying that a hearing must be made within a specific time frame as discussed in the information discussion. *Agency will draft compromise language.*
- Section 8-68f-20 (b) Procedures to Obtain a Hearing
  - Commenter believes that approval of a hearing officer by an individual tenant is problematic, and two (2) offer a version of the federal regulation as an alternative. Two (2) commenters believe that the draft supplies tenants with a greater opportunity for an unbiased hearing. *OPEN FOR AGENCY DISCUSSION.*
- Section 8-68f-20 (e) Procedures to Obtain a Hearing
  - One commenter would like to add a section mirroring federal escrow deposit requirement; two (2) commenters point out that the federal provision does not apply to state housing and should be retained as written. *OPEN FOR AGENCY DISCUSSION.*
- Section 8-68f-20 (f) Procedures to Obtain a Hearing
  - One commenter believes that this is in conflict with Section 8-68f-12 (d); another notes that both sections are permissive and both offer an option for the landlord. *Agency is comfortable with language as exists, so no change will be made.*
- Section 8-68f-20 (g) Procedures to Obtain a Hearing
  - One commenter believes references are incorrect. *Agency disagrees; references are as were intended; so no change will be made.*
- Section 8-68f-21 & -22 Procedures Governing the Hearing

- One commenter acknowledges that sections mirror federal regulation, however, proposes to add language for clarity. ***Agency agrees and will make appropriate revisions.***

- Section 8-68f-22 Procedures Governing the Hearing
  - One commenter recommends adding language to mirror federal language relative to hearing officer rendering a decision without a hearing under specific circumstances. Another commenter believes that this should not be allowed, however, if so, that it should only be done for an indisputable abuse of process relative to a fully resolved complaint involving the same tenant. ***Agency agrees will develop compromise language. OPEN FOR AGENCY DISCUSSION.***
- Section 8-68f-23 Non-Applicability of Grievance Procedure
  - Two commenters suggest that language is vague and open to interpretation and recommends clarification before proceeding; another agrees, however is in support of current draft due to time and recent changes to statute with regard to tenant participation. ***Agency agrees that clarification would be beneficial, however in the interests of time and implementation, will revisit this issue at a later time.***
- Section 8-68f-23 Non-Applicability of Grievance Procedure
  - Two (2) commenters questions the use of "good faith" and "encourage"; another supports their use in part because it is in statute, and it is court tested language. ***Agency is comfortable with language as exists, so no change will be made.***
- Unaddressed Legal Issues - Pets
  - One commenter suggests adding language requiring the establishment of a pet policy and suggests mirroring Section 8-116b of the general statutes. Another supports this position, but acknowledges that it is unnecessary as it would be repetitive of the statute. **Agency disagrees; statute is relevant for only one type of state public housing and this regulation is intended to be broader than just elderly/disabled housing. No change will be made.**
- Unaddressed Legal Issues – Domestic Violence
  - One commenter suggests adding language from Section 47a-11e with regard to termination of rental agreement due to family violence; another believes that addressing the issue is acceptable, but language in statute is insufficient. **Agency disagrees; repetition of this statute is unnecessary for this applicable to ALL rental housing, not just state public housing. No change will be made.**

CHARTER OAK
COMMUNITIES

January 5, 2012

Mr. Michael C. Santoro
Community Development Specialist
Office of Housing and Community Development
Department of Economic & Community Development
505 Hudson Street
Hartford, CT 06106-7106

RE: Tenant Rights in State Public Housing

Dear Mr. Santoro:

We have received DECD's "Notice of Intent to Adopt Regulations" regarding Section 8-68f of the General Statutes. Below are our comments on the proposed regulations.

The following provisions have the potential to make the landlord unnecessarily vulnerable:

- Page 3: 8-68f-3 (g(b)): The requirement to pay 4% or 5.25% interest on security deposit balances is not reasonable as the landlord is frequently earning no - or de minimus - interest on these accounts. The interest rate, if any, should be based upon a standard index like the Federal Reserve Rate or LIBOR, etc.

- Page 5: 8-68f-7(l & m): Requires tenant to make "reasonable effort" to ensure that no household member or guest engages in criminal activity, etc. This seems subjective if the remedy is to evict the entire household (or at least to be able to do so) in response to the criminal activity. A tenant should not be able to use the defense that they "tried" or made a "reasonable effort" to prevent the activity. The landlord can retain the right to forebear from evicting the entire household if the identified offender leaves, but this should be at the landlord's sole discretion.

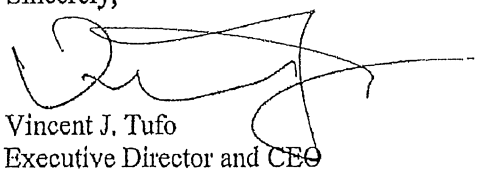
- Page 6: 8-68f-10 (b & c): In certain, relatively rare, cases a tenant might refuse entry by maintenance personnel for pest extermination. This is problematic when access to all apartments within a building is needed to manage an infestation of bedbugs, for instance. The definition of "emergency" should be expanded to include access to perform

maintenance services that are reasonable and necessary to protect the health and safety of residents.

- Page 12: 8-68f-23(a): Requires landlords to make a "good faith" effort to encourage tenant participation in the operation of the property. We are wary of subjective terms including "good faith" and "encourage". Without a pre-identified standard of what constitutes adequate participation, sufficient encouragement, etc., the claim that a landlord has failed under this item could be raised as a defense to almost any action by the landlord.

Thank you for your consideration.

Sincerely,



Vincent J. Tufo
Executive Director and CEO

CC: Jonathan Gottlieb
Donna Starzecki
Betsy Crum, Connecticut Housing Coalition

Legal Assistance Resource Center ❖ of Connecticut, Inc. ❖

44 Capitol Avenue, Suite 301 ❖ Hartford, Connecticut 06106
(860) 278-5688 x203 ❖ cell (860) 836-6355 ❖ fax (860) 278-2957 ❖ RPodolsky@LARCC.org

February 2, 2012

Michael C. Santoro, Community Development Specialist
Office of Housing and Community Development
Department of Economic and Community Development
505 Hudson St.
Hartford, CT 06106-7106

Re: Regulations concerning Tenant Rights in Public Housing

Dear Mr. Santoro:

I am writing you on behalf of the legal services programs in Connecticut, who represent numerous public housing tenants throughout Connecticut. We are very pleased that DECD has completed its regulations under C.G.S. 8-68f. We support the Department's proposed regulations on tenant rights in public housing and urge the Department to approve them. We believe that they are satisfactory as presently drafted and that no further changes, other than technical drafting ones, are needed at this time.

We recognize, however, that ConnNAHRO and various housing authorities have submitted a number of requests for modification. We have no objection to some of those proposals, but we believe that others will undercut rights that the Department's regulations seek to protect. There is, however, little time for a full review and analysis or for obtaining comments from practitioners within the legal services programs. In what follows, I have attempted to highlight some of the housing authority suggestions that are of concern to us. I may submit additional comments in the near future. We hope, in any case, that you will include us in any further discussions you may have as you decide upon the final draft of this proposal.

Background

As you know, the Department's proposed regulations derive originally from P.A. 89-113, which required the Department of Housing, by July 1, 1990, to establish uniform minimum standards for housing authority (1) leases, (2) grievance procedures, (3) tenant comment on proposed housing authority policies, and (4) tenant participation in the management of housing. The most important part of the statute -- the establishment of grievance procedures -- echoes long-standing constitutionally-based federal requirements for federal public housing and provides essential due-process procedures for tenants prior to forcing disputes into litigation. By 1989, federally-assisted public housing had long been subject to federal statutes and regulations that mandated such provisions, but state public housing in the Moderate Rental and State Elderly programs was not under any equivalent state rule. While some housing authorities may nevertheless have provided residents of state public housing with a grievance procedure, many did not. P.A. 89-113 (codified as C.G.S. 8-68f) was designed both to correct this deficiency and to provide housing authorities with a state-drafted model that they could adopt so as to make it easier for them to comply

Unfortunately, DECD (and its predecessor agency, the Department of Housing) failed to develop the standards required by P.A. 89-113. This left housing authorities uncertain as to what was required of them in the absence of a DECD model. In 2000, the General Assembly adopted P.A. 00-173 to make explicit that housing authorities must comply with the four requirements of C.G.S. 8-68f, even if DECD does not develop uniform standards ("Each housing authority...shall..."). P.A. 00-173 also required housing authorities with both state and federal housing to use their federally-required grievance procedures in their state developments. In addition, it continued to require DECD to establish uniform minimum standards for state housing authority grievance procedures. DECD responded by initiating a regulation-writing proceeding but did not complete it. We believe that some state-only housing authorities developed grievance procedures, some continued to function without grievance procedures (contrary to the statute), and some chose to treat ordinary housing authority monthly meetings as if they were grievance hearings (which they are not). The practical effect is that, in 2002, the residents of many state public housing developments still do not have access to the grievance procedures that the legislature required 23 years ago.

DECD's proposed regulations finally fill that gap. In particular, the regulations, which are modeled on federal requirements (although not always identical to them), provide housing authorities with an appropriate set of procedures that they can adopt as a whole. We believe that the DECD proposal is both effective and workable, and we therefore support its adoption without change, except as needed for technical reasons.

We offer the following comments on some of the changes proposed in filings by ConnNAHRO or individual housing authorities.

<u>8-68f-2(h) and 8-68f-3(c) -- Posting of charges</u>: Posting of information is not a sufficient means of notice to tenants. Notice to the tenant of charges and modifications in charges requires some form of direct notice to each tenant. We recommend that these sections not be changed.

<u>8-68f-3(c) -- Excess utilities</u>: Federal restrictions on excess utility charges (i.e., 24 CFR 966.4(b)(2) -- cited by ConnNAHRO) should be added to the regulation.

<u>8-68f-3(g)(b) -- Security deposit interest rate</u>: DECD cannot change the statutory minimum interest rate on security deposits. It does make sense, however, to cross-reference the minimum to the appropriate statutory section, rather than stating the actual rate in the regulation, so that the regulations will not have to be changed if the statute is changed.

<u>8-68f-5 -- Guest, foster-care, and live-in policies</u>: We do not think it is necessary to require housing authorities to have written policies in these areas and thus prefer that the language remain "may" rather than "shall."

<u>8-68f-7(d) and (f) -- Standard of tenant responsibility for cleanliness and plumbing</u>: One commenter proposes additions to C.G.S. 47a-7(b) and (d). We disagree and think that the language in the proposed regulation should not be changed.

<u>8-68f-7(l) and (m) -- Criminal activity</u>: One commenter questioned the "reasonable effort" standard in these subsections. The Connecticut statutes (C.G.S. 47a-15) explicitly recognize that it is unfair to hold tenants responsible for conduct of which they are unaware, and on-going practice recognizes that it is unfair to penalize a tenant who has made every reasonable effort to prevent misconduct by a third party, especially if the issue has been

resolved by third-party intervention (e.g., the arrest and incarceration of the problem person). The "reasonable effort" standard is the most appropriate standard.

8-68f-7(n) -- Tenant maintenance: Allowing housing authorities to transfer maintenance responsibilities to tenants is not a good idea, and we therefore oppose the proposed subsection (n). It raises numerous questions and creates numerous problems. For example, if a tenant is supposed to shovel snow, what happens if the tenant is at work when it snows or is out of town or simply does not perform? If the housing authority does not have an automatic system in place using its own staff or a professional contractor, the work is unlikely to get done in a timely manner, or may not get done at all. In effect, it can give housing authority management an excuse for non-compliance with statutory duties and is likely to result in unreliable performance. In addition, it is not clear who would provide, store, and maintain the equipment. These problems are avoided if maintenance is a clear housing authority responsibility.

8-68f-10 -- Emergency entry without tenant consent: There is no need to change the language of these sections because they adequately track the language of C.G.S. 47a-16, although we would not object to changes that make the rules for landlord entry more stringent than those required by statute. We do, however, oppose changes that are less restrictive. In regard to particular comments, we note that subsections (b) and (c) are not duplicative, because one deals with entry without consent and the other deals with advance notice of entry. We also think that it is unnecessary to try to create a definition of "emergency." The problem in doing this is illustrated by the commenter himself, since he suggests a general authorization to enter without advance notice and without tenant consent to "perform maintenance services that are reasonable and necessary to protect the health and safety of residents." While performing maintenance services, such as pest extermination, is clearly a legitimate reason for seeking entry, the essential element of emergency is that performance of the services are so urgent that they cannot wait for tenant consent. Pest extermination may in some cases be an emergency but in most cases is not. Entry without notice or consent can have serious consequences -- we have heard of tenants coming out of a shower and discovering a landlord or landlord employee in the apartment -- and is a serious invasion of tenant privacy and safety. In the absence of a comprehensive definition that narrowly defines all emergencies, it seems to us that it is much preferable to follow the language of the statute itself and leave the term "emergency" undefined.

8-68f-12(b) -- Notice of termination: The DECD regulation requires notice of termination of at least 14 days for non-payment of rent and a reasonable time of up to 30 days for certain health and safety/criminal violations. It should also include a requirement of at least 30 days' notice for all grounds not included in the above two categories, and we recommend such language be added.

8-68f-12(g) -- Statement that Connecticut eviction law satisfies due process: We oppose adding the proposed subsection (g). It is neither necessary, relevant, nor appropriate in these regulations.

8-68f-13 -- Lease and rule modifications: While in theory all lease modifications should be in writing, it is not unusual for both parties in practice to make adjustments to the lease. The courts have long recognized that it is unfair for one party without notice to suddenly begin enforcing a provision in the lease that the parties have mutually waived orally or by their course of conduct. The regulation appropriately makes clear that the requirement that

modifications be in writing does not preclude either party from arguing that a non-written waiver has occurred.

8-68f-14 -- Policies, rules, and regulations: One commenter seems to suggest that allowing tenants to comment on proposed changes to housing authority policies, rules, and regulations is "akin to 'inmates running the asylum'" and proposes that a DECD review of proposed modifications is sufficient. We believe that 8-68f-14 of the DECD draft is both necessary and appropriate and should therefore be retained. First, nothing in the regulation precludes DECD from reviewing leases. Second, 8-68f-14 does not give tenants a veto over the modifications of schedules, rules, and regulations. It instead requires that tenants be given an opportunity to comment before a modification is finalized. Note, however, tthat a housing authority's ability to change rules unilaterally is limited by state law (C.G.S. 47a-9(b)), which prohibits the modification of rules or regulations during the term of a lease without the consent of the tenant if the modification would result in a "substantial modification of the terms of the rental agreement." Third, tenant comment on modification of housing authority "policies and procedures, including changes to its lease...." is required by C.G.S. 8-68f(3). That requirement cannot be ignored by DECD. We therefore see no need to change this section.

8-68f-14(b) -- Summarization of tenant comments on changes to rules and regulations: Several commenters suggest summarization of comments is unreasonably burdensome. Summarization and formal response to comments is a common practice in administrative law and is required of state agencies by the Uniform Administrative Procedure Act (a housing authority is not a state agency under that statute). More important, it is critical to the underlying principles of C.G.S. 8-68f that agencies actually do review and consider tenant comments before to taking final action. Summarization and formal response is an important tool in making sure that comments receive genuine consideration. In most cases, there will be few if any comments and any burden on the housing authority will be minimal. If, on the other hand, there are many comments, it indicates that the proposed change in rules is controversial and, in that case, it is particularly essential that the comments be acknowledged and the housing authority's response identified. We think that the provision is reasonable and should be retained. We would not object to language making clear that responses to similar comments can be grouped (i.e., that every individual comment need not be answered individually).

8-68f-19 -- Right to a grievance hearing: We see no need to delete this section. In particular, we think that it is useful for the regulations to explicitly state the right to a grievance hearing, as enunciated in subsection (a).

8-68f-19 et seq. -- Meetings vs. hearings: One commenter suggests that informal "meetings" to review "calculations" are sufficient. C.G.S. 8-68f(2), however, mandates a procedure for hearing complaints and grievances. The statute, which uses the word "hearing," assumes that those procedures will be similar to federal grievance hearing procedures, since it states specifically that housing authorities with both state and federal public housing must use the federal procedures in their state housing. Complaints and grievances concern far more than rent calculations and may cover a wide range of tenant complaints -- both affirmative (e.g., lack of maintenance) and defensive (e.g., objections to fee assessments). The law requires that these matters be included in the regulations.

Similarly, evictions are not a substitute for grievance procedures, even if Connecticut's eviction law satisfy due process requirements. C.G.S. 8-68f(2) requires

grievance procedures. The underlying reason for a grievance procedure is that it permits many disputes to be resolved through that procedure and eviction thereby to be avoided. This is a benefit to both tenants and housing authorities and an essential part of the reason for these regulations.

8-68f-20(b) -- Grievance panel: Many tenants have complained that the existing mechanism for selecting a hearing officer sometimes produces hearing officers with a bias against the tenant. The DECD proposal in these regulations retains the existing system as a default but allows a tenant to obtain a three-person hearing panel on request if the tenant objects to the hearing officer chosen by the housing authority. It differs in substance from the federal procedure under 24 CFR 966.55 in that the federal procedure (a) does not allow an individual tenant to request a hearing panel unless tenants as a whole have voted to create such a procedure and (b) does not require the housing authority to use a hearing panel, even if it the tenants have voted. While there may be other ways to word this section, we think that the essential concept that should be implemented is that the individual grievant should be able to obtain a hearing panel upon request.

A question was also raised as to what happens if the two members of the panel cannot agree upon a third member. While this may be a theoretical problem, we believe it is not a practical one. It is our understanding that this sort of procedure is not uncommon in other dispute resolution systems -- e.g., consumer and labor arbitration -- and that disagreements are worked out.

8-68f-20(f) -- Expedited grievance procedures: One commenter suggests that there is a conflict between 8-68f-12(d), which permits housing authorities to exclude certain violations concerning criminal activity from the grievance procedure, and 8-68f-20(f), which permits housing authorities to establish an expedited grievance procedure for them. These provisions do not appear to be contradictory, however, since both are permissive and a housing authority could choose to do one or the other or neither. We therefore believe this section should be retained.

8-68f-20 -- Tenant escrow : The right to a grievance hearing should not be conditioned upon payments by the tenant into escrow. Denying a grievance hearing simply forces the matter into the eviction process, which is the very situation that a grievance structure is intended to avoid. Even in regard to rent calculation dispute, a grievance hearing may result in a resolution that avoids the need to litigate. In any event, any escrow system should exempt grievants who cannot afford to make a payment. The federal regulation itself does that, but it uses a measure (exemption from minimum rent) that does not exist in state public housing in Connecticut. Under no circumstances, should the right to a grievance hearing be denied because of indigency. It is our impression that federal escrow provisions are rarely used by housing authorities and that a preclusion on requiring escrow payments would have minimal impact on housing authorities while preventing serious and unnecessary denials of grievance hearings to tenants.

8-68f-22 -- Decision without a hearing: We oppose allowing hearing officers to decide grievances without a hearing. The only exception we can see that might be reasonable would be if the hearing will necessarily give full relief to the complaining tenant because, in a functionally similar hearing for a different tenant, the housing authority was ordered to discontinue a practice or policy that it is now wrongly applying to this tenant. If any other exception is permitted (and we think it should not be permitted), it should be based on an indisputable abuse of process because the grievance is identical (not merely similar) to a fully resolved

complaint involving the same (not a different) tenant and, in addition, upon a finding that the result will not be affected by the actual facts presented. In reality, however, individual facts almost always make a difference. Moreover, the refusal to conduct a hearing, even in an extreme case, is likely to cause more problems than would be caused by conducting the hearing and denying the grievance.

8-68f-23(a) -- Tenant participation: Some commenters suggest that this section should be deleted because it is general. We do not disagree that, in the long run, it would make sense to spell out the duty to encourage tenant participation in more detail. We think, however, that the wording of 8-68f-23(a) is adequate for now and that any greater detail should wait for another day, when more time is available to develop that detail. We note that, since at least 2001, housing authorities have been required to comply with C.G.S. 8-68f(4), even in the absence of DECD minimum standards. If we assume that they have in fact been in compliance, then a review of their manner of compliance should be helpful in developing more specific standards. That, however, will require much more time and should not delay these regulations.

One commenter questions the use of the terms "good faith" and "encourage." The word "encourage," however, is part of the statutory requirement of C.G.S. 8-68f(4) and therefore must be included in the language of the regulation. The phrase "good faith" is, if anything, an extra protection for housing authorities and should therefore not be objectionable to them.

Unaddressed issues -- Pets: We do not object to adding a provision on pets, as long as the language makes clear that a tenant vote is not required for the housing authority to permit pets. C.G.S. 8-116b is designed to allow a majority of tenants to force a housing authority to permit pets, not to prevent a housing authority from permitting pets voluntarily.

Unaddressed issues -- Domestic violence: We do not object to adding a provision on domestic violence, but the language of C.G.S. 47a-11e does not address the key issues. The real purpose of federal requirements is to prevent the eviction of the victim of domestic violence on the ground that criminal activity (e.g., an assault against the tenant) has been committed in the rental unit. If appropriate language can be quickly drafted and agreed upon, we would not object to its inclusion. If, however, coming up with appropriate language would significantly delay these regulations, we think such language should not be added at this time but should be deferred to future amendments to the regulations.

Thank you very much for your consideration of these comments. We would welcome the opportunity for further discussion if you wish.

Sincerely,

/s/ Raphael L. Podolsky
Raphael L. Podolsky

Legal Assistance Resource Center ❖ of Connecticut, Inc. ❖

44 Capitol Avenue, Suite 301 ❖ Hartford, Connecticut 06106
(860) 278-5688 x203 ❖ cell (860) 836-6355 ❖ fax (860) 278-2957 ❖ RPodolsky@LARCC.org

February 14, 2012

Michael C. Santoro, Community Development Specialist
Office of Housing and Community Development
Department of Economic and Community Development
505 Hudson St.
Hartford, CT 06106-7106

Re: Regulations concerning Tenant Rights in Public Housing

Dear Mr. Santoro:

This letter is a brief supplement to my comments dated February 2, 2012.

8-68f-3(c) -- Excessive utility charges: The language of the regulation mirrors the federal rule but omits the following federal restriction: "The imposition of charges for consumption of excess utilities is permissible only if such charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances." If this provision is retained, that additional language should be added. This addition was also recommended by ConnNAHRO. As a practical matter, metering based on an individual meter (which is what I assume is meant by "an individual check meter") can only occur with PURA (formerly DPUC) approval. See Secs. 16-11-55(d) and Sec. 16-11-100(f) of the Regulations of Connecticut State Agencies. Other forms of surcharging for excess utilities (i.e., the existence of major tenant-supplied appliances) may well be prohibited by C.G.S. 47a-4(a)(9), which provides: "(a) A rental agreement shall not provide that the tenant:....(9) agrees to pay a heat or utilities surcharge if heat or utilities is included in the rental agreement." There is no state statutory definition of "utilities surcharge," however, and to my knowledge there are no cases interpreting it. There is some genuine uncertainty as to what it prohibits.

I would therefore suggest that, if the reference to excess utilities is retained, besides adding in the restrictive federal language quoted above, you should also insert the phrase, "to the extent that they are permitted by Connecticut law." This will leave open the question as to what is or is not permitted by Connecticut law but will make clear that an excess utility charge cannot be imposed if it is determined that doing so would violate Connecticut law. The subsection would therefore read (new language underlined):

> (c) The lease may provide for charges to the Tenant for maintenance and repair beyond normal wear and tear and for consumption of excess utilities. The lease shall state the basis for the determination of such charges. The imposition of charges for consumption of excess utilities is permissible only if such charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances and only to the extent that they are permitted by Connecticut law.

As always, thanks very much for your consideration of these comments. We welcome the opportunity for further discussion.

Sincerely,

/s/ Raphael L. Podolsky
Raphael L. Podolsky