

UNDERSTANDING ADOPTION SUBSIDIES

STATE-SPECIFIC GUIDES FOR ADOPTIVE PARENTS AND ADOPTION PROFESSIONALS

WASHINGTON D.C.

WASHINGTON D.C. TITLE IV-E ADOPTION SUBSIDY REGULATIONS

Introduction

Both the foster care and the adoption assistance program are authorized by Title IV-E of the Social Security Act. For purposes of this manual, ‘CFSA’ refers to the requisite Child and Family Services Agency and ‘Court’ represents the District of Columbia Superior Court. ‘Receiver’ is the General Receiver of the DC Child and Family Services Agency or her designee and a ‘hearing examiner’ is the individual to whom the receiver has delegated the authority to conduct fair hearings and propose final decisions in those hearings.

In any state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980, Titles IV(E) and XIX of the Social Security Act, and any other applicable federal laws, the Department must include a provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost.

In the District of Columbia (hereinafter ‘DC’), the federal contribution to Title IV-E-eligible children, also known as the Federal Financial Participation (‘FFP’) rate, is 70.00%. It must apply for and administer all relevant federal aid in accordance with law and any remaining costs are funded entirely by DC’s own government funds. The adoption assistance program is supervised and administered locally, meaning that both policy and eligibility decisions are made by DC office personnel.

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Subsidy Eligibility and its Requirements

To be eligible to receive an adoption subsidy it must be determined that the child has ‘special needs’. Many different types of children can fall into the ‘special needs’ category. Most people believe that this term only encompasses those children who have some type of disabling mental or physical condition, but for eligibility purposes, several other things qualify as well. By definition, a special needs child includes any child who

is difficult to place in adoption due to their age, race, ethnic background or membership in a sibling group that should be placed together. And, broadening the scope of the term even more, any child who has been available for adoption for at least 6 months without being adopted is also considered a child with special needs. D.C. Code § 4-301.

Once it is decided that the child fits within the definition of “special needs”, the focus switches from evaluating the child to evaluating the circumstances surrounding the prospective adoption. To receive subsidy payments on behalf of the child, the adoptive parents must have the capability of providing a suitable family environment for the child in all ways except financially. Finally, it must be determined that if not for adoption by this family, such child, in all likelihood, would remain unadopted. D.C. Code § 4-301(b)(1).

When all of the above requirements have been satisfied, adoption subsidy payments may be made as needed, to any family adopting a “special needs” child, irrespective of the family’s state of residence. In addition, any children who were eligible for subsidies during an initial adoption occurring after October 1, 1997, are automatically eligible for subsidies in subsequent adoptions if that initial adoption was cut short because the adoptive parents either died or had their parental rights terminated or relinquished. D.C. Code § 4-304(f)(1).

The Subsidy Application Process

Subsidy requests or recommendation procedures differ depending on whether the child’s eligibility is due to having special needs or being available for adoption for too long.

In the first scenario, any foster parent or public or licensed private child placement agency having a child with special needs in foster or institutional care, may recommend a subsidy for the adoption of that child and offer advice as to which payment level is appropriate. The Mayor will then decide if the child has special needs and whether or not an appropriate adoptive home exists. If so, the Mayor is authorized to enter into a tentative adoption subsidy agreement with prospective adoptive family. D.C. Code § 4-301(c).

On the other hand, when a child has been available for adoption for at least 6 months, the mayor or agency must inform the family or institution caring for the child of the availability of adoption subsidies. If the family applies for adoption of the child, and it appears that the family is appropriate for the child, the Mayor will enter into a tentative agreement with the family concerning the amount and duration of a proposed subsidy.

In either situation, once the tentative agreement exists, the Mayor must assist the family in completing the requirements necessary to initiate the adoption, including payment for legal fees and court costs. D.C. Code § 4-301(d).

The Subsidy Agreement

Before the adoption is finalized the Mayor and the adoptive parents must sign a final draft of the subsidy agreement. However, once it is signed by the requisite parties, subsidy payments may begin even if the adoption has not yet become final and can continue until the child reaches the age of 18. D.C. Code § 4-301(b)(1); D.C. Code § 4-304(b)(1)&(e).

Continuous payments are reviewed annually during which appropriate payment adjustments can be made based upon changes in the child's needs, but reviews may also be held whenever changed conditions occur such as variations in medical opinions, prognosis and costs. These reviews may be requested at any time by a parent who was a party to the subsidy agreement and may be concerning a payment amount or the level of continuing payments. Upon receipt of such requests, the department must review the subsidy within 30 days.

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To ensure that the program actually encourages and promotes the adoption of children with special needs and so its effectiveness may be evaluated, the mayor must compile subsidy records into an annual report held open to the public for inspection. The report must include the number of children placed in adoptive homes under subsidy agreements during that year and the major characteristics of the those children along with the number of children who have remained in foster care for more than 6 months and their legal status.

In addition to keeping adequate program records, the Mayor is required to give prospective adoptive families information about the availability of adoptable children and the existence of aid to families who qualify for a subsidy. D.C. Code § 4-301(i).

Subsidy Payment Amounts

To carry out the purposes of subsidies, the Mayor may make payments from appropriations for the care of children in foster homes and institutions and may seek and accept funds from federal, private and other public funding sources. D.C. Code § 4-301(f)(2).

Subsidy amounts vary depending on the child's special needs and the outcome of the parties' negotiations. Payments may include maintenance costs, various treatment related expenses such as medical, dental, surgical, psychiatric and psychological ones, along with any other costs that are deemed necessary for the child's care and well-being. While family income and resources are not utilized in determining subsidy daily amounts and no means tests are employed, the District-funded special service subsidy does consider the availability of community resources and a family's ability to pay when determining whether the agency will pay for requested services. D.C. Code § 4-301(e).

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In addition to the above considerations, subsidy amounts are limited by and may not exceed the highest amounts permitted for foster care payments. These rates are divided into four payment levels referred to as Normal, Special, Handicapped, and Multiple Handicapped and are explained below. D.C. Code § 4-304(f)(2).

The Normal Rate: A child coming from a neglectful or an abusive family will receive the first level payment known as the normal rate. Then, depending on the circumstances, such a child can qualify for higher levels.

The Special Rate: If a child has a professionally diagnosed medical, psychiatric, educational or social need that is regular, re-occurring or on-going and requires extraordinary time or expense on the part of a foster parent, the second level's special rate will applied.

The Handicapped Rate: This is available to a child needing foster parent intervention because he cannot accomplish normal age-appropriate life processes, (e.g., eating, bathing, toileting, dressing, ambulating, emotional and/or social control without adult intervention).

The Multiple Handicapped Rate: This rate is reserved for those who are the most severely handicapped and is assigned to those children who require adult intervention in more than one of the age-appropriate daily living process listed in the handicap rate. 52 D.C. Reg. 1034.

	Under age 12	Over age 12
Normal	\$26.66/day (\$799.93/month)	\$28.99/day (\$869.59/month)
Special	\$27.17/day (\$815.10/month)	\$30.02/day (\$900.60/month)
Handicapped	\$28.90/day (\$867/month)	\$32.09/day (\$976/month)
Multi-handicapped	\$33.90/day (\$1,017/month)	\$37.82/day (\$1,134.60/month)

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Types of Available Subsidies

Because situations can differ greatly, there are several different types of subsidies that may be available to those adopting children with special needs.

Maintenance Subsidy: Subsidy payments can be made on a long term basis, known as a maintenance cost, to help a family whose income is limited and likely to remain that way.

In contrast, payments can also be made on a limited time basis which is meant to help a family finance the costs associated with integrating a child into the family.

Special Service Subsidy: Subsidies can be given on a special service basis to help pay for specific anticipated expenses when no other resources appear to be available. This type of subsidy can be used for things such as medical care, therapy, or other services related to a diagnosed physical or mental handicapping condition that existed prior to the adoption when they are not covered by the adoptive family's medical insurance or Medicaid. There are no annual limits on Special Services Payments at this time. **D.C. Code § 4-304(e)**

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Nonrecurring Costs Subsidy: The nonrecurring costs program, which encompasses one time only payments, allows families to apply for the reimbursement of attorney fees incurred during the adoption process and prospective adoptive parents should be notified of this potential reimbursement during the adoption subsidy interview. Unfortunately attorney fees are the only expense reimbursed under the nonrecurring costs program at this time but for families seeking this type of subsidy, there is a \$2,000 limit which can be applied for after the finalization of the adoption.

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Adoption Voucher Subsidy: Similarly, an adoption voucher program was set up to facilitate adoptions by aiding foster parents with costs associated with adoption. This is done by providing foster parents with a one-time payment to help with the home study and attorney fees incurred when adopting a foster child. A foster parent can receive a home study voucher for up to \$1,500 and up to \$5,000 for attorney's fees for each foster child or related sibling group.

While vouchers will not limit the amount of money available to the child through subsidies, their amount and availability are limited by the Adoption Voucher Fund's balance. If and when they are awarded, vouchers must contain a statement describing the benefits to the adopting foster parents and the terms and conditions for their use.

Adopting parents must give their vouchers to the attorney and licensed agency hired to perform the home study. An agency cannot submit a home study bill for adoption voucher payment until after the study has been completed. However, an attorney must present the voucher with his or her first bill to CFSA so that it can set up an account and deposit the appropriate amount in it. The attorney's fee must be no more than \$125.00 per hour and all related expenses must be billed at cost and submitted quarterly. Once attorney fees or home study bills are properly submitted to CFSA for payment, they must be paid within 30 days. D.C. Code § 4-341&-343; D.C. Code § 4-345; D.C. Code § 4-346.

Medical Subsidy:

Respite Care:

Deferred Adoption Assistance Subsidy: This is very rarely used and only available in limited circumstances. Felicia Kraft Interview.

College Tuition Scholarship Subsidy: This subsidy may be available through a fund administered by the Child and Family Services Agency known as the “Adoption Support Fund”, which among other things, has established a scholarship fund to support postsecondary education and training for adopted children. D.C. Code § 4-344.01.

The Permanent Guardianship Subsidy Program for Kinship Caregivers

By creating a provision that provides for a kinship caregivers (foster parents) subsidy, lawmakers were hoping to increase the number of kinship caregivers who would be able to provide permanent guardianship for foster children. 48 D.C. Reg. 3671.

Program Eligibility: In determining whether an applicant is eligible for a permanent guardianship subsidy, the agency must first determine whether the applicant is eligible to be appointed a permanent guardian. An applicant is eligible for this if all of the following criteria are met:

- 1) The applicant must have been the kinship caregiver of the child for at least the six continuous months immediately prior to the application for the permanent guardianship subsidy and continued to be the child’s kinship caregiver when the court entered the permanent guardianship order awarding the applicant permanent guardianship over a child.
- 2) The following criteria must have been met both at the time of the application and continuously through the point that the court awarded permanent guardianship:
 - a. There must have been a court determination that the child had been abused or neglected and, following a dispositional hearing, a court placed the child in the legal custody of the Child and Family Services Agency (agency).
 - b. The child must either be:
 - i. A member of a sibling group;
 - ii. Difficult to place for adoption because of a racial or ethnic background or physical or mental disability;
 - iii. At least 2 years of age;
 - iv. Not likely to be placed in a permanent placement but for her or his acceptance as a member of the applicant’s family;
 - c. The agency has determined that the child’s best interest is not met by the permanency plan of either reunification or adoption and that a legal guardianship permanency plan with the applicant is in the child’s best interest the applicant has a financial need for a permanent guardianship subsidy. 48 D.C. Reg. 3671-6101.1.

The Program's Application Process: To apply for a permanent guardianship subsidy an applicant must file an application with the agency which must be done prior to filing a motion for permanent guardianship with the Court. This may be done by using an agency form and including sufficient information to enable the agency to determine whether the applicant is in fact eligible to be appointed permanent guardian. Review of the application and an agency decision must be made within 30 days of receiving a properly completed application. 48 D.C. Reg. 3671-6102.1.

The Subsidy Agreement: The agreement must be entered into prior to receiving a permanent guardianship subsidy and must include the amount and duration of the subsidy and a statement as to whether DC Medicaid will be provided. 48 D.C. Reg. 3671-6104.1, 3.

The agency must review subsidies annually. Reviews must also be conducted when there are changes in the foster care board and care payments or when the child's age would change the permanent guardianship subsidy amount. Additionally, the permanent guardian may request reviews or the agency may conduct a review whenever there is information indicating that the factors for termination apply. 48 D.C. Reg. 3671-6105.1.

Such reviews will determine whether the requirements to receive the subsidy continue to be met. It will also look to see if any of the termination factors apply or whether there are any other factors that may necessitate a change in the subsidy or its amount. 48 D.C. Reg. 3671-6105.2.

An agreement can terminate upon the occurrence of various events. It can end based on terms or events outlined in the agreement itself or based on information learned through a review. Payments can cease if the permanent guardian dies or is removed from their position. In addition to those situations already mentioned, a subsidy may also end when a child turns 18 or establishes residence outside the permanent guardian's home unless he can demonstrate that he retains financial responsibility for the child and the child is attending a residential school. Lastly if the child who is the subject of the subsidy marries, dies or enlists in the military, the subsidy payments will terminate. 48 D.C. Reg. 3671-6104.4.

The Subsidy Type and Amount: A permanent guardianship subsidy may include short term payments, which are time-limited and intended to meet the cost of integrating a child into the family and long term payments, which are intended to help a permanent guardian whose income is limited and likely to remain so.

The subsidy amount will be based initially on the amount of the foster care payment received for the child's care at the time of application and, following a review held, based on the amount of foster care payment the child would receive if still in foster care. In addition, the amount will also be based on the applicant's federal adjusted gross income. 48 D.C. Reg. 3671-6103.3.

Provide link or put in chart located at 48 D.C. Reg. 3671-6103.3

The Program's Appeals Process: An applicant or recipient, who is upset by an agency decision in connection with the denial, reduction, or termination of a permanent guardianship subsidy, including a failure to act on a request for review, may appeal the decision in accordance with the Fair Hearing and Appeals Section discussed in detail later in this manual. 48 D.C. Reg. 3671-6106.1.

The Interstate Compacts Subsidy Program

An interstate compact provides procedures for interstate children's adoption assistance payments, including medical payments. The Mayor may participate in the development of, negotiate, and enter into one or more of these compacts with other states on behalf of the District and once they are created and agreed upon, they have the force of a law. D.C. code § 4-323.

In regards to medical payments, what a child is entitled to and how they must go about getting it depends on whether the child is residing in DC under another state's adoption assistance agreement or if the child is residing in another state under a DC agreement.

A special needs child living in DC, who is the subject of another state's agreement, is entitled to receive medical assistance identification from DC. To do this, the child's parents must file a certified copy of the other state's adoption assistance agreement with DC's Department of Human Services and must show that the agreement either remains in force or has been renewed, annually. D.C. code § 4-324(a).

If a child living in another state is covered by a DC adoption assistance agreement, DC must provide that child with coverage and any benefits not provided by their state of residence. To be reimbursed for such expenditures, the adoptive parents must submit evidence demonstrating that they paid for benefits or services not covered by the residence state. This reimbursement however, is limited and only includes the cost of services for which there is not federal contribution or ones that are federally aided, but are not provided by the residence state. In addition, there is no reimbursement for services or benefit amounts that are covered under any insurance or other third party medical contract or by any arrangement held by the child or the adoptive parents. D.C. code § 4-324(c).

The Subsidy Fair Hearing and Appeals Process

An applicant for, or recipient of, an adoption subsidy wishing to appeal an agency decision that either denies, reduces, or terminates the subsidy has a right to a fair hearing, but such a hearing will not be granted on any decision already determined by a court. CDCR 29-5901(a).

Any parent who is a party to a subsidy agreement may, at any time, submit a written request demanding a review of any payment amount or level. Once the request for review is received, it must commence within 30 days. If it is not acted on within 30 days of its

receipt, or if the Mayor modifies or terminates an agreement without the agreement of all parties, any party to the agreement is entitled to a fair hearing. D.C. code § 4-301(h).

Overview of the Process: The fair hearing process has many steps, which are discussed in turn, below. However, it is often useful to be familiar with the general process and understand how the steps fit together before burdening oneself with the details involved in each individual step.

The fair hearing process is usually triggered when the agency denies or changes a subsidy. If an agency denies the initial request for a subsidy, the applicant may request a fair hearing, but if an agency wishes to take action regarding an existing subsidy, they must send written notice of this intent, known as the Notice of Action, to the subsidy's recipient (the adoptive parent or child). If the recipient disagrees with this change, he becomes an appellant and must submit a fair hearing request within 30 days of such notice being issued. Once the agency receives this request, it will conduct a Program Administer Review as an attempt to resolve the dispute on its own.

If the issue cannot be resolved, the agency must send a notice of the fair hearing, which must begin within 45 days of the original hearing request. After a hearing is held, the hearing officer submits a proposed decision to the General Receiver who then decides whether to review it or not. If is not reviewed, the decision becomes final. However, upon a decision to review it, the General Receiver may either affirm, modify, or reverse what was proposed and the product of his review will become the final decision, or he may send the decision back for an additional hearing.

While this process may seem somewhat straightforward and logical based on the above overview, let us assure you that it is not. The steps described above are quite abbreviated when compared to their reality and even the details provided below don't quite do justice to what a hearing and/or appeal may entail. The time lines are strict and complex, as are the steps that they correspond with. However, this caution is not meant to discourage those who feel such actions are necessary. Its purpose is to merely provide enough background information to, hopefully, arm these persons with a sufficient amount of understanding so that their rights are not inadvertently forfeited or under cut. Thus the above mentioned steps are outlined below in greater detail.

Notice of Action or Intended Action: Before reducing, suspending or terminating a subsidy, the agency must give the applicant or recipient written notice of its decision at least 10 days before it goes into effect. The notice must describe the action the agency intends to take and the basis for it, along with the specific statute, regulation or rule that supports it. In addition to this, the notice must explain the recipient's right to request a fair hearing and the methods to do so. This must include their right to either obtain a lawyer or represent themselves in the proceeding and the circumstances under which services may be continued through out the fair hearing process. 47 D.C. Reg. 3364-5902.2.

Request for a Fair Hearing: A parent may request a fair hearing by submitting a written document that expresses their desire for an opportunity to present his or her case to a higher authority. This request must be made within 30 days of the post mark date of the Notice of Action, or if there was no such notice, the date of the action, or any date by which the agency was required to act and failed to do so. Finally, the request must be accompanied by copies of any relevant documents. If all relevant documents are not submitted with the request, the agency may refuse it or require the production of them. However, upon timely and proper receipt, the agency must acknowledge the request for fair hearing promptly and in writing. 47 D.C. Reg. 3364-5903.

Continuation of Payments during the Fair Hearing Process: An agency may continue or reinstate subsidy payments during the fair hearing process. If they decide to do so, the payments must continue and cannot be reduced, suspended or terminated unless or until one of the following situations occurs:

- 1) The appellant is notified that the agency has denied or dismissed the fair hearing request.
- 2) The hearing examiner decides at the hearing that the issue should be decided by a court rather than by the department.
- 3) The hearing officer decides in favor of the agency and denies an appeal.
- 4) A change in the adoptive parent's circumstances affecting the delivery of the subsidy payments occurs while the appeal is pending and the appellant fails to request a hearing after notice of the change.
- 5) The appellant specifically requests that the payment(s) not be continued or reinstated. 47 D.C. Reg. 3364-5904.

Denial or Dismissal of a Fair Hearing Request: An agency can deny a fair hearing request if it is untimely or if the issue in dispute pertains to a federal law or DC or agency policy rather than a dispute regarding a problem with payment. A request may be dismissed if the appellant(s) either dies, withdraws the request in writing, or, without good cause, fails to appear for the hearing. 47 D.C. Reg. 3364-5901.1; 47 D.C. Reg. 3364-5901.2.

Program Administrator Review: For every fair hearing request, the agency must first conduct a Program Administrator Review to try to informally resolve the dispute. This review must be conducted within 20 days of when the hearing request was filed and the agency must provide the appellant with written notice of the date, time and place at least 10 days in advance.

The notice must include the purpose of the review and the issues that will be addressed and inform the appellant of the right to bring an attorney as an advisor. At the review, the appellant may present arguments, facts and law to help support their position but the notice must state that appellant's failure to appear at the review will not affect their right to a fair hearing later. Lastly, the notice must tell the appellant that he will be notified of the result within 5 days and if he is satisfied with it, the request for a fair hearing will be considered withdrawn. 47 D.C. Reg. 3364-5906.

Fair Hearing Timeline and Notice: If the dispute is not resolved at the Program Administrator Review, the agency must hold a hearing within 45 days of the date the original request was filed. In addition, it must provide written notice to the appellant of the date, time, and place of the fair hearing at least 10 days before the date it is scheduled to begin. The appellant may request a change of the date, time or place of the hearing which shall be granted if there is good cause.

In addition to providing the appellant with the hearing's time and location, it must summarize the rules governing the fair hearing process and advise the appellant of their right to be represented by a lawyer at their own expense and the availability of any known free legal services. It must also note that he may examine the case record in order to prepare for the hearing and that at the hearing, Appellant will have the right to present documents and witnesses, including agency employees, in support of their position. Finally, the notice must inform the Appellant that his failure to appear for the hearing may result in dismissal of the appeal. 47 D.C. Reg. 3364-5907.

Hearing Procedures: The hearing will be in front of an impartial hearing examiner who shall receive written and oral evidence, but will not consider any evidence that is immaterial. At the hearing both the appellant and the agency may call and examine witnesses, introduce evidence, examine any evidence produced by the other party, cross-examine opposing witnesses and submit rebuttal evidence.

All hearings must be recorded and a transcription will be made at the request of either party or if it is required by law. The recording, all evidence presented, and the finding will constitute the exclusive recording of the hearing which must be kept available to Appellant for 2 years or until all litigation has ended. 17 D.C. Reg. 3364-5908.

Proposed Decision of the Hearing Examiner: In his decision, the examiner must determine whether the agency correctly applied their policies in light of the circumstances and prepare a proposed written decision based on upon the record. The decision must contain separate statements of findings of fact and conclusions of law, identify any pertinent federal and district laws, regulations, rules and policies, and state that the any party adversely affected by the proposed decision may file exceptions. When his decision has been rendered, he must mail a copy to the appellant and submit a copy to both the General Receiver of the DC Child and Family Services Agency and the Program Administrator. 47 D.C. Reg. 3364-5909; 47 D.C. Reg. 3364-5909.

Within 10 days of receiving the proposed decision, the General Receiver must decide whether to review it or not. If they decide to review it, they notify each party of this intent and provide them with a chance to state their exceptions to the decision. After giving the review notice the Receiver has thirty days from that date to conduct a review and render a decision. During such time, they may decide to affirm, modify, remand or reverse the hearing examiner's proposed decision. 47 D.C. Reg. 3364-5910.1-.3.

Exceptions to a Proposed Decision: A party wishing to take exception to the hearing examiner's proposed decision should file that exception with the Receiver either within 10 days of that decision or within 5 days of receiving notice of the Receiver's intent to review the decision, whichever is later. These exceptions must be in writing and contain concise statements identifying each part of the hearing examiner's proposed decision to which exception is being taken and the asserted basis for taking the exception. They must also identify any specific evidence produced at the hearing to which the party is referring and thus, in order to do this, the party must include a copy of the hearings transcript.

Copies of the exceptions must be sent to each party and the Receiver and each party must be permitted to present written arguments to the Receiver. As soon as practical, after receipt of the exceptions, the Receiver shall either adopt a final decision or order the hearing examiner to take additional evidence and prepare a revised proposed decision. 47 D.C. Reg. 3364-5911.

Rendering a Final Decision: The Receiver must make the final decision for each fair hearing. This decision must be in writing and contain findings of fact and conclusions of law for each issue supported by reliable, probative and substantial evidence. Unless he decides to review the hearing officer's proposed decision, the Receiver must affirm it, thus making it the final decision and send a copy to each party within 10 days of initially receiving it. If the decision is in favor of the agency, the proposed action may be taken upon issuance of the decision. The Receiver must make the decision and the agency must complete all corrective or administrative action required by the decision within 90 days of the date of the initial fair hearing request.

Publication of Hearing Decisions: The agency must prepare periodic compilations of hearing decisions and must make them accessible to the public in a manner that is consistent with the requisite confidentiality requirements. 47 D.C. Reg. 3364-5912.

CONTACT INFORMATION

State Agencies

County Information

Additional Groups