

760 CMR 4.00: GENERAL ADMINISTRATION OF LOCAL HOUSING AUTHORITIES

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4.01: Definitions

Definitions in 760 CMR 5.00: *Eligibility and Selection Criteria* and 11.00: *Modernization and Development of State-aided Public Housing* shall apply in 760 CMR 4.00. The following definitions shall also apply:

Administrative or Supervisory Employee. An Local Housing Authority (LHA) employee who has supervisory authority over others or who has administrative responsibility for projects, programs or departments, such as responsibility for tenant selection; an administrative or supervisory employee includes, but is not limited to, the following: executive director, assistant executive director, general counsel, maintenance supervisor, department head, tenant selector, and project manager.

Affordable Housing. Homeownership or rental housing which is restricted to occupancy by low or moderate income households and for which the sales prices or rents are affordable to such households.

Affordable Housing Development. A development of new or rehabilitated affordable housing, which may include market-rate housing if such market-rate housing is reasonably necessary for the financial feasibility of construction or operation of the affordable housing.

Annual Plan. The Annual Plan required by M.G.L. c. 121B, § 28A.

CIP. The five-year Capital Improvement Plan required pursuant to 760 CMR 11.00: *Modernization and Development of State-aided Public Housing*.

Controlled Affiliate. An entity with the power to own and manage residential real property of which and over which actual and legal control shall be in an LHA.

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Corrective Action Plan. A written plan adopted by an LHA stating how it will correct deficiencies found by the Department after its review in the Monitoring Program defined in 760 CMR 4.01: Monitoring Program.

Department. The Department of Housing and Community Development.

HUD. The U.S. Department of Housing and Urban Development.

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Immediate Family. A person, his or her spouse and their parents, grandparents, children, grandchildren, brothers, and sisters, including in-laws.

Low or Moderate Income Household. A household with gross income at or less than 80% of area median household income as most recently determined by the U.S. Department of Housing and Urban Development (HUD) adjusted for household size.

Market-rate Housing. Homeownership or rental housing which is not restricted to occupancy by low or moderate income households. Market-rate housing may be made available for occupancy by households without regard to income. Market-rate housing may also include housing to be occupied by households for which there are specified maximum income limits in excess of 80% up to 150% of area median income.

Minority Business Enterprise (MBE). A business organization owned and controlled 51% or more by one or more minority persons and certified as such by the Massachusetts Supplier Diversity Office (SDO) or successor agencies.

Monitoring Program. The monitoring program established pursuant to M.G.L. c. 121B, § 26B.

Supplier Diversity Office (SDO). The office of the Massachusetts Executive Office for Administration and Finance's Operational Services Division established under M.G.L. c. 7, § 61 whose mission is to increase business opportunities for M/WBEs.

Veteran. A Veteran as defined in M.G.L. c. 4, § 7(43).

Women Business Enterprise (WBE). A business organization owned and controlled 51% or more by one or more women and certified as such by the Massachusetts Supplier Diversity Office (SDO).

4.02: General Requirements

(1) Each LHA shall administer its operations in a fair and consistent manner. Such administration shall include but not be limited to;

- (a) creating and maintaining a website or web page and keeping and posting key information on its website, in its central office and on the wall of the community center or other conspicuous location for each of its developments in accordance with the Department's guidelines, so that tenants, applicants, local and state officials and the general public have a reasonably convenient means to communicate with the LHA and to take steps necessary to access the LHA's programs and opportunities. Information to be posted by the LHA shall include: LHA office hours, the names, addresses, phone numbers, email addresses or other means of contact for the LHA's Executive Director and Assistant Director (if any), all LHA board members, and senior staff; information for tenants on how to report maintenance problems; copies of its Annual Plan, and; any other items required under 760 CMR 4.00.
- (b) properly maintaining its property within budget.
- (c) using administrative and financial procedures and policies prescribed in the Department's guidelines.
- (d) posting in a conspicuous place in the LHA's central office and on its website or webpage, a notice stating that any individual who believes he or she has been denied employment or housing, discharged, or has suffered discrimination in compensation or in the terms, conditions, or privileges of employment or housing on the basis of race, color, religious creed, national origin, sex, sexual orientation, gender identity, genetic information,

age, ancestry, disability, marital status, veteran status, membership in the armed forces, presence of children, or political beliefs, receipt of public assistance rental assistance or housing subsidy or any other basis prohibited by law, has the right to file a complaint with the Massachusetts Commission Against Discrimination (MCAD).

(e) adopting and enforcing appropriate anti-discrimination policies, which meet the requirements of applicable law, including, a policy against sexual and other discriminatory harassment, a language access plan, and a policy for reasonable accommodation on account of disability.

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(f) giving to an applicant or tenant, who is known not to speak English, information in commonly spoken foreign languages that states that “this is an important document, please contact the (name of the local housing authority) at (phone number of local housing authority) for language assistance”.

(g) participating in the Capital Assistance Program as described in 760 CMR 11.08: *Capital Assistance Program*, when required to do so or when such participation would be beneficial to the operation of the LHA.

(2) The LHA shall post and shall keep posted in a conspicuous place in its central office, on its website or webpage, and, if practical, in each development, all rules and policies of the LHA and the regulations of the Department which affect the rights, status, duties or welfare of tenants and their households, together with such other information as required to be posted by Department guidelines. All posted rules and policies shall state the date of last revision and identify a contact person and the means of contact. If postings are repeatedly removed, destroyed or defaced, the LHA shall take reasonable alternative measures to make the material conveniently available to tenants. Absence of a posting shall not affect the validity or applicability of rules, policies or regulations. Upon request, a tenant shall, without charge, be provided with one copy of an applicable rule, policy or regulation; the LHA may charge a reasonable fee for providing a duplicate copy or copies to the tenant.

(3) From time to time the Department may develop and issue guidelines and/or standard forms to be used by the LHA in connection with the provisions of 760 CMR 4.00, 5.00: *Eligibility and Selection Criteria*, 6.00: *Occupancy Standards and Tenant Participation for State-aided Housing*, 8.00: *Privacy and Confidentiality*, 11.00: *Modernization and Development of State-aided Public Housing*, 49.00: *Massachusetts Rental Voucher Program* and 53.00: *Alternative Housing Voucher Program* and with reports required by the Department. Each LHA shall employ the current guidelines and the current forms.

4.03: Code of Conduct

(1) Standards in M.G.L. c. 268A.

(a) Applicability to LHA. M.G.L. c. 268A specifies standards of conduct for all Massachusetts public officials and employees. Board members, employees, and professional consultants employed by LHAs are considered to be public officials or employees subject to these standards.

(b) Prohibitions. M.G.L. c. 268A prohibits improper conduct by public officials and employees. The statute also prohibits conduct which appears to be improper. An LHA board member or employee cannot have a financial interest in contracts with the LHA. An LHA board member or employee cannot accept gifts to influence a decision, and he or she cannot accept compensation, other than that paid by the LHA, in connection with any matter in which the LHA has an interest. The statute contains other standards of conduct that apply to board members and employees. When questions arise as to whether certain conduct may be improper under the statute, the affected person should consult the State Ethics Commission.

(2) Specific Standards Affecting Board Members and Employees. The following specific restrictions shall apply to LHA board members and employees:

(a) Ineligibility of Certain officials to be State-appointed Board Members. An elected or appointed official of a state, county or municipal government, other than a town meeting member, who is in a policy making position as determined by the Department, shall not be eligible for appointment as the state-appointed board member of an LHA. This restriction shall not prohibit reappointment of a currently serving state-appointed board member.

(b) Ineligibility of LHA Board Members for Employment. An LHA board member shall

not be eligible for any paid position, including temporary or contract work, with the LHA during his or her service as a board member or for a period of one year following the end of such service.

(c) Ineligibility of Certain LHA Employees for Employment as Clerk of the Works. An LHA executive director, assistant executive director, or director of maintenance or modernization shall not be eligible to serve as clerk of the works on any development or modernization project of the LHA for a period of one year following termination of his or her employment with the LHA.

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- (d) Ineligibility of Family Members for Employment. No member of the immediate family of an LHA board member or of an administrative or supervisory employee shall be eligible for employment in any capacity at the LHA without the prior written approval of the Department. The Department may in its discretion approve employment of such immediate family member provided that there has been compliance with all pertinent hiring standards and procedures, the individual is qualified for the position, and the appointment has not been influenced by any consideration other than merit.
- (e) Restrictions on Supervision by Family Members. No LHA employee shall hold a position in which he or she directly or indirectly would supervise a member of his or her immediate family.
- (f) Restrictions on Purchases of Goods or Services. No LHA shall contract with or purchase goods or services from an LHA board member, employee, or member of the immediate family of such board member or employee, or from any closely held entity in which an LHA board member, an employee, or a member of the immediate family of such board member or employee holds any capital stock or has any beneficial interest.
- (g) Admission or Transfer of an LHA Board Member, Employee, or Family Member as a Tenant. Whenever any LHA board member, any administrative or supervisory employee or any member of the immediate family of such a board member or employee seeks admission as a tenant or seeks admission as a participant in a program administered by the LHA or seeks a transfer to a different unit, all necessary information shall be forwarded to the Department, which shall make the decision on the requested admission or transfer in accordance with applicable procedures.
- (h) Restrictions on Rental Assistance to LHA Board Members, Employees, and Family Members. No rental assistance shall be paid for any unit owned in whole or in part by an LHA board member, executive director, rental assistance director, any other employee of an LHA (if such person is an employee in the same municipality as the unit), or a member of any such person's immediate family under any state-funded rental assistance program without the prior written opinion of the State Ethics Commission that such payment would not be improper. The LHA shall forward a copy of the opinion to the Department.
- (i) Prevention of Personal Use of LHA Property. No LHA board member or employee shall make personal use of or permit any other person to make personal use of any property belonging to the LHA. The property belonging to the LHA shall be used in furtherance of the LHA's purposes. 760 CMR 4.03(2)(i) shall not be construed to limit the LHA from allowing LTOs, non-profit neighborhood or community groups, or public service organizations to use the property of the LHA for proper purposes benefitting the LHA or its tenants.
- (j) Restrictions on Gifts or Compensation. No LHA board member or employee or any member of his or her immediate family (whether on his or her own behalf or on behalf of another person or entity) shall request, solicit, receive, or accept any cash, gift or compensation in any amount from any LHA tenant or any person or other entity who or which does or may reasonably be expected to do business with the LHA. No LHA employee may receive compensation (other than from the LHA) for goods or services provided to a tenant whether or not such goods or services are provided during working hours or on LHA property.
- (k) Restrictions on Political Activity. In addition to any restrictions on political activity imposed by federal law, no LHA board member or employee shall solicit or receive campaign contributions, or conduct political activities during work hours, on LHA property or by use of LHA resources, or shall improperly use his or her official position to coerce or influence others in political campaigns.
- (l) Preferential Treatment on Account of Board Membership. No family member, friend, business associate, employer, or potential employer or any like person shall be given any

preferential treatment by the LHA because of his or her relationship with the board member. A tenant, who is a board member, shall receive no preferential treatment in housing or services because of his or her board membership.

(m) Limitations on a Board Member Who is an Officer of an LTO. A board member who is an officer in a local tenants' organization (LTO) (or other local tenants' association) shall not act on behalf of the LTO (or other tenants' association) before the LHA. An officer of an LTO (or tenants' association) who is a board member shall not contact the LHA or appear at any LHA meeting on behalf of the LTO (or other such association), and he or she shall not

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participate as a board member in any matter directly involving the LTO (or other tenants' association) in which he or she is an officer. No LTO (or other tenants' association) shall be given preferential treatment because an officer of the organization is a board member or a member of the family of a board member.

(3) Waiver of Restriction for Good Cause. The Department may in its discretion waive one or more of the restrictions in 760 CMR 4.03(2) in a particular situation where there is a good cause for the waiver and the conduct is not otherwise prohibited.

(4) Tenant Board Members. The following restrictions shall apply to tenants who are board members of an LHA:

(a) Laws Restricting Certain Actions. In recognition of the value of a tenant on the board of an LHA, M.G.L. c. 121B, § 5 requires that one of the four locally appointed board members in a city must be a tenant in the LHA's housing and M.G.L. c. 121B, § 5A requires that one of the four locally appointed or elected board members in a town must be a Tenant in the LHA's housing. The only restriction imposed by the Legislature in M.G.L. c. 121B on participation by a tenant board member in the LHA's business is that he or she may not participate in any decision which affects his or her "personal interest". The board members of an LHA are considered special municipal employees. The Commonwealth's Ethics Law, in M.G.L. c. 268A, § 19 prohibits a special municipal employee from participating in his or her job capacity in any matter in which the employee (or a family member, a business in which he or she holds an office or is employed, or a potential employer with which he or she is negotiating) has a "financial interest". Thus, a tenant board member under the Ethics Law must avoid participating in decisions which affect his or her "financial interest" (the Ethics Commission requires such an interest either to be "direct" or "reasonably foreseeable") and under M.G.L. c. 121B must avoid participating in decisions which affect his "personal interest". These two statutory requirements should be construed in harmony with each other in determining whether a tenant board member may participate in making a decision. The Ethics Law should not be read to prevent full and effective participation of a tenant member on an LHA board so long as he or she does not use his or her position to derive some direct personal benefit, financial or otherwise, to the board member (or to a family member or to a business or potential employer described in 760 CMR 4.04(2)).

(b) Determination of When Not to Participate. The determination (whether a decision would have a direct or other reasonably foreseeable effect on a personal interest) is one which the tenant board member must make initially. He or she should look to see whether the decision would result in some actual benefit to himself or herself (or a family member or a business or potential employer described in 760 CMR 4.04(2)). A benefit is something of more than minimal value which the board member (or family member or business or potential employer described in 760 CMR 4.04(2)) might receive depending on the board's vote. In the event that a vote could result in such a benefit to the board member (or family member or business or potential employer described in 760 CMR 4.04(2)), he or she should not participate in making the decision, unless the matter is one of general application to all tenants in a housing program. The question, whether a decision could be considered to have such a direct benefit, may be difficult for a board member to make under certain circumstances. In such a case the member should request advice from the Ethics Commission, which has established procedures for giving both formal and informal advice.

(c) Examples of When a Tenant Board Member May or May Not Participate. A tenant board member shall not participate in discussions or votes regarding any matters which will affect his or her tenancy or housing unit exclusively, or which will benefit a number of tenancies or housing units, including the tenant member's unit, but exclude other similar tenancies or housing units. For example, a member shall not participate in a discussion or

vote to provide new appliances to a number of selected units, including the member's own unit and excluding other units which also need new appliances. A tenant member may participate in a discussion or vote on policy matters if they will apply to all tenants in the same housing program equally, such as lease provisions, rules and procedures, but should not participate in a discussion or vote on policy matters which will confer a benefit on himself or herself (or a family member or to a business or potential employer described above) to the exclusion of other potentially eligible tenants.

4.04: Funding and Hiring for LHA Employee Positions

(1) In approving the recommended candidates, salaries and wages in an LHA's budget, the Department shall determine that all of the following conditions have been met:

(a) In selecting its employees the LHA has followed all applicable hiring procedures (in the case of the executive director, the Department's guidelines regarding hiring and salaries and any other related guidance) which shall have been approved by the Department and has complied with the LHA's personnel policy and any other applicable legal requisites.

(b) Each employee meets the minimum qualifications for his or her position set forth in the LHA's job description and in the advertisement for the position.

(c) At the time of hire, Criminal Offender Record Information (CORI) discloses no dispositions of criminal matters reflecting the potential employee's dishonesty, untrustworthiness, unreliability or unsuitability to perform the duties of the position or reflecting activity, which if repeated by an employee, would endanger the safety or security of tenants, household members, employees, or guests or the security of their property or the property of the LHA.

(d) Pursuant to M.G.L. c. 121B, § 7A, the Department shall establish guidelines setting standards for employment agreements to be executed by each LHA and its executive director. The Department may review all contracts between LHAs and executive directors and all terms for payments or monetary remuneration relevant to state payments, and shall review all such contracts and terms for payments or monetary remuneration worth more than \$100,000 *per annum*. The Department may strike contract provisions that do not conform to the guidelines.

(2) In the event an LHA shall lack sufficient revenues to meet its expenditures in its operating budget(s) approved by the Department for state programs, the Department shall fund the deficit as provided by law. The total expenditures for salaries and wages shall not exceed the amount in the approved budget for salaries and wages without the approval of the Department.

4.05: Equal Opportunity Officer

Each LHA shall designate a highly placed official or employee as the Equal Opportunity Officer (EO Officer). LHAs shall forward the name of the individual so designated to the Department's Affirmative Action Officer and shall notify the Affirmative Action Officer when a new EO Officer is designated.

4.06: LHA Affirmative Action Plan

(1) Purpose. Nondiscrimination and equal opportunity are the policy of the Commonwealth. It is of critical importance for agencies of state and local government to take affirmative steps to prevent discrimination and to promote equality of opportunity in their operations. Where there has been discrimination, affirmative action shall include efforts necessary or appropriate to remedy the effects of such discrimination.

(2) Adoption of Plan. Each LHA shall be responsible for the development, implementation, monitoring and update of a written affirmative action plan. Each LHA shall submit to the Department a board vote that the affirmative action plan has been adopted by the LHA together with a copy of the plan. A similar vote shall be submitted for each change in the plan, along with a copy of the change. The plan shall be kept on file at the LHA and available for inspection by tenants, employees, and applicants for housing and employment. The Department may require changes or updates of the plan in the event that the plan shall be inadequate. The affirmative action plan of an LHA, adopted prior to and in effect on September 5, 2005 shall satisfy the requirement for development of a plan.

(3) Contents of Plan. The affirmative action plan shall include, but not necessarily be limited to, the following:

- (a) A written equal opportunity policy.

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- (b) A workforce analysis, including:
1. For each department or division of the LHA, the number of minorities (this number may be further broken down by minority group), the number of women, the number of persons with disabilities and the number of Veterans in each of the following job categories and the total number of employees in each such job category:
 - a. maintenance and service;
 - b. clerical;
 - c. managerial, technical, and professional.

For purposes of 760 CMR 4.06 a person with a disability shall be deemed to be an individual who has a physical, psychiatric or developmental impairment or has a record of having an impairment or perceived as having an impairment, which substantially limits one or more of his or her major life activities.
 2. The number of individuals hired in each such job category during the LHA's previous fiscal year; and the number of minorities (this number may be further broken down by minority group), the number of women, the number of persons with disabilities, and the number of Veterans hired in each such job category during the LHA's previous fiscal year.
 3. A listing of recruitment sources used during the previous fiscal year.
- (c) A determination of the percentages which minorities (the percentage of minorities may be further broken down by minority group), women, persons with disabilities, and Veterans have in the population of the municipality and the applicable (primary) metropolitan statistical area in which the municipality is located, as determined in the most recent federal census or other reliable data source. The higher of the applicable percentages for minorities, women, persons with disabilities, and Veterans shall be the goals of the LHA for employment in the LHA's work force. The goal for employment of minorities may be broken down into goals for employment of the distinct minority groups. Ideally, each job category will reflect percentages of minorities (or minority groups), females, persons with disabilities, and Veterans which are the same as the percentages in the overall population of the municipality or the (primary) metropolitan statistical area, whichever is applicable.
- (d) A description of methods for publicizing job openings so as to encourage job applications by minorities (or members of underrepresented minority groups), women, persons with disabilities, and Veterans, including, but not necessarily limited to, the following:
1. Publicizing internally and externally through usual means designed to reach a wide audience.
 2. Utilizing media sources which will reach minorities, women, persons with disabilities, and Veterans as necessary.
 3. Contacting organizations which serve minorities, women, persons with disabilities, and Veterans as necessary.
 4. Causing all solicitations or advertisements for employees to state: "An Equal Opportunity Affirmative Action Employer."
- If consistent with any applicable internal promotion policy, LHAs shall make efforts to keep job positions open for a reasonable amount of time in order to effectuate the efforts to encourage applications by minorities, women, persons with disabilities, and Veterans. At a minimum, no job position shall be filled until at least two weeks after the publicizing efforts have been taken.
- (e) A requirement that, for every job opening not filled through internal promotion pursuant to an internal promotion policy, the LHA shall interview a minimum of three qualified candidates, if available, and that an effort shall be made to interview at least one candidate from an underrepresented group.
- (f) A statement of measures ensuring against discriminatory practices in hiring, including

review and, where necessary, development or revision of the following:

1. recruitment and personnel procedures;
2. selection process, including matters such as job requirements, job descriptions, testing, interviewing, and application forms;
3. internal promotion policy or other policy on promotions;
4. terms and conditions of employment; and
5. policies relating to layoff, recall, termination, demotion, discharge.

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(g) Provisions for periodic review of the effectiveness of affirmative action efforts, including an annual update of the workforce analysis, the description of methods of publicizing job openings, and the statement of measures insuring against discriminatory practices.

(4) Reports to the Department. Within 90 days after the end of the LHA's fiscal year, each LHA shall supply the Department with its workforce analysis, its description of methods of publicizing job openings, and its statement of measures ensuring against discriminatory practices for the previous fiscal year. The Department may require an LHA to supply additional information. If at any time the Department shall find that an LHA has failed to comply with its affirmative action plan or has failed to make reasonably effective affirmative action efforts, the Department shall require the LHA to take appropriate corrective measures.

(5) Hiring among Equally Qualified Persons. Until an LHA has reached its affirmative action goals, subject to 760 CMR 6.09(4)(d), when it has a choice between candidates whom the LHA has determined to be equally qualified, if one or more are tenants, such tenant candidate(s) shall be deemed to be more qualified than the non-tenant candidates. If, notwithstanding the preference for tenants in hiring, there remain equally qualified candidates, the order of further consideration as to which candidate to hire shall be as follows:

(a) Where an LHA has not reached a goal for employment of minorities (or for employment of members of a particular minority group), qualified minority candidates (or qualified candidates from such minority group).

(b) Where an LHA has not reached a goal for employment of persons with disabilities, qualified candidates with disabilities.

(c) Where an LHA has not reached a goal for female employment, qualified female candidates.

(d) Where an LHA has not reached a goal for employment of Veterans, qualified Veteran candidates.

(e) Where a candidate qualifies in more than one category, this fact shall entitle him or her to receive the LHA's further consideration before other candidates in the highest category for which he or she qualifies.

(6) Residency as a Criteria. Residency within the city or town in which an LHA is located is prohibited as a prerequisite for employment except a residency requirement is permitted in the case of 24 hour on-call maintenance personnel.

4.07: LHA Fair Housing Marketing Plan

(1) When a Fair Housing Marketing Plan is Necessary. All LHAs shall engage in and promote fair housing and engage in tenant selection practices so as to prevent discrimination and to promote equal opportunity. The Department shall from time to time review an LHA's tenant selection policies or practices. Each LHA shall biennially determine whether the percentage for each minority group in the LHA's housing by program is significantly below the percentage for the minority group in the general population of the city or town or in the general population of the applicable metropolitan statistical area, whichever is greater, and, if so, shall update and implement its written fair housing marketing plan (FHMP) to ensure affirmative outreach to the minority group. The term "minority" shall have the meaning provided in 760 CMR 5.03: *Definitions*.

(2) Contents of the FHMP. An LHA's FHMP shall include, but not necessarily be limited to, the following:

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- (a) Specification of the percentages for each minority group in the general population of the city or town and in the general population of the metropolitan statistical area; based on the most current available census data.
- (b) Provision for correction of any procedures or policies which have had a negative effect on applications by or selection of minorities or other classes of persons protected under fair housing laws.

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(c) A description of special efforts which will be undertaken to attract applications from members of under represented minority groups (*i.e.*, minority groups whose proportion among LHA tenants is less than their proportion of the general population of the municipality or statistical area); such special efforts shall include, but shall not necessarily be limited to, advertising in minority community newspapers and media, and contacting minority community organizations. In any such ad, the LHA shall include the logo and slogan "Equal Housing Opportunity" in type size at least equivalent to other wording.

(d) A description of outreach efforts regarding persons with disabilities. Such efforts shall include providing notice of accessible units in accordance with M.G.L. c. 151B, § 4(7A).

(3) Non-compliance with a Plan. If the Department determines that an LHA has not followed its FHMP, it shall require such LHA to take specific corrective measures. The corrective measures shall continue until the LHA demonstrates to the Department that the LHA is in compliance with its FHMP and that the consequences of its past violations have been remedied.

4.08: Ineligibility for Financial Assistance on Account of Civil Rights Non-compliance

In deciding whether to approve any LHA application for state financial assistance or for federal assistance administered by the Department, the Department shall consider any history of civil rights noncompliance in accordance with 760 CMR 47.00: *Affirmative Action Regulations Governing Recipients of EOCD/DCA Financial Assistance.*

4.09: Contracts for Goods, Services, Construction, Modernization, and Maintenance

(1) Whenever an LHA intends to contract for goods, services, construction, modernization, or maintenance, the LHA shall take affirmative action to attract MBE and WBE suppliers, manufacturers, and contractors. Records detailing affirmative action efforts under this section shall be kept by LHAs, subject to review by the Department. Every contract for goods, services, construction, modernization, or maintenance shall contain an article prohibiting discriminatory employment practices by the contractor, subcontractor, manufacturer, or supplier of goods or services on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, genetic information, age, ancestry, disability, marital status, veteran status, membership in the armed forces, presence of children, or political beliefs, receipt of public assistance or rental assistance or housing subsidy or any other basis prohibited by law. Each such contract shall require the contractor to use best efforts to employ qualified tenants for any positions which are open at the time the contract is awarded or which become open during the term of the contract. Contracts shall be made pursuant to Massachusetts law and shall not provide for indemnification of the contractor by the LHA.

(2) With regard to every LHA contract for the design, construction, or modernization of a state-aided public housing development, having a contract value in excess of the dollar threshold required under applicable rules of the SDO or successor agency(ies), the Department shall require, whenever feasible, that minimum percentages of the design and construction contract amounts shall be reserved to SDO-certified MBEs and WBEs. These required minimum percentages shall be set forth in the Department's instructions for use of its front end contracting documents. Each contract shall specify the requisite percentages, if any, for MBE participation and for WBE participation.

4.10: Collective Bargaining by an LHA

(1) Notice to the Department. To safeguard the financial interests of the Commonwealth and

to reduce the possibility of disapproval of increased state funding for a proposed collective bargaining agreement between an LHA and an employee organization affecting programs receiving financial assistance from the Department, the LHA shall take the following actions:

- (a) Prior to bargaining with any employee organization, the LHA shall notify the Department, in writing, of its intention to begin collective bargaining, and promptly schedule and participate in a pre-bargaining conference with the Department to discuss pertinent matters pertaining to the collective bargaining. The LHA shall provide the Department with a description of the bargaining unit.

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(b) At the pre-bargaining conference, the LHA and the Department shall review any current or expired collective bargaining agreements and proposals it anticipates will be made during negotiations either by the LHA or by the employee organization, and the costs and impacts of the proposals on the LHA and its employees.

(c) At the end of negotiations, the LHA shall submit a copy of the collective bargaining agreement to the Department for its review.

(d) Whenever proceedings are initiated before the Massachusetts Labor Relations Commission or any other commission, board, agency or court which may affect the terms of a collective bargaining agreement which is reviewable by the Department, the LHA shall provide written notice to the Department of the initiation of the proceeding and shall provide semiannual status reports thereafter.

(2) Department Review of the Collective Bargaining Agreement.

(a) The Department will review the following aspects of a collective bargaining agreement to determine whether it was based on sensible negotiating practices:

1. its cost;
2. whether it promotes efficiency of operations;
3. whether it promotes stability of labor relations;
4. whether it promotes equal opportunity in employment; and
5. whether the agreement adequately provides for the following:
 - a. A "no-strike or lockout" clause, wherein the employee organization agrees that employees will not engage in a strike, walkout, slowdown or other work stoppage, and an agreement by the LHA that it will not lock out employees, during the term of the collective bargaining agreement.
 - b. A grievance and arbitration procedure, as authorized by M.G.L. c. 150E, § 8.
 - c. A clause whereby all of the provisions of the collective bargaining agreement are subordinate to applicable provisions of federal or state law.

(b) During the Department's review, and on its request, the LHA shall promptly make available all information and documents that are relevant to the review and shall provide a written statement of the facts and reasons supporting any terms which may be under review.

(3) Non-compliance and Sanctions. If the applicable financial terms of a collective bargaining agreement exceed the LHA's approved budget or if its terms fail to reflect sensible negotiating practices, including inadequate regard for the financial interests of the Commonwealth, the Department may:

- (a) Deny an increase in state funding to pay for the LHA's increased financial obligations under the agreement.
- (b) Rate the LHA's management (by issuing a finding) on account of any such financial imbalance or any such poor negotiating practices.
- (c) Take such other appropriate action as may be warranted under the circumstances and applicable law.

4.11: Development of Additional Units on Land Subject to a Contract for Financial Assistance by LHAs or Controlled Affiliates

(1) Pursuant to M.G.L. c. 121B, § 31 an LHA or a controlled affiliate may submit to the Department an application for a new affordable housing development utilizing private or mixed public and private financing on land which is or has been subject to a contract for financial assistance for or in connection with a state-aided housing project between the LHA and the Department. The form and contents of such an application shall be prescribed by the Department and shall include the plans and description of the new affordable housing development, the

estimated cost thereof, the proposed method of financing, and a detailed estimate of the expenses and revenue thereof. Within 60 days of receipt of a complete application the Department shall approve such application provided that it shall have made the following findings:

- (a) The land is surplus to the needs of any existing state-aided housing project and to any planned state-aided housing project on the site.

4.11: continued

- (b) Excepting any market-rate housing, the housing to be constructed will be deed restricted to occupancy by low or moderate income households at affordable rents or sales prices. Any deed restriction shall specify the term for which the housing shall be affordable. The term may be perpetual or for a lesser number of years provided that the term shall be a minimum of 40 years or such other term as may be approved by the Department in a waiver of the 40-year minimum term. The purpose of the deed restriction shall be to ensure affordability of the housing during the term.
- (c) Adequate provision has been made so that the tenant share of the rent for an affordable rental housing unit will be no more than the greater of the following amounts:
1. no more than the percentage of monthly net household income which is specified in 760 CMR 6.04(1)(b) with net household income of the tenant household determined in the manner specified in 760 CMR 6.05: *Determination of Gross Household Income and Net Household Income*; or
 2. an amount not to exceed 30% of 75% of area median household income adjusted for household size as determined by HUD except as the Department may otherwise approve; or
 3. the amount allowed as the tenant share of rent by a state or federal affordable housing program which has provided financing for or has otherwise subsidized the housing unit.
- (d) Alternatively, adequate provision has been made so that the sales price of an affordable homeownership housing unit shall not exceed:
1. the amount which a low or moderate income household of appropriate size could afford using reasonable assumptions determined by the Department with respect to financing, household assets, and percentage of income available for housing costs; or
 2. a sales price allowed as the sales price of the housing unit by a state or federal affordable housing program which has provided financing for or has otherwise subsidized the housing unit.
- (e) The affordable housing to be constructed shall have a similar purpose as that of any housing project on such land or, if the land is vacant, with the purposes of the contract for financial assistance respecting such land.
- (f) Adequate provision has been made so that the lot or lots of land on which the additional housing will be constructed will be suitably subdivided from the remaining land or a suitable condominium will be created at such time as homeownership housing units are constructed on such lot or lots or at such earlier time as financing is secured by a mortgage on such lot or lots. Any such mortgage shall contain provisions requiring notice to the Department and a reasonable opportunity for it to cure in the event of foreclosure for breach of the terms of such mortgage. Any such mortgage shall also contain such commercially reasonable protections against loss of affordability as are permitted by mortgagee.
- (g) Adequate provision has been made so that a state or federal affordable housing program or the Department will approve the plans and description of the new or rehabilitated housing, its estimated construction costs, and its financing and will ensure that proper standards of health, sanitation, and safety are met by such housing. When approval is given by a state or federal affordable housing program, copies of the approval, the approved plans, description and other information must be provided to the Department.
- (h) Any market-rate housing units specified in the application appear to be reasonably necessary for the economic feasibility of the construction or operation of the affordable housing units and comprise no more than 25% of the total affordable housing and market-rate housing units, unless the Department shall find that a greater percentage of market-rate housing units is reasonably financially necessary for the economic feasibility of the construction or operation of the affordable housing units.
- (i) There is a requirement that public construction and prevailing wage requirements, insofar as applicable, will be complied with in the construction of the housing.

(j) There is a requirement that tenant or homeowner selection procedures including any preferences will be fair and reasonable and will not contravene any applicable state or federal anti-discrimination laws or any state or federal fair housing laws.

4.11: continued

(2) The Department shall notify the LHA or its controlled affiliate in writing whether an application is incomplete or whether it has been approved, approved with conditions, or denied within 60 days from the date of the Department's receipt of the application. Housing approved by the Department under 760 CMR 4.11 shall not be subject to any contract for financial assistance between the LHA and the Department for or in connection with a state-aided housing project under M.G.L. c. 121B shall not be a housing project eligible for subsidy under M.G.L. c. 121B, § 32, and shall not be subject to regulation by the Department as such. With respect to housing approved under 760 CMR 4.11, the LHA shall not be obligated to repay any state bond funds received pursuant to a CFA for relevant acquisition, development or modernization. Implementation of any application for an affordable housing development approved by the Department under 760 CMR 4.11 shall be subject to receipt by the LHA or its controlled affiliate of a building permit under applicable zoning or under a comprehensive permit and subject to the approval of any necessary subdivision plan, within 24 months of the Department's approval or such further time as may be approved by the Department.

4.12: Transfer of Surplus Land Subject to a Contract for Financial Assistance (CFA) for Development of Affordable Housing

(1) Pursuant to M.G.L. c. 121B, § 34 an LHA or its controlled affiliate may submit to the Department an application for approval of a transfer of land (including a transfer by conveyance or a transfer by ground lease) which is subject to a contract for financial assistance between the LHA and the Department but which is surplus to the anticipated need for land for any existing or future state-aided housing project. The purpose of the transfer shall be for the construction of an affordable housing development. The form and contents of such application shall be specified by the Department and shall include a showing that the land is surplus to the needs of any existing state-aided housing project and to any planned state-aided housing project on the site and shall specify the anticipated use of the property following transfer. Within 60 days of receipt of a complete application the Department shall approve such application provided that at shall have made the findings specified in 760 CMR 4.11 and shall also have found that there has been or will be a disposition process complying with all applicable requirements of law for disposition of land by a public entity.

(2) The Department shall notify the LHA or its controlled affiliate in writing whether an application is incomplete or whether it has been approved, approved with conditions, or denied within 60 days from the date of the Department's receipt of the application. Housing approved by the Department under 760 CMR 4.12 shall not be subject to any contract for financial assistance for or in connection with a state-aided housing project under M.G.L. c. 121B between the LHA and the Department shall not be a housing project eligible for subsidy under M.G.L. c. 121B, § 32 and shall not be subject to regulation by the Department as such. With respect to a transfer of land approved under 760 CMR 4.12 the LHA shall not be obligated to repay any state bond funds received pursuant to a CFA for relevant acquisition, development or modernization. Implementation of any application for an affordable housing development approved by the Department under 760 CMR 4.12 shall be subject to receipt of a building permit under applicable zoning or under a comprehensive permit and the approval of any necessary subdivision plan within 24 months of the Department's approval or such further time as may be approved by the Department.

4.13: Acquisition and/or Development of Real Property Never Subject to a Contract for Financial Assistance

(1) Pursuant to M.G.L. c. 121B, § 31 an LHA may submit to the Department an application for an affordable housing development utilizing private or mixed public and private financing on

real property which is owned or which is to be acquired by the LHA but which is not and never has been subject to a contract for financial assistance between the LHA and the Department. Such application for approval shall not be required for an acquisition or development to be financed by a state or federal affordable housing agency or program. If an application is required the form and contents of the application shall be prescribed by the Department. Within 60 days of receipt of a complete application the Department shall approve such application provided that it shall have made the following findings:

- (a) The proposal for an affordable housing development appears capable of achievement.

4.13: continued

(b) The affordable housing to be constructed will be deed restricted to occupancy by low or moderate income households at affordable rents or at affordable sales prices. Any deed restrictions shall specify the term for which the housing shall be affordable. The term may be perpetual or for a lesser term of years. The purpose of the deed restriction shall be to ensure affordability of the housing during the term.

(c) The tenant share of the rent for such an affordable housing unit shall be:

1. no more than the percentage of monthly net household income which is specified in 760 CMR 6.04(1)(b) with net household income of the tenant household determined in the manner specified in 760 CMR 6.05: *Determination of Gross Household Income and Net Household Income*; or
2. a rental amount which shall not in any event exceed 30% of 80% of area median household income adjusted for household size as determined by HUD; or
3. an amount determined as an allowable rent by a state or federal affordable housing program.

(d) Sales prices for such affordable housing shall be no more than a low or moderate income household of appropriate size could afford using reasonable assumptions determined by a state or federal low or moderate income homeownership program.

(e) Adequate provision has been made so that the lot or lots of land on which the housing will be constructed will be suitably subdivided from any other land of the LHA which is subject to a contract for financial assistance.

(f) Adequate provision will be made, insofar as reasonably possible and financially feasible, to protect against loss of affordability in the event of foreclosure of any mortgage.

(g) Public construction and prevailing wage requirements, insofar as applicable, will be complied with in the construction of the housing.

(h) Tenant or homeowner selection procedures, including residency preferences, shall be fair and reasonable and will not contravene any applicable state and federal anti-discrimination laws any state or federal fair housing laws.

(2) The Department shall notify the LHA in writing whether an application is incomplete or whether it has been approved, approved with conditions, or denied within 60 days from the date of the Department's receipt of the application. Any housing approved by the Department under 760 CMR 4.13 shall not be subject to any contract for financial assistance for or in connection with a state-aided housing project under M.G.L. c. 121B between the LHA and the Department, shall not be a housing project eligible for subsidy under M.G.L. c. 121B, § 32, and shall not be subject to regulation by the Department as such.

4.14 Transfer of Surplus Land Never Subject to a Contract for Financial Assistance

(1) An LHA may transfer surplus real property which is not and never has been subject to a contract for financial assistance between the Department and the LHA. Approval by the Department shall not be required for such a transfer. The LHA shall comply with all applicable requirements of law for disposition of real property by a public entity in any such transfer.

4.15 Transfer of Existing Public Housing Developments to Controlled Affiliates for Substantial Rehabilitation

(1) Pursuant to M.G. L. c. 121B, §§ 31 and 34 an LHA may submit to the Department an application for the transfer of a housing project, which is in need of substantial rehabilitation, to a controlled affiliate of the LHA for purposes of securing additional financing, which in conjunction with any financing available from the Department, is necessary for paying the cost of substantial rehabilitation of the housing project. The form and contents of the application

shall be prescribed by the Department. In connection with any development by a controlled affiliate under 760 CMR 4.15 the controlled affiliate shall enter into a binding legal contract and land use restriction with the LHA and the Department which requires:

- (a) compliance by the controlled affiliate with the provisions of M.G.L. c. 21B and 760 CMR 4.00, 5.00: *Eigibility and Selection Criteria* and 6.00: *Ocupancy Standards and Tenant Participation for State-aided Housing* in the same manner and to the same effect as if it were an LHA, subject to any waivers in 760 CMR 4.00 given by the Department to the controlled affiliate as may be necessary for securing financing;

4.15: continued

(b) appropriate remedies for the Department, the LHA, investors and lenders in the event that the controlled affiliate fails to meet its obligations to the Department, the LHA, investors or lenders, including, but not limited to, enforcement rights by the Department over the controlled affiliate pursuant to M.G.L. c. 121B and the Department's regulations just as if the controlled affiliate were an LHA. Within 120 days of receipt of a complete application, if the Department shall find that a transfer to a controlled affiliate is reasonably necessary for securing necessary financing, shall have made the findings hereafter specified and shall find that the proposed legal documents satisfy the requirements of 760 CMR 4.15, it shall approve the transfer, and the LHA may deed the housing project and land associated therewith and necessary therefor to the controlled affiliate; and

(c) appropriate remedies for the controlled affiliate, investors and lenders, subject to the approval of the Department and LHA, in the event that any annual subsidy which is due under a contract for financial assistance is reduced or eliminated and other financial measures to remediate the deficit are unsuccessful. Such measures shall include, when feasible: reasonable reductions in operating expenses; accessing debt service reserves, other reserves or surplus cash flow; refinancing project debt; seeking alternative operating subsidy funding; and seeking other funds to reduce project debt. Remedies shall be designed to eliminate operating deficits and may include adjustment in the target mix of incomes of resident households.

(2) The Department shall not approve such an application unless it shall have found that the housing project is in need of substantial rehabilitation; that the costs of substantial rehabilitation cannot be wholly financed by the Department; that the controlled affiliate is adequately financed and properly constituted; that the LHA has effective legal control of the controlled affiliate; that the applicant has complied with the tenant participation requirements of 760 CMR 6.09(3)(g); that the financial plan for substantial rehabilitation, including any new or replacement units, which will be part of the housing project, is sound and likely to be accomplished; that the financial plan for new units which will not be part of the housing project is sound and likely to be accomplished; and that any lien or mortgage on the land of the housing project or other affordable housing shall be reasonably necessary and shall be subordinate to the requirements set out in 760 CMR 4.15(1)(a).

(3) With respect to financing, including any necessary annual subsidy payments, the LHA, the controlled affiliate and the Department shall enter into a binding legal contract for financial assistance or an amendment to a contract for financial assistance which shall specify the financial assistance, including annual subsidy, to be given by the Department, its uses and remedies for misuse. In conjunction with a substantial rehabilitation of a housing project on land transferred to a controlled affiliate, the controlled affiliate shall be subject to the same procedures for securing approval of plans for substantial rehabilitation as if it were a housing authority. It may seek approval of new or replacement units which will become part of the low rent housing project which shall thereafter be administered as part of the project. The controlled affiliate may also seek approval of new affordable housing or new market-rate housing units which will not be a part of the housing project. Any new market-rate units shall be approved by the Department as reasonably necessary financially for the substantial rehabilitation or operation of the housing project and shall be no more than 25% of the total of both affordable housing units and market-rate housing units, or such greater percentage as the Department determines is financially necessary. The requirements of 760 CMR 4.11 shall be applicable to any new housing units to be constructed insofar as they will not be part of the housing project. A housing project so rehabilitated by a controlled affiliate shall be the real property of the LHA for purposes of its exemption from real estate tax.

4.16: LHA Annual Plans

(1) The Department will issue written guidance to LHAs for the planning, development, submission and implementation of Annual Plans, will offer technical support and guidance to LHAs in connection with the Annual Plan process, and will also provide LHAs with information regarding available technical support.

4.16: continued

(2) Each LHA shall submit an Annual Plan to the Department for approval before the LHA's fiscal year end. The Annual Plan shall be developed and reviewed in accordance with Department guidelines and will include, at a minimum, the following elements:

- (a) Capital Improvement Plan (CIP). An updated five year Capital Improvement Plan describing how the LHA will preserve and modernize its state-aided public housing units, showing the LHA's active projects and proposed projects, the funding sources expected to be available over the next five years, and the timeframe for planning and construction, based on assumptions and spending rules established by the Department and in compliance with 760 CMR 11.00: *Modernization and Development of State-aided Public Housing*.
- (b) Maintenance and Repair Plan. A plan describing how the LHA will utilize and prioritize its resources to address the challenges of effectively maintaining its state-aided public housing units in the coming year.
- (c) Operating Budget. A budget stating the income and costs of operating the LHA's state-aided housing programs in the coming year, including any related forms required by DHCD, which conforms to the Department's Accounting Manual and its annually-issued Budget Guidelines.
- (d) Narrative. A description of actions that it has taken during the past year in response to significant findings made by DHCD in its Monitoring Program in accordance with Department guidelines. A description of the LHA's goals and means by which it will meet or improve upon the performance-based assessment standards established by the Department in the Monitoring Program.
- (e) Policies. A list of LHA policies indicating the date of the last revision of each policy.
- (f) Waivers. A description of all waivers from the Department's regulations, the reason for the waiver, and the date the waiver was granted by the Department.
- (g) Comments. A summary of all substantive comments received by the LHA about the Annual Plan and the LHA's responses to those comments.
- (h) Other elements. The Plan shall include other elements, if any, as required by Department notices or guidelines.

(3) Corrective Action Plans. In addition to the Annual Plan elements stated above, any LHA that is required to submit a Corrective Action Plan under the Monitoring Program shall also include the Corrective Action Plan in its Annual Plan, as well as such other related material as the Department may require.

- (4) The Department may, in its discretion, establish a streamlined Annual Plan format for:
- (a) LHAs with more than 200 state-aided public housing units that, pursuant to the Department's most recent review under the Monitoring Program, have been determined not to be in need of corrective action; or
 - (b) LHAs with fewer than 200 state-aided public housing units that have not been designated as "chronically poor performing" under the Monitoring Program.

(5) LTO and Resident Participation. Each LHA shall comply with the requirements of 760 CMR 6.09: *Tenant Participation* and any additional written guidance issued by the Department with respect to LTO and resident participation in its Annual Plan review and comment process.

(6) Public Notice, Hearing and Comment. The LHA's Board or similar governing body shall conduct a public hearing to invite public review and comment on the Annual Plan. The hearing must be conducted at a location that is convenient to the residents served by the LHA after the following public notice has been given:

- (a) At least 45 days before the hearing is to take place, the LHA shall publish a notice that

a public hearing will take place on the Annual Plan, including the date, time and location of the hearing, and stating the agenda items that will be covered at the hearing, including, but not limited to, the proposed operating budget, the proposed CIP, and the LHA's specific plan to meet or improve upon the results of its Monitoring Program review.

4.16: continued

(b) The LHA shall give public notice as required in 760 CMR 4.16(6)(a) by posting on the LHA's website and in prominent locations in the LHA's offices and community spaces and by notifying any LTOs. The required public notice shall inform the public that the draft Annual Plan will be made available for inspection at the LHA's Office during its normal business hours for a period of at least 30 business days before the public hearing. The notice will also instruct the public that the LHA will receive public comments on the Plan orally, in writing and by email no later than the end of the day on which the public hearing takes place.

(c) Outreach. In addition to the notice requirements stated above, LHAs shall conduct reasonable outreach activities to encourage broad public participation in the Annual Plan.

(7) An LHA, after submitting its Annual Plan to the Department, may not make any amendments that meet the criteria described in DHCD guidelines as significant changes to the Annual Plan without the Department's prior written approval.

(8) Any LHA that fails to submit an Annual Plan meeting the requirements of 760 CMR 4.16 may be subject to administrative budget sanctions and may be designated a "chronically poor performing" LHA.

(9) The Department will review and approve Annual Plans in accordance with criteria established in its written guidelines.

4.17: Waiver of Provisions by the Department

An LHA may submit to the Department a request for approval of a waiver of any provision of 760 CMR 4.00. The LHA shall specify in writing the reason why a waiver is necessary and appropriate. The Department, in its discretion, may approve a waiver if it determines that good cause exists for the waiver and that the waiver is appropriate under the circumstances and will be consistent with the purpose of the public housing program and all applicable provisions of law.

REGULATORY AUTHORITY

760 CMR 4.00: M.G.L. c. 121B, §§ 7A, 26, 26B, 26D, 28A, 29, 31, and 34; c. 23B; E.O. 390 and 526.