Commonwealth of Massachusetts

DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

Mitt Romney, Governor ◆ Kerry Healey, Lt. Governor ◆ Jane Wallis Gumble, Director

Public Housing Notice 2003-05

MEMORANDUM

TO: Interested Parties

FROM: Carole E. Collins, Director, Bureau of Housing Management

RE: Proposed Amendments to 760 CMR 5.00 and 760 CMR 6.00

DATE: July 3, 2003

****

Pursuant to the provisions of MGL c. 30A §2 notice is hereby given of the Department's proposed action to promulgate amendments to the following regulations:

760 CMR 5.00:	Eligibility and Selection Criteria
760 CMR 6.00:	Occupancy Standards and Tenant Participation for State-Aided Housing

Such action is taken under the regulatory authority provided to DHCD in MGL c. 23B and MGL c. 121B.

A summary of the proposed amendments is as follows:

- The proposed amendments raise rents for all residents living in state-aided public housing to be more in line with other subsidy programs.
- Rents for residents of family public housing will increase from the current amount of 25% or 30% of household income to 27, 30 and 32% of household income.
- Any overhoused household that is living in an apartment larger than their family size requires, who fails to move to an appropriately sized apartment when requested to do so by an LHA will be charged rent at 150% of what otherwise would be due.
- To address rent collection problems and the costs involved in addressing delinquent payments, a late fee penalty of $25 will be charged to any tenant household which fails to pay rent within 30 days of its due date.
- Provision is made for the collection of debt owed an LHA when it has a monetary judgment and execution through the Comptroller's Set-Off Debt Collection Program.
- The current annual income deduction of $400 per household for tenants who are at least 60 years of age or are handicapped will be eliminated. This amendment will result in a tenant rent increase of $10 per month. That deduction will continue for those tenants, who are at least 60 years of age or are handicapped and live in family housing, provided that the household is not overhoused as these residents of family housing will be subjected to a rent increase based on the increased percentage of income charged for rent.

- 760 CMR 5.16 is being amended to require that LHAs maintain their required vacancy information on a web based DHCD system.
- The other amendments are technical amendments.

The Department of Housing and Community Development will hold a public hearing on the proposed amendments on Monday, August 11, 2003 at 10:00 a.m. to 1:00 p.m., at the McCormack Building, One Ash Burton Place, 21st Floor – Conference Rooms 2 and 3, Boston, MA 02108 at which time oral testimony and written comments will be accepted. Written comments will be accepted prior to the hearing and should be directed to: Maura Hamilton, DHCD, Once Congress Street, 10th Floor, Boston, MA 02114. Enclosed with this notice is a copy of the proposed amendments for each regulation. Copies of the proposed amendments will be available for inspection at the offices of DHCD during regular business hours (8:45 a.m. – 5:00 p.m., Monday – Friday) prior to and during the public comment period.

We request that each LHA receiving this notice provide a copy of this notice with the enclosures to each of its LTOs. Thank you for your assistance.

760 CMR 5.00: ELIGIBILITY AND SELECTION CRITERIA

Strike existing subsection 5.01 and replace with the following:

5.01: Effective Date

760 CMR 5.00 became effective August 9, 1996 and superseded 760 CMR 4.00 and 760 CMR 5.00, as previously promulgated. Amendments to subsection 5.03 and 5.05 became effective June 12, 1998. Additional amendments to subsections: 5.03, 5.06, and 5.16, are effective August 29, 2003. Waivers in effect on August 9, 1996 for a tenant selection plan at a local housing authority (LHA) shall remain in effect unless specifically revoked by the Department.

Strike existing definition of Family housing and replace with the following:
5.03: Definitions

Family housing - c. 200 or c. 705 housing managed pursuant to the provisions of M.G.L. c. 121B, § § 32 and 34 or c. 689 special needs housing if such special needs housing is under the direct management of an LHA and if its residents have individual leases with the LHA.

Strike existing subsections 5.06 (1) and (2) and replace with subsections 5.06 (1), (2) and (3) as follows:

5.06: Income Eligibility

(1) Income limits for admission of an applicant to state-aided public housing and for participation in the AHVP shall be set at two year intervals. The income limits shall be the " Low Income Limits", set by the United States Department of Housing and Urban Development (HUD), then in effect, for a similarly sized household in the city or town in which the LHA is located. Household income shall be determined in the same manner as net household income for rent determination, provided that income shall be imputed to assets which have been disposed of as provided by 24 CFR Part 5.6 or successor regulatory provision.

(2) A household occupying a unit in elderly/handicapped housing shall remain eligible for continued occupancy until such time as 30% of its monthly net household income equals or exceeds the fair market rent (FMR) then in effect for the Section 8 Existing/Voucher Program for a unit of appropriate unit size in the area in which the LHA is located.

(3) A household occupying a unit in family housing shall remain eligible for continued occupancy until such time as 32% of its monthly net household income equals or exceeds the fair market rent (FMR) then in effect for the Section 8 Existing/Voucher Program for a unit of appropriate unit size in the area in which the LHA is located.
(The existing subsection 5.06(3) becomes 5.06(4).)

Strike existing subsection 5.16(2) and replace with the following:
5.16: Administration

(2) The LHA shall maintain permanent handwritten ledgers including a master file ledger and waiting list ledger. The LHA shall maintain the Department' s prescribed on-line vacancy ledger in accordance with guidelines issued by the Department as they may be amended from time to time. Waiting lists and vacancy ledgers indicating the applicant's control number shall be considered public information, and, upon request shall be available for public inspection.

760 CMR 6.00: Occupancy Standards and Tenant Participation for State-Aided Housing

Strike existing subsection 6.01 and replace with the following:
6.01: Effective Date

(1) 760 CMR 6.00 became effective on October 1, 1998 (the "effective date" of this regulation). An amendment to subsection 6.04became effective November 13, 1998. An amendment to subsection 6.05 became effective January 1, 1999. Amendments to subsections: 6.03, 6.04, 6.05, and 6.06, are effective August 29, 2003 and shall be applicable to all rents due and payable October 1, 2003 and thereafter notwithstanding the provisions of 760 CMR 6.04(4). 760 CMR 6.00 replaces provisions formerly appearing in 760 CMR 1.00, 2.00, 3.00, 6.00 and 7.00 which were rescinded on the effective date. Waivers pursuant to these former regulations, in effect at an LHA immediately prior to the effective date, shall remain in effect unless and until revoked by the Department. As provided herein, leases and grievance procedures in use immediately prior to the effective date shall remain in use until new or amended leases and grievance procedures are approved by the Department. Recognition of local tenant organizations in effect on the effective date shall remain in effect unless recognition is revoked. Tenant participation agreements in effect on the effective date remain in effect according to their terms unless amended or revoked.

Insert, in alphabetical order - after Notice of Termination, the definition for Overhoused as follows:
6.03: Definitions

Overhoused – a tenant household which the LHA has determined, based upon the composition of the household, to be occupying a unit consisting of more bedrooms than is appropriate for the household size pursuant to 760 CMR 5.03 unless such occupancy is authorized by law.

Strike existing definition of Utilities and replace with the following:
6.03: Definitions

Utilities - any or all of the following: electricity and any other fuels for heat, hot water, and cooking.

Strike existing subsection 6.04(1) and replace it with the following:
6.04: Rent Determination

(1) Amount of Rent.

(a) Monthly rent shall be charged tenants of elderly/handicapped housing in the following manner:
1. Where the tenant does not pay for utilities, rent shall be 30% of monthly net household income as determined pursuant to 760 CMR 6.05.
2. Where the tenant pays for some or all utilities, rent shall be 25% of monthly net household income as determined pursuant to 760 CMR 6.05.

(b) Monthly rent shall be charged tenants of family housing in the following manner:
1. Where the tenant does not pay for utilities, rent shall be 32% of monthly net household income as determined pursuant to 760 CMR 6.05.
2. Where the tenant pays for one or more utilities, but not all, rent shall be 30% of monthly net household income as determined pursuant to 760 CMR 6.05.

3. Where the tenant pays for all utilities, rent shall be 27% of monthly net household income as determined pursuant to 760 CMR 6.05.

(c) In the event the tenant household has been determined to be overhoused and the tenant has failed or refused to transfer to a unit of appropriate unit size offered by the LHA, following any such failure or refusal to transfer, the tenant's m onthly rent shall be 150% of the rent which would otherwise have been charged to tenant.

(d) An LHA may round the amount of monthly rent to the nearest whole dollar nothwithstanding the fact that rounding upward will cause rent to slightly exceed the applicable percentages set out in 760 CMR 6.04(1) (a), (b) and (c).

Strike existing subsection 6.04 (3) and replace it with the following:

(3) Failure to Pay Rent.

(a) In the event that a tenant shall fail to pay all or any part of the rent within seven (7) days of its due date, the LHA may declare the unpaid rent delinquent and issue a notice of termination of lease. Prior to issuing such a notice, except where the tenant is habitually delinquent in paying rent and has had a prior opportunity for discussion within the prior six months, the LHA shall provide the tenant with an opportunity to discuss the reason for the late payment.

(b) In the event that tenant shall fail to pay all or any part of the rent within thirty (30) days of its due date, the LHA shall impose a fee in the amount of $25 for failure to pay rent when due. The LHA may also charge tenant interest in accordance with applicable law and with the terms of tenant's lease. If tenant shall have shown good cause for late payment to the LHA, the LHA in its discretion may waive the interest or fee for late payment. If the LHA and tenant shall have entered a repayment agreement the LHA may waive the interest or fee for late payment of the rent which is the subject of the repayment agreement. By charging interest or the fee for late payment of rent, the LHA shall not have condoned tenant's breach of tenant's obligation to pay rent when due, and the LHA shall not thereby waive any rights to issue a notice of termination of the lease, to bring eviction proceedings against tenant and to collect arrearages, constable fees and costs on account of the tenant's failure to pay rent when due.

(c) In the event that a tenant's failure to pay rent due results in a monetary judgment and execution for the LHA the LHA may seek to intercept funds which are otherwise payable by the Commonwealth to tenant on or after January 1, 2005, through the Comptroller' s Set-Off Debt Collection Program or successor program in the manner provided by the program and as may be specified in guidelines issued by the Department.

Strike existing subsection 6.05(1) and replace it with the following:

6.05: Determination of Gross Household Income and Net Household Income

(1) The Computation of Net Household Income. Rent is a percentage of net household income, as provided in 760 CMR 6.04(1), (25%, 27%, 30% or 32% except as provided in 760 CMR 6.04 (1)(c) and (d)). In order to determine net household income, the LHA shall first determine gross household income. Gross household income includes the income items set out in (2) below and excludes the non-income items set out in (3) below. The deductions set out in (4) below are deducted from gross household income so computed, and the result is net household income.

Strike existing subsection 6.05(4)(a) and replace it with the following:

(4) 6.05: Determination of Gross Household Income and Net Household Income Deductions from Gross Household Income.

(a) $400 for a household living in family housing in which the tenant is an elderly person of low income or a handicapped person of low income, provided that the household is not overhoused.

Strike existing subsection 6.06(2) and replace it with the following:

6.06: Lease Requirements

(2) Provisions as to Rent. Each new or amended lease submitted for approval by the Department shall contain provisions which are consistent with the provisions concerning the amount of rent, rent payment, failure to pay rent, annual and interim redeterminations of rent and the other matters set out in 760 CMR 6.04. The lease shall require payment of the fee in 760 CMR 6.04(3) for late payment of rent and may require payment of interest on unpaid rent.