Commonwealth of Massachusetts

Department of Housing &

Community Development

# Charles D. Baker, Governor ◆ Karyn E. Polito, Lt. Governor ◆ Janelle Chan, Undersecretary



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 **PUBLIC HOUSING NOTICE 2019-07**

**TO:** All Local Housing Authority Executive Directors

**FROM:** Amy Stitely, Associate Director, Division of Public Housing

**SUBJECT:** Request for Information: Creation of Regional Housing Authority Entities

**DATE:** March 28, 2019

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**Request for Information:**

**Creation of Regional Housing Authority Entities**

*Respondents to this Request for Information (RFI) are invited to respond to any or all of the questions in this document. Responses to this RFI shall serve solely to assist DHCD in understanding the current level of interest at Local Housing Authorities (LHAs) with regard to the creation of regional housing authority governance entities and to inform the development of a possible solicitation for a Request for Responses (RFR) in the future. This RFI does not in any way obligate DHCD to issue an RFR or to include any of the RFI provisions or responses in any RFR. Responding to this RFI is entirely voluntary, and will in no way serve as an advantage or disadvantage to the respondent in the course of any RFP that may be subsequently issued.*

1. **Introduction**

The purpose of this RFI is to elicit the advice and best analysis of Massachusetts housing authorities to enable DHCD to craft a potential future RFR for LHAs interested in obtaining technical assistance to explore the feasibility of forming new regional governance entities. Responses to this RFI should include any and all information that will be useful to DHCD in subsequently drafting more detailed procurement solicitation(s) related to the creation of such entities.

1. **Purpose of RFI**

In the public housing reform legislation of 2014 (Chapter 235 of the Acts of 2014), the Legislature added a new section 38D to M.G.L. c.121B (see Appendix A, attached) which states that DHCD:

“shall develop a regional public housing innovation program. The program shall be designed to achieve: (i) innovative models for the development, redevelopment and repair of public housing; (ii) innovative models for improved management of public housing; (iii) increased coordination among several housing authorities; (iv) increased economic efficiencies; and (v) the expansion of economic opportunities for tenants and the commonwealth.”

Section 38D provided various incentives to encourage the formation of up to three Regional Housing Authorities (RHAs) composed of at least seven communities with a combined total of at least 750 total state-aided public housing units, and one RHA with at least ten communities with between 250 and 700 state units. DHCD promulgated regulations for this initiative in 2017 at 760 CMR 63.04 (these regulations can be found here: <https://www.mass.gov/files/documents/2017/10/25/760cmr63.pdf>

Since then, no LHA Boards have voted to create regional entities of the type envisioned by Section 38D, but some LHAs have expressed an interest in investigating the pros and cons of various types of regional governance entities. Such efforts involve the evaluation of complex issues, such as the impact on existing personnel, pension plans, how to ensure fair distribution of resources among multiple communities, how to preserve ties to local city and town governments that may benefit an existing LHA, and so on.

Due to the complexity of these issues, DHCD is considering issuing an RFR awarding funding for technical assistance to LHAs wanting to explore the feasibility of forming a regional housing authority or similar entity. Before we do so, we are seeking feedback from all interested LHAs to determine whether (1) there is any demand for such assistance and (2), if there is demand, what form and type of technical assistance would be most useful.

To that end, we encourage all interested LHAs to review the questions below and respond in as much detail as possible. As noted above, responding to this RFI is entirely voluntary and in no way will it serve as an advantage or disadvantage to the respondent in the course of any RFR that may be subsequently issued.

1. **Information Solicited**

In a cover letter of interest, signed by the Executive Director and Board Chair, please identify the responding LHA(s) and the email address and phone number for the key point of contact for future follow up. With this letter, submit answers to the following questions in as much detail as you are able, limiting the response to 10 pages total, not including the cover letter or attachments:

* 1. Please describe the level of your LHA’s interest in this topic.
		1. Is it something you have previously discussed and seriously considered in the past? Or are you new to the idea and merely curious at this time?
		2. If the topic of regionalization has already been discussed,
			1. What other LHAs are contemplated as participants in a new RHA?
			2. Who took part in any previous conversations (your Board, your staff, other LHA Boards, other LHA Executive Directors or staff, local or state elected leaders, staff at the municipal level, etc?)
			3. Did the conversation seem promising, why or why not?
	2. What type of regional governance structures has your LHA considered, if any, and why? Some examples include:
		1. A conventional regional housing authority, created by contractual agreement, as envisioned in M.G.L. c. 121B sec. 3A (attached).
		2. A large RHA of 7 to 10 LHAs, as anticipated by sec. 38D described above and attached.
		3. An RHA created pursuant to special legislation, to allow for a more permanent structure than provided by the contractual arrangements of Sec. 3A. (Note: This is the method that was used to create the existing RHAs in Hampshire, Hampden, Franklin, Dukes and Nantucket Counties.)
	3. Can you describe the features of a governance structure that you feel would be important for success? For example, please share any thoughts on how a regional entity might best address concerns such as the following:
		1. How to share control and oversite of the regional entity among the participating communities
		2. The impact on existing LHA personnel, both positive (perhaps greater employment opportunities/salary increases) and negative (perhaps reassignment to new, less-desired duties for staff with overlapping jobs)
		3. The impact on commitments to local pension plans
		4. How to ensure fair distribution of capital, operating and staffing resources among multiple communities
		5. How to preserve ties to local city and town governments that may benefit an existing LHA by, for example, providing free snow plowing or trash pickup, or Community Preservation Act (CPA) or other local funds for capital improvements.
		6. Impact on labor union agreements
		7. Ability to withdraw from the entity
		8. Impact on service provision
		9. Impact on maintenance and capital project delivery (e.g., ability to hire mod director or construction trade specialists, perform force account work, aggregate formula funding across the larger portfolio to do larger projects), or any other concerns you believe are of importance to address in planning for a regional governance entity.
	4. Similarly, which features do you feel would be problematic or create roadblocks to success?
	5. Do you have any suggestions for legislative changes that could make regional governance easier, more effective, more feasible (including changes to elements of sec. 38D)?
	6. What kind of assistance would be helpful to your LHA in evaluating entering into a regional governance structure with other LHAs? Please describe in as much detail as possible the scope of work items you would want assistance with. These may include, but are not limited to:
		1. Legal (governance structure; impact on personnel/union concerns, etc.)
		2. Financial/accounting analysis
		3. Funding to assist Local Tenant Organization to evaluate a proposal
		4. Consultant to assist in reorganization design
		5. Consolidation of data and IT systems
	7. Do you have any recommendations for monetary or programmatic changes or incentives that would make the formation of an RHA advantageous?
1. **General Instructions**

Please note that this RFI is issued solely for the purpose of obtaining information. Nothing in this RFI shall be interpreted as a commitment on the part of DHCD to enter a contract with any respondent or to make any procurement.

* 1. Respondent Questions. Potential respondents who have questions regarding this RFI may e-mail them to the contact listed in sec. 4(d) below no later than 5:00 p.m. on Wednesday, May 15, 2019. Respondents should make inquiries and request clarification concerning this RFI by written questions via e-mail. Responses to inquiries and clarification questions will be provided electronically to all interested parties.
		1. Any addenda to the RFI, including Q&A answers as described above, will be posted on DHCD’s website at the same location as this Public Housing Notice 2019-07**. IF YOU WOULD LIKE DHCD TO NOTIFY YOU WHEN SUCH ADDENDA ARE POSTED, PLEASE EMAIL YOUR NAME, LHA, EMAIL ADDRESS AND PHONE NUMBER TO THE DHCD CONTACT NAMED IN SEC. 4(D) BELOW.**
	2. Q & A Session. DHCD will schedule an informal question and answer session associated with this RFI on Tuesday, April 30, 2019 at 10:00 a.m. The results of this session will be shared with all interested parties via email.
	3. Response Submission. All responses to this RFI are due no later than 5:00 p.m. on Friday, May 31, 2019. Respondents should submit one (1) electronic copy via e-mail and may, if they choose, also submit a hard copy to the contact listed in Sec. 4(d) below. All responses must include a vote of the LHA Board indicating it has reviewed and approved the response, with the understanding that the response in no way binds your LHA to any course of action.
	4. DHCD Contact Information. Please direct all communications, questions, and responses to the following contact:

Paul McPartland

Asset Management Coordinator

Department of Housing and Community Development

Commonwealth of Massachusetts

100 Cambridge Street, Suite 300

Boston, MA 02114

Phone – 617-573-1219

Fax – 617-573-1340

E-mail: paul.mcpartland@mass.gov

* 1. Additional Information. DHCD may request additional information from respondents which respondents are encouraged, but not required, to provide. DHCD may, at its sole discretion, create an RFP which will include the detailed requirements and key success criteria for the procurement and be based, at least in part, on the responses received from this RFI.
1. **Public Record.**

All responses to this RFI will be public record under the Commonwealth’s Public Records Law, M.G.L. c. 66, sec. 10, regardless of confidentiality notices set forth on such writings to the contrary.

 **Appendix A: MGL c. 121B, sec. 38D**

**Section 38D: Regional public housing innovation program; goals; application for participation in program; funds; powers and projects**

Section 38D. (a)(1) As used in this section, the following words shall have the following meanings, unless the context clearly requires otherwise:

''Affordable housing'', homeownership or rental housing which is restricted to occupancy by low or moderate income households of 1 or more persons and for which the sale price or rent is affordable as defined by the criteria for inclusion in the department's subsidized housing inventory or consistent with funding sources.

''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.

''Extremely low income household'', a household with a gross income at or less than 30 per cent of area median household income as most recently determined by the United States Department of Housing and Urban Development, adjusted for household size.

''Housing authority'', a housing authority established pursuant to section 3.

''Low or moderate income household'', a household with gross income at or less than 80 per cent of area median household income as most recently determined by the United States Department of Housing and Urban Development, adjusted for household size; provided, however, that in Nantucket or Dukes county ''low or moderate income household'' shall mean persons and households earning less than 150 per cent of Nantucket county or the county of Dukes County median household income as reported from time to time by the United States Department of Housing and Urban Development.

''Market-rate housing'', homeownership or rental housing which is not restricted to occupancy by low or moderate income households; provided, however, that ''market-rate housing'' may be available for occupancy by households without regard to income and may also include housing subject to maximum income limits to be occupied by households with gross income greater than 80 per cent but not more than 150 per cent of the area median household income as most recently determined by the United States Department of Housing and Urban Development, adjusted for household size.

''Program'', the regional public housing innovation program under this section.

''Public housing'', state-assisted housing developed through funds provided under chapter 200 of the acts of 1948, chapter 667 of the acts of 1956, chapter 705 of the acts of 1966, chapter 689 of the acts of 1974 and chapter 167 of the acts of 1987.

''Regional housing authority'', a housing authority established pursuant to section 3A.

''Very low income household'', a household with a gross income at or less than 50 per cent but greater than 30 per cent of area median household income as most recently determined by the United States Department of Housing and Urban Development, adjusted for household size.

(2) The department shall develop a regional public housing innovation program. The program shall be designed to achieve: (i) innovative models for the development, redevelopment and repair of public housing; (ii) innovative models for improved management of public housing; (iii) increased coordination among several housing authorities; (iv) increased economic efficiencies; and (v) the expansion of economic opportunities for tenants and the commonwealth. The department shall establish criteria to evaluate a regional housing authority's application for the program.

(b)(1) A regional housing authority may apply to the department for approval to participate in the program. Participation shall be limited to applicants that have the ability to plan and carry out activities under the program, as evidenced by their prior performance in the operation and maintenance of public housing, demonstrate a need to redevelop and repair occupied and vacant public housing units and other appropriate factors as determined by the director of the department.

(2) The department may determine the housing authorities participating in the program; provided, however, that the total number of authorities shall not exceed 4. To be eligible to participate in the program, a housing authority shall be a regional housing authority under section 3A. Not more than 3 of the participating housing authorities shall have not fewer than 7 participating communities and portfolios of not fewer than 750 state-aided public housing units. Not less than 1 of the 4 authorities shall have a portfolio of between 250 and 700 state-aided public housing units and not fewer than 10 participating communities. In selecting participating authorities, the department shall establish criteria that provides for representation of housing authorities having various characteristics, including housing authorities serving urban, suburban and rural areas and housing authorities in various geographical regions throughout the commonwealth. The department shall create a position within the department to provide assistance to housing authorities during the process of becoming a regional housing authority under section 3A. Nothing in this section shall prohibit participation by an otherwise eligible housing authority on Nantucket Island or Martha's Vineyard.

(3) The department shall require program applicants to describe how tenants shall be provided with independent technical assistance sufficient to allow them meaningful and informed input and shall encourage applications that demonstrate, create or seek to achieve, with respect to public housing: (i) innovative models for the redevelopment and repair of public housing, including housing for the elderly and frail; (ii) innovative models for improved management; (iii) coordination among several housing authorities; (iv) economic efficiencies; and (v) expansion of economic opportunities for tenants and the commonwealth. Additionally, the department shall encourage applications that achieve the development of affordable housing.

(4) The department shall act on the application within 90 days of its submission and shall approve not more than 4 applications that meet the criteria established by the director. The department and the participating housing authority shall enter into a program participation agreement summarizing the terms of participation, voluntary withdrawal and termination for material default and a timetable for achieving objectives of the program. The initial term of participation shall be 10 years, which shall be extended in whole or in part by the department so long as: (i) the housing authority has made satisfactory progress toward its goals; (ii) the extension will meet the original objectives of the program; and (iii) the housing authority has not received a negative evaluation pursuant to subsection (n).

(5) Upon expiration, withdrawal or termination of an agreement, the department shall work cooperatively with the housing authority in a transition process. The transition process may provide for retention of elements of the program implemented during participation, including, but not limited to, contractual agreements with third parties that contain terms that extend beyond the term of participation that were referenced in the program participation agreement, approved annual plans or approved annual reports.

(c) The department, subject to appropriation, shall disburse all funding for a participating housing authority or regional housing authority on a predictable schedule to permit and encourage planning and efficiency by the housing authority. Further, the department shall increase participating regional housing authorities annual operating subsidy by providing an additional subsidy which is equal to 20 per cent of the regional housing authority's annual budget for elderly and family state public housing, minus the cost of utilities.

(d) Except for subsection (g), if any provision of this chapter conflicts with the powers granted under this section or substantially restricts a housing authority's ability to achieve the goals specified in its application or plan, such provision shall not apply to a housing authority or regional housing authority approved by the department to participate in the public housing innovation program, to the extent the department determines it is necessary.

(e) Regional housing authorities participating in the program shall, in addition to those powers conferred in this chapter, have the following powers:

(i) to combine all forms of assistance received from the commonwealth and other sources, including, but not limited to, public housing operating subsidies appropriated by the commonwealth through a general appropriations act and public housing modernization funds authorized by the commonwealth to be funded through the sale of general obligation bonds, other funds or grants; provided, however, that a housing authority shall not receive diminished assistance by virtue of participation in the program under this section;

(ii) to establish a reasonable rent policy, which shall be included in the annual plan required by subsection (h), that shall: (A) provide for rents that are affordable to tenants throughout the term of the program; (B) be designed to provide incentives to improve employment and training and self-sufficiency by participating families; (C) include transition and hardship provisions; (D) include in the transition period a limit on rent increases in any 1 year related solely to the change in the rent policy to not more than 10 per cent for the duration of the transition period; (E) provide a rent cap for tenant households at or below 50 per cent of area median income, adjusted for family size, of not more than the maximum tenant rental payments, including, if applicable, minimum rents, permitted by section 32; and (F) provide a rent cap for elderly and handicapped persons of low income of not more than the maximum tenant rental payments including, if applicable, minimum rents, permitted by said section 32 and subsection (e) of section 40;

(iii) to establish, and include as part of the annual plan required by subsection (h), local methods of tenant or homeowner selection; provided, however, that the method shall be fair, objective, public and shall not discriminate against an applicant based on a protected category in chapter 151B or violate other fair housing laws or department policies and provides admissions preferences for homeless households, veterans and victims of domestic violence;

(iv) to create efficient, fair and open procurement policies for supplies, services and real property, designed to reduce costs and to meet local need, which shall be included in the annual plan required by subsection (h);

(v) to participate in a mixed public-private affordable housing development or create legal entities or instrumentalities necessary to participate in mixed public-private affordable housing development designed to rehabilitate, repair, replace or develop affordable housing, including public housing developments and projects developed pursuant to sections 26, 34 and 40;

(vi) to create partnerships or consortia with other public or private entities for the operation, financing or development of any program otherwise authorized by law;

(vii) to acquire property to carry out its purposes and to dispose of property of the local housing authority without repayment of bonds to the commonwealth, notwithstanding any provision of this chapter to the contrary, unless otherwise required by law or contract; provided, however, that the proceeds of such disposition shall be applied to acquisition, operation, development, rehabilitation or repair of public or affordable housing consistent with the limitations on use of proceeds in subclause (E) of clause (3) of subsection (g); and

(viii) to enter into energy services contracts in accordance with section 11C of chapter 25A for a period of up to 20 years.

(f) Projects pursuant to this section may include a mix of extremely low income households, low or moderate income households and market-rate housing and may utilize any available source of rental subsidy or financial assistance; provided, however, that operating subsidies appropriated by the general court and bond funds authorized by the general court for the benefit of low rent housing projects operated pursuant to sections 32 and 40 shall not be used to fund capital or operating costs other than those for the redevelopment, repair and operation, including services benefitting the tenants, of such housing.

(g) Notwithstanding subsection (d), the local housing authority shall:

(i) comply with section 12, related to wages, labor requirements and the Social Security Act;

(ii) comply with section 29, related to wage rates and collective bargaining;

(iii) retain the same number of public housing units as existed before participation in this program and to the greatest extent possible: (A) provide for full tenant participation, including public hearings, on adoption or material amendment of its annual plan as required under subsection (h); (B) provide for a tenant lease and grievance procedure substantially similar to that in effect prior to entry into this program; (C) provide that evictions shall be only for good cause; (D) assure that housing assisted under this program is decent, safe and sanitary and that, excepting any market-rate housing, the housing is deed restricted to occupancy by extremely low income households, very low income households or low and moderate income households at affordable rents or sales prices, in perpetuity or for such other term as may be approved by the department, consistent with funding sources; and (E) assure that proceeds from the disposition of public housing and funds generated from new affordable and market-rate housing created to replace public housing, unless restricted to a particular use, shall be allocated to the reconstruction, rehabilitation or repair of public housing developments;

(iv) assure that if a participating housing authority redevelops its public housing units, all households residing in the units at the time of planned redevelopment shall receive relocation assistance, if eligible, under this chapter or other applicable statutes; provided however, that such households shall have the right to return to the redeveloped public housing, unless such household is determined to be in unlawful occupancy prior to the approval of the housing authority's application, has materially breached the lease agreement or has been evicted for cause, under applicable law, subject to units of the appropriate size and requirements being available; provided further, that such households shall have priority for placement over new applicants;

(v) comply with chapter 334 of the acts of 2006; and

(vi) comply with the audit requirements of section 29.

(h) Each housing authority participating in this program shall prepare an annual plan. Tenants assisted by the housing authority and the wider community shall be provided with adequate notice and opportunities to participate in the development and preparation of the plan. The tenants shall be provided an opportunity to comment and make recommendations on the plan which shall include not less than 1 public hearing held at a time and location that the participating housing authority reasonably believes will facilitate attendance by and input from tenants.

The annual plan shall:

(i) state the housing authority's goals and objectives under the program for its fiscal year;

(ii) describe the housing authority's proposed use of assistance for activities under the program for the fiscal year;

(iii) describe how the housing authority will achieve the repair and redevelopment of public housing;

(iv) state the housing authority's proposed income mix for its housing portfolio of: (A) extremely low income households; (B) very low income households; (C) low or moderate income households; and (D) market-rate housing;

(v) explain how the housing authority's proposed activities will meet its goals and objectives;

(vi) include appropriate budgets and financial statements; and

(vii) describe the tenant participation procedure and what independent technical assistance will be made available to tenants.

A plan submitted pursuant to subsection (i) shall be deemed approved unless the department, within 60 days of submission, issues a written disapproval. The department shall disapprove the plan if the department reasonably determines, based on information contained in the plan or other reliable information available to the department, that the plan does not comply with this section or other applicable law or cannot reasonably be expected to achieve the purposes of this section. The housing authority shall notify tenants of such approval or disapproval.

(i) In place of all other planning and reporting requirements of the department, each housing authority participating in this program shall submit to the department an annual report, in a form and at a time specified by the department. The annual report shall be the primary means by which the housing authority shall be required to provide information to the department, to tenants and the public on the activities assisted under this section during a fiscal year, unless the department has reason to believe that the housing authority has violated the terms of the program.

Each annual report shall:

(1) document the housing authority's use of assistance under the program, including appropriate financial statements;

(2) describe and analyze the effect of assisted activities in addressing the objectives of this section, including the effect of rent and tenant selection policies;

(3) state the previous year's income mix of residents in the housing authority's public housing and affordable housing developments under this program;

(4) include a certification by the housing authority that it has prepared an annual plan in accordance with subsection (h);

(5) describe and document how the housing authority has provided tenants assisted under the program and the wider community with opportunities to participate in the development or material modification of the annual plan and an opportunity to comment on the annual plan which shall include not less than 1 public hearing;

(6) include a report on the annual incomes of persons served in the previous year; and

(7) include other information as may be required by the department pursuant to subsection (k) to determine the effectiveness of the program.

(j) A report submitted pursuant to subsection (i) shall be deemed approved unless the department, within 60 days of submission, issues a written disapproval because the department reasonably determines, based on information contained in the report or other reliable information available to the department, that the housing authority is not in compliance with this section or other applicable law.

(k) Each housing authority shall keep such records as the department may prescribe as reasonably necessary to document the amount of funds and the disposition of funds under this program, to ensure compliance with the requirements of this section and to measure performance.

(l) The department shall have access, for the purpose of audit and examination, to any books, documents, papers and records that are pertinent to the requirements of this section and assistance given in connection with this section; provided, however, that reporting shall be conducted solely through the annual report unless the department has reason to believe that the housing authority is not in compliance with this program.

(m) The state auditor shall have access, for the purpose of audit and examination, to any books, documents, papers and records that are pertinent to the requirements of this section and assistance given in connection with this section.

(n) Each authority shall be evaluated by an independent evaluator twice during the initial term of participation and periodically thereafter, in accordance with standards adopted by the department, to determine the success of initiatives undertaken to achieve the purposes set forth in this section and the housing authority's plan.

(o) The department shall establish a manner in which to post the housing innovations plan, annual report, independent evaluation and other public records pertaining to each housing authority's public housing innovations program established pursuant to this section so that the progress of each public housing innovations program is publicly available and free to access.

(p) The department shall establish a 9 member advisory committee whose members shall include the director of the department or a designee, 1 representative selected by Citizens Housing and Planning Association, Inc., 1 representative selected by the Massachusetts chapter of the National Association of Housing and Redevelopment Officials, 1 representative selected by the Massachusetts Union of Public Housing Tenants, Inc., 1 representative selected by the Massachusetts Coalition for the Homeless, Inc., and 4 additional members chosen by the director of the department, 1 of whom shall have at least 5 years of experience as the manager of not less than 200 units of privately owned housing, to provide advice and recommendations to the department regarding regulations to implement this section and to provide ongoing assistance in determining the effectiveness of the program.

(q) The department shall adopt regulations implementing this section.

(r) The department shall annually report to the house and senate committees on ways and means and the joint committee on housing on the participation of housing authorities in the public housing innovations program.