

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

No. 2022-P-0645

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FAIRHAVEN HOUSING AUTHORITY, LAWRENCE HOUSING  
AUTHORITY, MEDFORD HOUSING AUTHORITY, NANTUCKET  
HOUSING AUTHORITY, PROVINCETOWN HOUSING AUTHORITY,  
STONEHAM HOUSING AUTHORITY, SUDBURY HOUSING AUTHORITY,  
RENEE H. CEELY, EXECUTIVE DIRECTOR NANTUCKET HOUSING  
AUTHORITY, KRISTIN HATCH, EXECUTIVE DIRECTOR  
PROVINCETOWN HOUSING AUTHORITY, EFRAIN ROLON,  
EXECUTIVE DIRECTOR LAWRENCE HOUSING AUTHORITY, SHARON  
WILKINS, FORMER EXECUTIVE DIRECTOR STONEHAM HOUSING  
AUTHORITY, BRIAN COSTELLO, FORMER EXECUTIVE DIRECTOR  
WATERTOWN HOUSING AUTHORITY, MASSACHUSETTS CHAPTER  
NATIONAL ASSOCIATION OF HOUSING AND REDEVELOPMENT  
OFFICIALS,

PLAINTIFFS-APPELLANTS

v.

COMMONWEALTH OF MASSACHUSETTS, and MASSACHUSETTS  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT,

DEFENDANTS-APPELLEES

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ON APPEAL FROM A JUDGMENT OF THE SUPERIOR COURT

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PLAINTIFFS-APPELLANTS' BRIEF

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**STATEMENT OF THE ISSUE**

Whether the Complaint stated a plausible claim upon which relief may be granted to the Plaintiffs.

**STATEMENT OF THE CASE**

The Plaintiffs-Appellants, seven local housing authorities, five current or former local housing authority Executive Directors, and the Massachusetts Chapter of the National Association of Housing and Redevelopment Officials (collectively, "Plaintiffs"), appeal from the Superior Court's (Connolly, J.) dismissal of the Plaintiffs' Complaint against the Commonwealth of Massachusetts and the Department of Housing and Community Development ("DHCD") (collectively, "Defendants"). (Record Appendix ("RA") at 133 & 145; Addendum ("Add.") at 45). By this action Plaintiffs seek a declaration that certain "guidelines" established by DHCD pursuant to G.L. c. 121B, §7A exceeded the scope of the authority the Legislature granted DHCD through that statute. (RA at 38).

On January 9, 2020, Plaintiffs filed the single-count Complaint in this matter. (RA at 7). Plaintiffs seek a declaratory judgment that DHCD's adoption and enforcement of certain guidelines concerning Executive

Director pay and terms and conditions of employment (the "Guidelines") exceeded DHCD's authority to promulgate subregulatory guidance under G.L. c. 121B, §7A. (RA at 38 (Count I)). The Complaint alleges the following material facts: (1) local housing authorities ("LHAs") have the authority to employ an Executive Director and determine the Executive Director's "qualifications, duties and compensation" pursuant to G.L. c. 121B, §7 ("Section 7"); (2) G.L. c. 121B, §7A ("Section 7A") authorizes DHCD to "promulgate guidelines for contracts to be executed by the housing authority and an executive director ... review all contracts between the housing authorities and executive directors ... [and] strike contract provisions that do not conform to the guidelines"; (3) DHCD has adopted such guidelines but enforced them as obligatory regulations; and (4) DHCD did not promulgate said guidelines through any process provided for under G.L. c. 30A. (RA at 17, 20, 26-28, 38 [¶¶ 35, 60, 91-96, 99-100, 154]). The Plaintiffs claim the manner in which DHCD has enforced the Guidelines effectively makes them regulations that infringe upon the LHAs' statutory authority to determine the terms and conditions of Executive Director employment by mandating the compensation level and

material employment terms for all LHA Executive Directors in the Commonwealth. (RA at 25-27, 29, 38 [¶¶91-100, 107-109, 154-156]). It is the Plaintiffs' position that this exceeds DHCD's authority under Section 7A and unlawfully usurps the LHAs authority under Section 7. (RA at 25-27, 38 [¶¶91-96, 99, 156]).

On March 15, 2021, DHCD moved to dismiss the Complaint on grounds that the Guidelines and authority being exercised by DHCD fit within its statutory mandate pursuant to Section 7A. (RA at 8, 131-132). Plaintiffs opposed the motion, and after a hearing on November 2, 2021, by Memorandum of Decision and Order on Defendants' Motion to Dismiss, dated April 20, 2022 (hereinafter "Order"), the Superior Court entered judgment dismissing the Complaint. (RA at 8-9, 163; Add. at 54).

#### **STATEMENT OF FACTS**

Massachusetts General Laws Chapter 121B authorizes the creation of, and establishes the powers and duties of approximately 240 local housing authorities in the Commonwealth. (RA at 10). These LHAs are administered by Executive Directors, appointed by elected and/or appointed Boards of Commissioners. G.L. c. 121B, §§ 5 & 7. LHAs may employ an "executive director ... [and] determine their qualifications, duties and



compensation.” G.L. c. 121B, §7. By virtue of Chapter 235 of the Acts of 2014, the Legislature amended G.L. c. 121B in several respects, including the addition of a new section, Section 7A. (RA at 20 [¶¶ 57, 59-60])). Section 7A states:

[DHCD] shall promulgate guidelines for contracts to be executed by the housing authority and an executive director. [DHCD] may review all contracts between the housing authorities and executive directors and all terms for payments or monetary remuneration relevant to state payments; provided, however, that [DHCD] shall review all contracts and all terms for payments or monetary remuneration worth more than \$100,000 per annum. [DHCD] may strike contract provisions that do not conform to the guidelines.

While Section 7A was enacted in the aftermath of a scandal involving the Executive Director of the Chelsea Housing Authority, who had severely misallocated Chelsea Housing Authority funds and was ultimately criminally convicted for such conduct (RA at 19 [¶¶ 49, 54]), there is no other historical context showing widespread (as opposed to isolated) abuses by Housing Authorities/Executive Directors of this kind.<sup>1</sup>

DHCD issues budget guidelines and other subregulatory guidance through “Public Housing Notices”

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<sup>1</sup> Indeed, public officials are presumed to act in good faith. James Constr. Co. v. Commissioner of Public Health, 336 Mass. 143, 146 (1957).

("PHNs").<sup>2</sup> (RA at 17 [¶40] & 67). Thus, when Section 7A was enacted, DHCD adopted the "guidelines" for Executive Director employment contracts in the form of PHNs as well. (RA at 17 [¶¶39-40] & 23 [¶¶74, 77]). Prior to the adoption of G.L. c. 121B, §7A, DHCD's Executive Director salary and qualifications PHNs were significantly less frequent and detailed than those issued after adoption of Section 7A. (RA at 22-24 [¶¶69-76] and PHNs cited therein). For purposes of this brief, Plaintiffs refer to the Executive Director Salary and Qualifications Schedules, Executive Director Hiring and Contract Guidelines, and any associated Budget Guidelines collectively, as the "Guidelines" promulgated under the authority of Section 7A.

Shortly after enactment of Chapter 235 of the Acts of 2014, a working group of members of Plaintiff MassNAHRO began discussions with DHCD about the anticipated Guidelines. (RA at 24 [¶80]). Although there is nothing in Section 7A that requires or even references DHCD's promulgation of a "template" Executive Director contract, these discussions also encompassed a

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<sup>2</sup> PHNs are the primary way in which DHCD issues directives, advice and guidance to LHAs. (RA at 17 [¶40] & 67).

possible contract template that would expedite DHCD review of Executive Director contracts. (RA at 24-25 [¶¶ 80-83]). The Guidelines and contract template ultimately adopted by DHCD in 2016, however, contain “mandatory” provisions that were not raised during these discussions, and also included provisions about which concerns had been raised, e.g.: express terms and conditions for the termination of an Executive Director; blanket limitations upon fringe benefits; and binding arbitration as the required mechanism for dispute resolution. (RA at 25-26 [¶¶ 86, 88, 91-93]). The Guidelines and template contract also prohibit contract provisions that are typical in the public sector, such as longevity payments and indemnification language. (RA at 26 [¶93]). Finally, the Guidelines and the contract template limit the hours for which an Executive Director may be compensated, regardless of actual hours worked, based upon the number of units managed by the LHA. (RA at 26 [¶94]).

DHCD has claimed the Guidelines’ requirements for terms of Executive Director contracts (or use of the template contract itself) are not mandatory. (RA at 27 [¶97]). This is belied by the language of the relevant PHNs themselves (which use the term “mandatory”). (RA at

25-27 [¶¶86, 92, 99]). In fact, DHCD has rejected nearly all Executive Director contracts in other forms or that do not include the "mandatory" terms included in DHCD's template, and rejected or reverted budget submissions and given negative findings for LHAs that do not have approved Executive Director contracts. (RA at 27, 29 [¶¶99-100, 109]). DHCD has even insisted, by email and formal letter, that its contract terms must be followed and incorporated. (RA at 29 [¶107]). Moreover, though LHAs receive both state and federal funding, DHCD has taken the position that its salary caps and contract terms apply to all compensation paid to Executive Directors, irrespective of what portion of the Executive Director's work or compensation involves federally-subsidized units, other federal funding, or even funds received from other sources. (RA at 29-30 [¶¶112-113]). Thus, DHCD has dictated most of the essential terms and conditions of Executive Directors' employment, including compensation, benefits, and hours of work, thus essentially inserting itself into the employer-employee relationship that exists between LHAs and Executive Directors. (RA at 26 [¶¶92-94]).

In enforcing its Guidelines and mandating use of its employment contract template, DHCD has disapproved

LHAs' entire annual budgets (RA at 33 [¶131]), has withheld other funds due an LHA (RA at 34 [¶136]), and otherwise penalized LHAs by "negative findings" during LHA performance reviews (RA at 31, 34, 38 [¶¶121, 132, 152]).

### **SUMMARY OF THE ARGUMENT**

It was error for the lower court to dismiss the Plaintiff's Complaint on the Rule 12(b)(6) Motion filed by Defendants, and the Complaint adequately stated a plausible claim upon which relief could be granted. (pp. 15-16). Procedurally, the court erred in effectively converting Defendants' motion into a Rule 56 motion, without adequate notice to the Plaintiffs. The impact of this was that the lower court made a conclusion of law on an inadequate record. (pp. 17-18). Substantively, in determining that DHCD's Guidelines were within the authority delegated to it by the Legislature under G.L. c. 121B, §7A, the lower court failed to engage in necessary scrutiny and analysis of the Guidelines themselves. (pp. 19-20). A deeper level of analysis was required to conclude: first, whether the Guidelines and written and enforced where what was intended by the Legislature under Section 7A (pp. 20-26); and second, whether the scope and extent of the

Guidelines and DHCD's enforcement of same are consistent with an administrative agency's authority to promulgate subregulatory guidance, as there is no dispute that the Guidelines were not promulgated as formal regulations under G.L. c. 30A (pp. 26-40). The well-pleaded Complaint and all reasonable inferences drawn therefrom sufficiently stated a claim that the answer to both of the above questions is "no." (pp. 28-35). By affording Defendants more deference than is appropriate, and by failing to engage in this necessary, deeper level of analysis, the lower court did not adequately engage in the important judicial function that serves as a check and balance against excessive administrative action (pp. 35-40). The lower court's dismissal of the Complaint was plainly in error, and should be reversed.

### **ARGUMENT**

#### **I. STANDARD OF REVIEW**

This Court reviews "the allowance of a motion to dismiss *de novo*, accepting as true the facts alleged in the plaintiffs' ... complaint and exhibits attached thereto, and favorable inferences that reasonably can be drawn from them." Burbank Apts. Tenant Ass'n v. Kargman, 474 Mass. 107, 116 (2016); Fairney v. Savogran Co., 422 Mass. 469, 470 (1996)). The Plaintiffs' complaint must

contain a plain statement of the “factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief” at the pleading stage. Iannachino v. Ford Motor Co., 451 Mass. 623, 636 (2008). Assuming all allegations in the complaint are true, the factual allegations of the complaint must merely amount to a right to relief if true without speculation or conjecture. Id.

A “well-pleaded complaint may proceed even if it appears that a recovery is very remote and unlikely.” Town of Sudbury v. Massachusetts Bay Transp. Auth., 485 Mass. 774, 779 (2020) (internal quotations omitted), quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 556 (2007). Because the allegations contained in the Complaint, and the reasonable inferences drawn therefrom, plausibly suggest the Plaintiffs are entitled to the declaratory judgment sought, this Court should vacate the Superior Court’s judgment dismissing the Complaint.

**II. THE COMPLAINT PLAUSIBLY STATES A CLAIM UPON WHICH RELIEF MAY BE GRANTED TO THE PLAINTIFFS, AND THE LOWER COURT’S DISMISSAL OF THE COMPLAINT WAS IN ERROR.**

- A. The Superior Court Effectively Converted Defendants’ Motion to Dismiss Into a Motion for Summary Judgment, Without Appropriate Notice to the Plaintiffs.

The material facts alleged in the Complaint and exhibits thereto are largely undisputed. As the Superior Court observed, the relationship between Sections 7 and 7A of Chapter 121B is a main (but not only) issue in this case. (RA at 135; Add. at 47). Taking the well-pleaded facts alleged in the Complaint as true, as well as any reasonable inferences drawn therefrom, DHCD has promulgated “guidelines” but enforced them as mandates, tantamount to regulations. For example, the Guidelines place strict limits on Executive Director compensation, require written contracts between LHAs and Executive Directors, set out the circumstances in which an Executive Director must be terminated, impose binding arbitration upon the LHAs as the resolution method for disputes under the contract, and prohibit certain fringe benefits routinely provided to public employees. (RA at 137; Add. at 49). While DHCD’s initial official position was that the contract template is not mandatory, it has nonetheless insisted in written communications to Plaintiffs (and others) that its template contract be used, and has rejected “virtually all” Executive Director contracts not using the template. (RA at 29 [¶¶107-108]). DHCD has also



rejected budget submissions for LHAs that do not use the template and made negative findings for such LHAs during performance reviews. (RA at 138; Add. at 50).

The Complaint contained sufficient facts to state a claim for relief that DHCD's actions well exceeded its authority under Section 7A, which only authorized "guidelines" (and not regulations), even if the Plaintiffs are not ultimately successful on their claim. The Superior Court reached the merits of the Plaintiffs' claim when ruling on Defendants' Rule 12(b)(6) motion, which is only intended to test the sufficiency of the Complaint. In so doing, the Superior Court effectively converted the Defendants' motion to dismiss to one for summary judgment without notifying the Plaintiffs or providing them the opportunity to submit additional evidence or materials. See Stop & Shop Co., Inc. v. Fisher, 387 Mass. 889, 892 (1983) (error to convert Rule 12(b)(6) motion to summary judgment motion because plaintiff was not notified it was defending against anything other than rule 12(b)(6) motions and had no opportunity to present materials relevant under Rule 56); Orion Inc. Co. PLC v. Shenker, 23 Mass. App. Ct. 754, 757 (1987) (conversion of motion to dismiss to summary judgment motion improper unless plaintiffs on

constructive notice of same due to submission of materials not properly before court on Rule 12(b)(6) motion). In such circumstances, the appellate court can only affirm the lower court if "it appear[ed] to a certainty that [plaintiff was] entitled to no relief under any state of facts which could be proved in support of the claim." Id. at 893, quoting Reporter's Notes to Mass. R. Civ. P. 12.

While the Complaint was lengthy, detailed, and contained significant legislative history, this is not to say the Plaintiffs submitted all information and evidence relevant to a determination of the Legislature's intent when it enacted Section 7A, demonstrating the arbitrariness of the Guidelines, and/or showing how DHCD's enforcement of the Guidelines makes them, in effect, regulations that did not go through the formal rulemaking process.<sup>3</sup> The Superior Court committed an error of law by resolving the ultimate issue in the case without, at a minimum, providing the Plaintiff the opportunity to submit additional evidence to support its claims, showing the extent to which DHCD

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<sup>3</sup> There is no dispute that the Guidelines were not promulgated pursuant to G.L. c. 30A, or that G.L. c. 30A applies to regulations promulgated by it. — —

has enforced the Guidelines as mandates, and/or that the Legislature did not intend to bestow such sweeping power upon DHCD through the enactment of Section 7A.

B. The Superior Court Failed to Undertake Necessary Analyses to Conclude that the Guidelines Were Within DHCD's Statutory Authority.

The Superior Court's analysis was, unfortunately, more cursory than is required in this case. The fundamental administrative law issue presented here is whether the Guidelines, either on their own or as enforced by DHCD, are within DHCD's statutory authority under Section 7A. Yet the Superior Court did not undertake any analysis whatsoever as to the actual terms of the Guidelines to determine whether they exceeded the authority conferred to DHCD under Section 7A.<sup>4</sup> Instead, the Superior Court appears to have concluded that DHCD's position as an oversight agency permits it to impose sweeping and highly impactful new rules upon LHAs through PHNs, without limit, even when adopted as subregulatory guidance. (RA at 140-141; Add. at 52-53). While the Plaintiffs assert that this conclusion is legally incorrect, at the least, this is not a finding

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<sup>4</sup> This will be discussed further in Section B.2, infra.

or conclusion that was appropriate at the motion to dismiss stage.

1. On a Motion to Dismiss, the Complaint Plausibly Stated a Claim that DHCD's Interpretation of G.L. c. 121B, §7A Was in Excess of its Authority, Given the Provisions of G.L. c. 121B, §7.

While the starting point of analysis is the language of Section 7A, that cannot be read in a vacuum. To determine what was intended by the use of the word "guidelines" in Section 7A, we first look to common and plain usage, together with how Section 7A fits within the whole of Chapter 121B. "Guidelines" are commonly defined as "a general rule, principle, or piece of advice", or "an indication of or outline of policy or conduct."<sup>5</sup> Guidelines would advise LHAs with respect to best practices for Executive Director employment, including whether to have a written employment agreement and, if so, what terms to include.<sup>6</sup> As set forth in

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<sup>5</sup> E.g., Merriam-Webster Dictionary (<https://www.merriam-webster.com/dictionary/guideline>) (Add. at 235); Google Dictionary ([https://www.google.com/search?q=Dictionary&stick=H4sIAAAAAAANQesSoyi3w8sc9YSmZSWtOXmMU4-LzL0jNc8lMLsnMz0ssqrRiUWJKzeNZxmQFEAMA7\\_QXqzcAAAA&zx=1610374661430#spf=1610374661439&dobs=guidelines](https://www.google.com/search?q=Dictionary&stick=H4sIAAAAAAANQesSoyi3w8sc9YSmZSWtOXmMU4-LzL0jNc8lMLsnMz0ssqrRiUWJKzeNZxmQFEAMA7_QXqzcAAAA&zx=1610374661430#spf=1610374661439&dobs=guidelines)) (Add. at 234).

<sup>6</sup> By comparison, the federal Department of Housing and Urban Development (HUD) offers the following

detail in the Complaint and described herein, DHCD's guidelines are anything but "general advice" or "outlines of policy." Section 7A's use of the term "guidelines" for Executive Director contracts cannot reasonably be construed to equate to mandates encompassing all material terms and conditions of Executive Director employment, which is the effect of DHCD's Guidelines and actions enforcing the same. The "guidelines" referred to in Section 7A are more

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recommendations as to "best practices" for Executive Director contracts:

"Use employment contract provisions that protect the [Public Housing Authority]. The employment contracts should avoid unreasonable bonuses, buy-out clauses, and separation pay, and including clauses for acts of fraud, financial non-compliance, personal tort claims (harassment, hostility), etc. The employment contract should also include provisions requiring financial disclosures for positions of trust as permitted by State law."

U.S. Dept. Housing and Urban Development, Integrity Bulletin (Winter 2013)  
<https://www.hudoig.gov/sites/default/files/2019-04/Hiring%20for%20Public%20Housing%20Agencies.pdf>  
 (Add. at 229).

While it is arguable that something more than a simple paragraph of basic guidance was envisioned by the Legislature when it adopted Section 7A, the above-quoted HUD recommendation provides a ready comparison between "guidance"/"guidelines," on the one hand, and "regulations"/"mandates" on the other hand.

appropriately viewed as parameters for, and/or recommendations as to, best practices when establishing terms and conditions for the employment of Executive Directors. While DHCD may have the express statutory authority to “strike” provisions that do not comply with the Guidelines, it does not have the authority to write, rewrite, or add provisions to Executive Director contracts, which is what it has done here (as alleged in the Complaint).<sup>7</sup>

In contrast, Section 7 of Chapter 121B plainly provides the Boards of Commissioners of LHAs [and not DHCD] with the authority to “*employ ... an executive director who shall be ex officio secretary of the authority, ... and [to] determine their qualifications, duties and compensation...*” (emphasis added). The Legislature did not amend Section 7 when it added Section 7A, and as acknowledged by the lower court in its Order, the Legislature is presumed to have known of Section 7’s existence when it adopted Section 7A. See Commonwealth v. Russ. R., 433 Mass. 515, 520 (2001). As such, the

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<sup>7</sup> Arguably, DHCD’s Guidelines and mandated contract requirements also interfere with LHA’s contracting authority. See, e.g., Constonis v. Medford Hous. Auth., 343 Mass. 18, 113 (1961) (citations omitted) (“A housing authority has the contracting powers of a private corporation.”)

two statutes must be read harmoniously, and not in a manner that renders Section 7 null and void, which is exactly what DHCD's interpretation of Section 7A does to Section 7. See Janocha's Case, 93 Mass. App. Ct. 179, 182 (2018), quoting Spaniol's Case, 466 Mass. 102, 107 (2013) & Price v. Railway Express Agency, Inc., 322 Mass. 476, 480 (1948); Commonwealth v. Williamson, 462 Mass. 676, 683 (2012), quoting Bankers Life & Cas. Co. v. Commissioner of Ins., 427 Mass. 136, 140 (1998) & 2A B. Singer, Sutherland Statutory Construction §46.06 (5th ed.1992)).

DHCD's Guidelines are at odds with Section 7, and effectively render void Section 7's provisions with respect to Executive Director hiring, and terms and conditions of employment. Indeed, the Guidelines are even in conflict with Section 7A itself, because they impose strict requirements upon LHAs, instead of the parameters within which LHAs may work, as the term "guidelines" would generally suggest. Thus, while the Court must reconcile Sections 7 and Section 7A of G.L. c. 121B and defer to DHCD's reasonable interpretations of Chapter 121B, it need not and should not defer to DHCD's interpretations that are inconsistent with the plain language of Section 7A, and must ensure that DHCD's

interpretation is reasonable. Compare Arlington Hous. Auth. v. Secretary of Communities & Dev., 409 Mass. 354, 359-360 (1991) (court rejecting statutory interpretation of DHCD's predecessor organization, in the context of agency-promulgated regulations).

The most reasonable reading of Section 7A, when considered in conjunction with Section 7, is that DHCD can identify reasonable and broad parameters for Executive Director hiring and compensation. DHCD's Section 7A authority is to promulgate guidelines provides a mechanism for DHCD to ensure that an LHA Board of Commissioners carefully considers the terms of a contract it enters into with an Executive Director. This interpretation of Section 7A would preserve the LHA's Board of Commissioner's authority, under Section 7, to negotiate employment agreements and the terms and conditions of Executive Director employment while allowing DHCD to fulfill its important oversight function.

Such an interpretation is also consistent with what DHCD has done historically with its Executive Director Salary and Qualification Schedules. Prior to the enactment of Section 7A, DHCD's issuance of Executive Director Salary and Qualifications Schedules was



sporadic and unpredictable. (See RA 23 [¶75]). In light of the long lag time since DHCD had issued an Executive Director Salary and Qualifications Schedule prior to the enactment of Section 7A, it is reasonable to interpret Section 7A as a directive to DHCD to be more consistent in this regard, rather than signaling a wholesale conferral upon DHCD to essentially step into the shoes of Board of Commissioners and dictate how these boards exercise their authority under Section 7.

Additionally, although DHCD had, in 2012, called for development and implementation of a required Executive Director contract (RA 19 [¶52]), this was not made part of Section 7A (or any other part of Chapter 235 of the Acts of 2014). There simply is nothing to support DHCD's interpretation of Section 7A as authorizing it to mandate a specific employment contract and dictating all of those contract terms. Finally, legislative history shows that a redistribution of power over LHAs was considered, whereby LHAs would be eliminated and replaced with regional housing authorities, but the Legislature rejected this option (RA at 19-20 [¶¶55, 58]), leaving LHAs under local control.

Considering all of these factors, had the Legislature intended to essentially remove some or all of Boards of Commissioners' authority under Section 7 in this regard and transfer that authority to DHCD, it would have amended Section 7 accordingly. "Statutes that relate to the same subject matter are not to be construed 'in a way that produces absurd or unreasonable results when a sensible construction is readily available.'" Manning v. Boston Redev. Auth., 400 Mass. 444, 453 (1987). Here, DHCD's interpretation of Section 7A and its overly expansive view of "guidelines," both independently and together with its enforcement of the Guidelines, results in a direct conflict with Section 7, and must be rejected.

2. DHCD's Guidelines are Subregulatory Guidance, and as Such, the Guidelines and DHCD's Actions in Enforcing the Guidelines Require Greater Scrutiny to Determine Whether They are Within the Scope of Authority Delegated under Section 7A.

Considering that DHCD's Guidelines were not promulgated as formal regulations, greater judicial scrutiny is warranted. When the "scope of agency authority is at issue, [the courts] must determine whether the agency is acting within 'the powers and

duties expressly conferred upon it by statute and such as are reasonably necessary to carry out its mission.'"  
Morey v. Martha's Vineyard Comm'n, 409 Mass. 813, 818 (1991). If "the Legislature has spoken with certainty on the topic in question ... [and] the statute is unambiguous, [the court] give[s] effect to the Legislature's intent," but if not, the court determines whether the agency action can "be reconciled with the governing legislation." Goldberg v. Board of Health of Granby, 444 Mass. 627, 632-633 (2005).

Though agencies have broad discretion to act within the scope of their enabling legislation, "[t]he principle of according weight to an agency's discretion ... is 'one of deference, not abdication,'" and the court should not "hesitate to overrule agency interpretations of statutes or rules when those interpretations are arbitrary or unreasonable." Armstrong v. Secretary of Energy and Env'tl. Affairs, 490 Mass. 243, 247 (2022), quoting Moot v. Department of Env'tl. Protection, 448 Mass. 340, 346 (2007). "[A]n 'incorrect interpretation of a statute ... is not entitled to [agency] deference.'" Atlantic Med. Ctr. v. Commissioner of Div. of Medical Assistance, 439 Mass. 1, 7 (2003), quoting Massachusetts Hosp. Ass'n v. Department of Med. Sec., 412 Mass. 340,

345-346 (1992) and Kszezka's Case, 408 Mass. 843, 847 (1990); see also Woods v. Executive Office of Communities and Dev., 411 Mass. 599 (1992) (no deference is afforded to an agency's improper interpretation of statute; court rejecting interpretation of statute made by DHCD's predecessor organization).

Section 7A is not ambiguous with respect to what DHCD is allowed to create concerning Executive Director contracts: guidelines. It is an indispensable tenet of administrative law that guidelines are distinct from, and do not carry the legal import of, formal regulations. An agency's guidelines concerning a matter within its jurisdiction, while subject to some deference, "do not carry the force of law." Dahill v. Police Dept. of Boston, 434 Mass. 233, 239 (2001); compare Williams v. Hanover Hous. Auth., 871 F. Supp. 527, 531-532 & n.4 (D. Mass. 1994) (citations omitted) (discussing legal weight to be affording federal agency interpretative guidance as opposed to regulations promulgated in accordance with federal rulemaking requirements).

In dismissing this Complaint, the Superior Court accepted Defendants' argument that, because DHCD has general oversight authority over LHAs, and because Section 7A directs DHCD to adopt "guidelines" concerning

Executive Director contracts, DHCD's authority to adopt such guidelines was essentially limitless. In so doing, however (and as noted previously), the Superior Court did not undertake any analysis of the specific terms of DHCD's Guidelines, or make any conclusions of law as to the propriety of the specific terms of the Guidelines when adopted as subregulatory guidance (as opposed to formal regulations), together with DHCD's subsequent actions enforcing these Guidelines. Instead, the Superior Court accepted DHCD's assertion that its broad oversight role supported the Guidelines, without question.

Both DHCD and the Superior Court cite to the 1973 Supreme Judicial Court decision in Commissioner of Dept. of Community Affairs v. Medford Hous. Auth., 363 Mass. 826 (1973) for this proposition. But it must be remembered that this case involved formal regulations promulgated by DHCD. Similarly, the sole appellate decision that has since cited to the now-45 year old Medford Housing Authority decision to support DHCD's broad oversight authority over LHAs, also deals with formally-adopted regulations and not subregulatory guidance. See Harborview Residents' Comm., Inc. v. Quincy Hous. Auth., 368 Mass. 425 (1975). The Plaintiffs

are not aware of any appellate decisions addressing the scope and extent of DHCD's authority to promulgate "guidelines" on any particular subject. The courts have rejected provisions of DHCD's regulations when they conflict with state law. See, e.g., Springfield Hous. Auth. v. Labor Relations Comm'n, 16 Mass. App. Ct. 653, 659-660 (1983); see also Medford Hous. Auth., 363 Mass. at 832-833 (citations omitted) (court upholding agency regulations but acknowledging that they nonetheless remain open to judicial scrutiny "if practice should show up particular features in a new light."). Certainly, greater deference should not be afforded to the Guidelines than would be afforded to formally promulgated regulations, in this context.

In affording substantial deference to DHCD, however, the Superior Court essentially ignored any legal difference between guidelines and regulations. This was in error. As this Court knows, regulations are binding and involve a deliberative process that includes public notice, the opportunity for public comment and in some cases public hearing, filing with the Secretary of the Commonwealth, and publication of the final regulations in the Massachusetts Register. G.L. c. 30A, §§2-6. Properly promulgated state regulations have the

force of law, as if they were passed by the Legislature and signed by the Governor. Purity Supreme, Inc. v. Attorney Gen., 380 Mass. 762, 769 (1980); see also Borden, Inc. v. Commissioner of Pub. Health, 388 Mass. 707, 723 (1983).

In contrast, agency *guidelines* do not have to go through the process of providing public notice of the proposed content, soliciting and/or responding to public comment, and do not have the force of law or the presumption of validity. See DeCosmo v. Blue Tarp Redev. LLC and Schuster v. Wynn Resorts Holdings, LLC, 487 Mass. 690, 694-695 (2021) (citation omitted)<sup>8</sup>; Global NAPs, Inc. v. Awiszus, 457 Mass. 489, 496-497 (2010); see also Golchin v. Liberty Mut. Ins. Co., 460 Mass. 222, 229 (2011) ("Merely because [an agency] is possessed of authority regarding a particular topic does not render [its] every pronouncement regarding that topic a regulation possessing the full force and effect of a statute."); Massachusetts General Hosp. v. Rate Setting Comm'n, 371 Mass. 705, 707 (1977 ) ("A holding that

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<sup>8</sup> Of note, the DeCosmo case involved agency "rules," not regulations, but as the Court noted, those rules "undergo a thorough approval process more similar to the promulgation of regulations" than other policy guidance. 487 Mass. at 695.

notice and hearing are not required for a particular agency promulgation is cushioned by the consequence that it does not have the binding force attributable to a full-blown regulation.”); Williams, 871 F. Supp. at 531-532; contrast Pepin v. Division of Fisheries & Wildlife, 467 Mass. 210, 221 (2014) (properly promulgated regulations are presumptively valid) (citations omitted).

Subregulatory guidance is appropriate to “‘fill in the details or clear up an ambiguity of an established policy’ without resort to formal rulemaking as long as it does not contradict its enabling statute or preexisting regulations.” Genworth Life Ins. Co. v. Commissioner of Ins., 95 Mass. App. Ct. 392, 396 (2019), quoting Massachusetts Gen. Hosp., 371 Mass. at 707. Subregulatory guidance can also be used to “rationalize existing [agency] procedures” in response to the conduct of regulated entities. Atlas Distrib. Co. v. Alcoholic Beverages Control Comm’n, 354 Mass. 408, 414 (1968) (reinterpretation of reasoning behind existing rule not within definition of “regulation” in G.L. c. 30A, §1(5)).

Importantly, however, while subregulatory guidance is appropriate to “fill in the details or clear up an



ambiguity of an established policy," it is not an appropriate vehicle to "inaugurate a material change of policy." Boston Retirement Bd. v. Contributory Retirement Appeals Bd., 441 Mass. 78, 83 (2004), quoting Massachusetts Gen. Hosp., 371 Mass. at 707. While DHCD's Executive Director Salary and Qualifications Schedules prior to the enactment of Section 7A had generally established salary parameters, basic qualifications, and minimum hours of work for Executive Directors (RA at 23 [¶75 and PHNs cited therein]), this is a far cry from what it has done in its Guidelines, including with the mandatory requirements for Executive Director contracts. It is essential, therefore, that the actual provisions of the Guidelines be analyzed in order to determine whether they are: 1) legally within the scope of authority conferred upon DHCD by the Legislature; and 2) appropriate for subregulatory guidance.

The Legislature's use of the term "guidelines" rather than "regulations" has meaning. Because of the significant impact regulations may have, the Legislature must expressly or implicitly delegate regulatory authority to a state agency, and such authority may only be exercised in compliance with the regulatory process set forth in Chapter 30A. See G.L. c. 30A, §§2-3, 5-6;

Telles v. Commissioner of Ins., 410 Mass. 560, 563 (1991), citing Massachusetts Declaration of Rights, art. 30; Borden, 388 Mass. at 721. Because DHCD did not comply with Chapter 30A when it promulgated the Guidelines, the Guidelines cannot be enforced as mandatory regulations and must be treated as the guidance implied by the Legislature's use of the term "Guidelines" in Section 7A.

The Legislature is well aware of the distinction between regulations and guidelines and chose to use the term "guidelines" in Section 7A for a reason. Chapter 235 of the Acts of 2014, the reform legislation that added Section 7A, itself distinguishes between instances in which DHCD was authorized to adopt regulations on specific subjects as opposed to "guidelines." Compare G.L. c. 121B, §5A (regulations with respect to tenant elections); G.L. c. 121B, §26D (regulations regarding LHA websites and posting of information thereon); and G.L. c. 121B, §28A (regulations regarding annual plans), with G.L. c. 121B, §7A (quoted above) and G.L. c. 121B, §26B (DHCD shall promulgate "guidelines for designating a housing authority as 'chronically poor performing' under the monitoring program" required to be established under Section 26B).

Chapter 121B contains several other instances in which the Legislature directed DHCD to promulgate “regulations” relative to public housing authorities’ operations. See, e.g., G.L. c. 121B, §39 & 40 (tenant selection standards); G.L. c. 121B, §26 (dissemination of personal data); G.L. c. 121B, §29 (standards for planning, constructing, maintaining, and operating housing projects). DHCD has, in fact, promulgated numerous sets of state regulations governing LHA operations in accordance with these and other statutory provisions. See, e.g., 760 CMR 4.00, *et seq.* (general administration of housing authorities); 760 CMR 5.00, *et seq.* (tenant eligibility and selection criteria); 760 CMR 6.00, *et seq.* (occupancy and rent determination standards for state-aided public housing); 760 CMR 8.00, *et seq.* (privacy and dissemination of personal data); and 760 CMR 11.00, *et seq.* (preservation, modernization and development of state-funded public housing). Thus, if the Legislature intended DHCD to promulgate requirements for Executive Director contracts that have the force of state law, it would have used the word “regulations” in Section 7A.

The Superior Court did not address the important distinction between agency regulations and guidelines,

but instead deferred wholly to DHCD's view that it could, essentially, do anything it wanted in its Guidelines. In itself, that conclusion has significant ramifications - not just in this case but with respect to all state administrative agencies, as it impermissibly conflates administrative regulatory power with policymaking power. As reflected in the cases cited above, judicial review of agency actions serves an important check and balance on overly broad exercises of agency authority. All impacted by agency action such as in this case rely upon the courts to engage in this significant function.

Scrutiny of the actual terms of the Guidelines shows them to be more akin to regulations.<sup>9</sup> First, the Guidelines require all LHA Executive Directors to have written employment contracts, when nothing in Section 7 or Section 7A suggest the Legislature intended to impose such a requirement. Section 7A simply says DHCD is to review Executive Director contracts, implicitly meaning when such contracts exist, as contractual obligations have different legal effect than non-contractual obligations. Simply stated, there is nothing in G.L. c.

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<sup>9</sup> While the lower court cited to these types of provisions in the "Background" portion of its Order, they were not otherwise analyzed substantively. [RA at 136-141; Add. at 48-53).

121B, including Section 7A, that authorizes DHCD to require written employment contracts. In other instances, the Legislature has stated when it intends to require the execution of an employment contract. See, e.g., G.L. c. 7, §49 (“The public employee retirement administration commission shall select an executive director, *and enter into an employment contract with said director.*”) (emphasis added).

Second, the Guidelines dictate the number of hours Executive Directors may work. (RA at 26 [¶94]). The Guidelines contain a cap on the number of hours for which Executive Directors may be compensated based upon the number of units in the LHA, but this does not take into account the wide variations in staffing different housing authorities have. (RA at 26, 30 [¶¶95, 114]). This is precisely the type of top-down rulemaking untethered to real world circumstances that results from the promulgation of what are in effect binding regulations without the notice and comment process. Had DHCD engaged with any small LHAs, it would have understood the significance of its decision to impose blanket standards with respect to hours for which Executive Directors may be compensated without reference to overall staffing at the LHA.

Third, DHCD's template contract controls significant terms and conditions of Executive Director employment, including:

1. Terms and conditions governing, and even mandating, termination of employment;
2. Limitations upon certain fringe benefits, without regard to the benefits offered to other LHA staff, and based upon state employee union contractual benefits that have no applicability here;
3. Precluding the inclusion of terms typical in public sector employment contracts, such as longevity payments<sup>10</sup> and indemnification language;

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<sup>10</sup> Had this case been allowed to proceed in the normal course, evidence would have been presented to the court to demonstrate how arbitrary DHCD has been in its promulgation of Executive Director "guidelines." For instance, in the most recent Budget Guidelines, PHN 2022-16 (<https://www.mass.gov/doc/phn-2022-16-fy2023-budget-guidelines/download>) [Add. at 113], DHCD now allows Executive Directors to be paid for "longevity," where it had before prohibited this practice. Surprisingly, DHCD directs that these longevity payments must be characterized as "bonuses" and paid from non-state funds. [Add. at 107]. DHCD characterizes longevity payments as "bonuses" that "should not affect retirement compensation", *id.*, despite the fact that longevity payments are considered "regular compensation" for purpose of calculating retirement compensation under G.L. c. 32. See 840 CMR 15.03(2) (including compensation received for length of service in calculation of regular compensation for retirement purposes).

4. Forcing the parties to submit to binding arbitration as the required mechanism for dispute resolution; and

5. Limiting salary, regardless of the LHA's financial situation, the Executive Director's experience, or what percentage of an Executive Director's total compensation is paid for from federal as opposed to state funding.

(RA at 22, 26, 29-30, 33 [¶¶70, 92-93, 110, 113, 130]).

Aside from the fact that these mandates deprive LHAs and their Boards of Commissioners of their statutory authority under Section 7, DHCD has no specialized expertise or knowledge with respect to public sector employment contracts, or relevant terms thereof. One need only look at the fact that the original Executive Director contract template contained a patently illegal term that DHCD removed in a subsequent version of the template contract (after this was pointed out by Plaintiff MassNAHRO).<sup>11</sup> (RA at 25 [¶¶88-89]);

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<sup>11</sup> As set forth in Attorney General Advisory 99/1, <https://www.mass.gov/doc/attorney-generals-advisory-on-vacation-policies/download> (Add. at 233-234), vacation payments are wages under G.L. c. 149, §148, and payment for accrued but unused vacation cannot be withheld upon termination of employment, for any reason. DHCD's original Executive Director contract template provided that "[i]n the event that the Contract is

compare PHN 2016-40, p. 10 (<https://www.mass.gov/files/documents/2017/10/04/2016-40.pdf>) (Add. at 198) with PHN 2017-25, p. 10 (<https://www.mass.gov/files/documents/2017/11/01/2017-25.pdf>) (Addendum at 165).<sup>12</sup>

Lacking any specialized expertise on the precise topic at issue in this case, DHCD is not entitled to the deference the lower court afforded it when considering the Motion to Dismiss.

### **CONCLUSION**

For all of the foregoing reasons, the Complaint in this matter states a claim upon which relief could plausibly be granted. It was erroneous as a matter of law for the lower court to determine that DHCD was entitled to substantial deference in its interpretation of its authority under G.L. c. 121B, §7A as allowing DHCD to promulgate “guidelines” that in fact act as – and are enforced by DHCD as – formally promulgated

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terminated by the Authority for cause pursuant to Section 14(B)(i) below, Executive Director shall not be paid for any such accrued but unused vacation time.” This provision was deleted from subsequent contract templates.

<sup>12</sup> Moreover, DHCD’s application of its Guidelines has changed over time, and even varied depending upon the LHA involved. Such evidence would have been presented to the court had DHCD’s Motion to Dismiss been denied and the case was allowed to proceed, as it should have been.



regulations. It was error to make that determination on a superficial level, without examining DHCD's actions in enforcing its Guidelines. While the Superior Court's decision is not precedential, the implication thereunder is that DHCD has unfettered authority under the guise of "Guidelines" to establish the terms and conditions of LHA executive directors' employment.

This is inconsistent with Section 7A, and it is the courts' responsibility to ensure that DHCD exercise of administrative authority does not go unchecked. Failing to do so could very well signal to DHCD and other administrative agencies that they can accomplish more through subregulatory guidance than the Legislature intends. The Plaintiffs respectfully request that this Honorable Court vacate the judgment dismissing the Complaint entered by the Superior Court and remand the matter for further proceedings consistent with the opinion of this Court.

PLAINTIFFS-APPELLANTS,

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Dated: November 18, 2022  
 824208/MassNAHRO/0007

**CERTIFICATION PURSUANT TO RULE 16(k)**

I, Michele Randazzo, hereby certify that the foregoing Plaintiffs/Appellants brief complies with the Massachusetts Rules of Appellate Procedure pertaining to the filing of briefs, including but not limited to Mass. R. App. P. 16(a), 16(e), 16(f), 16(h) and 20.

/s/ Michele Randazzo

**CERTIFICATE OF SERVICE**

I, Michele Randazzo, hereby certify that on the below date, I served a copy of the foregoing Plaintiff/Appellants' Brief and Addendum by electronic mail, to:

Amy Spector, Esq.  
Eric A. Haskell, Esq.  
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Boston, MA 02108

/s/ Michele Randazzo (BBO# 564906)

Dated: November 18, 2022

**ADDENDUM**

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NOTIFY

V4/26

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 2084CV00078

FAIRHAVEN HOUSING AUTHORITY, LAWRENCE HOUSING AUTHORITY,  
MEDFORD HOUSING AUTHORITY, NANTUCKET HOUSING AUTHORITY,  
PROVINCETOWN HOUSING AUTHORITY, STONEHAM HOUSING AUTHORITY,  
SUDBURY HOUSING AUTHORITY, RENEE H. CEELY, EXECUTIVE DIRECTOR  
NANTUCKET HOUSING AUTHORITY, KRISTIN HATCH, EXECUTIVE DIRECTOR  
PROVINCETOWN HOUSING AUTHORITY, EFRAIN ROLON, EXECUTIVE  
DIRECTOR LAWRENCE HOUSING AUTHORITY, SHARON WILKINS, FORMER  
EXECUTIVE DIRECTOR STONEHAM HOUSING AUTHORITY, BRIAN COSTELLO,  
FORMER EXECUTIVE DIRECTOR WATERTOWN HOUSING AUTHORITY, and  
MASSACHUSETTS CHAPTER NATIONAL ASSOCIATION OF HOUSING AND  
REDEVELOPMENT OFFICIALS

vs.

COMMONWEALTH OF MASSACHUSETTS and MASSACHUSETTS DEPARTMENT  
OF HOUSING AND COMMUNITY DEVELOPMENT

MEMORANDUM OF DECISION AND ORDER ON  
DEFENDANTS' MOTION TO DISMISS

Plaintiffs, seven local housing authorities ("LHAs"), five current or former LHA executive directors, and the Massachusetts Chapter National Association of Housing and Redevelopment Officials, bring this action challenging guidelines issued by the defendant, the Department of Housing and Community Development ("DHCD"), governing salaries and other terms of employment of LHAs' executive directors. Plaintiffs seek a declaration that DHCD's guidelines and its actions in enforcing those guidelines exceed DHCD's authority and usurp the authority of LHAs. The matter is now before the court on the Defendants' Motion to Dismiss. For the reasons that follow, the Defendants' Motion to Dismiss is ALLOWED.

NOTICE SENT (2)  
04.28.22

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## BACKGROUND

### **I. Statutory Background**

Public housing developments in Massachusetts are owned and operated locally by LHAs, subject by statute to DHCD oversight . There are two types of public housing developments in Massachusetts: those that receive operating subsidies from DHCD, known as “state-aided public housing” and those that receive subsidies from the federal government, known as “federal public housing.” LHAs may own and/or operate state-aided public housing only, federal public housing only, or some combination of both. Common to all public housing in the state is that they are supported by public financial subsidies, whether from the state, the federal government, or both.

General Laws c. 121B sets forth the purposes, powers, and responsibilities of LHAs and DHCD and the nature of the relationship between the two agencies. See *West Broadway Task Force, Inc. v. Commissioner of the Dept. of Community Affairs*, 363 Mass. 745, 747 (1973) (stating same for Department of Community Affairs (“DCA”), predecessor to DHCD). Pursuant to G.L. c. 121B, LHAs have “operating responsibility and corresponding powers regarding the finances, construction, maintenance, and day-to-day management of housing projects” in their respective cities and towns. *Id.* at 748, citing G.L. c. 121B, §§ 1, 3, 7, 11-16, 26-37. DHCD is the “administrative superior with power to oversee most phases of the operations of the local housing authorities, and to that end it is given various powers of approval and veto of the activities of those authorities together with rule making power and power to demand reports and other information.” *Id.*, citing G.L. c. 121B, §§ 1, 11, 29, 30-32, 34, 35, 37; c. 23B, § 1, 3; see also *Commissioner of the Dep’t of Community Affairs v. Medford Housing Auth.*, 363 Mass. 826, 830 (1973) (agreeing with DCA’s contention that Legislature intended LHAs to be “operating agencies” ... subject to the broad supervision and control of DCA”). “The statute

sets before [LHAs], as operator[s], and [DHCD], as supervisor, the goal of providing decent, low cost housing.” *Id.*, citing G.L. c. 121B, § 32 (“It is hereby declared to be the policy of this commonwealth that each housing authority shall manage and operate decent, safe and sanitary dwelling accommodations at the lowest possible cost, and that no housing authority shall manage and operate any such project for profit.”).

At issue in this case is the relationship between G.L. c. 121B, § 7 and § 7A. Section 7 provides that an LHA “may employ ... an executive director who shall be ex officio secretary of the authority ... and shall determine their qualifications, duties and compensation....” G.L. c. 121B, § 7. In 2014, the Legislature amended G.L. c. 121B,<sup>1</sup> and added § 7A<sup>2</sup>, which states:

The department shall promulgate guidelines for contracts to be executed by the housing authority and an executive director. The department may review all contracts between the housing authorities and executive directors and all terms for payments or monetary remuneration relevant to state payments; provided, however, that the department shall review all contracts and all terms for payments

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<sup>1</sup> This amendment may be seen as the legislative response to reports that the Chelsea Housing Authority was providing its Executive Director with salary increases that were “vastly higher than those permitted by the regulatory limits imposed by DHCD,” and allowing the Executive Director to file budget reports with “deliberately falsified salary figures.” *Chelsea Housing Auth. v. McLaughlin*, 482 Mass. 579, 581-582 (2019). For example, in 2011, the Chelsea Housing Authority approved a salary of \$291,975 for McLaughlin, but he reported to the state that his salary was only \$160,415. *Id.* at 582.

<sup>2</sup> The Legislature also added § 26B, which provides, in relevant part:

(d) The department shall establish guidelines for designating a housing authority as “chronically poor performing” under the monitoring program.... If a housing authority is designated as “chronically poor performing”, the department may appoint a chief administrative and financial officer, hereinafter referred to as CAFO, who shall be responsible for the overall administration of the housing authority.... If the department finds clear and convincing evidence of a demonstrable threat to tenant safety attributable to the conduct of the executive director or financial misconduct or criminal activity by the executive director, the department may terminate the employment of the executive director in accordance with the executive director’s employment agreement with the authority as approved by the department.

or monetary remuneration worth more than \$100,000 per annum. The department may strike contract provisions that do not conform to the guidelines.

St. 2014, c. 235, effective Nov 4, 2014.

## II. Public Housing Notices

DHCD uses Public Housing Notices (“PHNs”) to, among other things, provide guidance, instructions, clarifications, and other policy information. In 2020, when Plaintiffs brought this action, certain PHNs regarding Executive Directors were in place, including (1) 2019-29, “Clarification of DHCD Standards for Reviewing Benefits Provisions of Local Housing Authority Executive Director Contracts,” (2) 2019-21, “Executive Director Salary and Qualifications Schedule,” (3) 2017-25, “Revised DHCD Guidelines for Executive Director Contracts,” (4) 2017-21, “DHCD Guidelines for Local Housing Authority Hiring of Executive Director,” and (5) 2017-18, “DHCD Guidelines for At-Will Employment of Executive Director.”<sup>3</sup>

For fiscal year 2020, PHN 2019-21 caps the salary that an executive director may receive “from direct employment by one or two LHAs ... at \$180,000.” Further, “the maximum salary for an executive director when including additional salary taken from other program activities remains at \$198,000.”<sup>4</sup> Executive directors whose current salary exceeds this salary cap are not

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<sup>3</sup> Prior to the enactment of § 7A, DHCD issued similar guidelines. See, e.g., PHN 2012-02, “Interim Rule to the Executive Director Salary and Qualification Schedule” (stating that executive director’s compensation shall not exceed \$160,000 per year unless approved by DHCD); PHN 2007-06, “Executive Directory Salary and Qualifications Schedule Effective 07/01/07” (establishing salary schedule and minimum qualifications for executive directors).

<sup>4</sup> Plaintiffs allege that DHCD disapproves executive director contracts containing any benefits provision that is in excess of those benefits “received by unionized State employees through collective bargaining,” regardless of what percentage an executive director’s compensation is paid for through funds received from the state and what percentage is paid through funds received from the federal government or any other source.



able to receive a salary increase until DHCD publishes a new salary schedule. In addition, 2019-21 sets the number of “required hours” an executive director must work.

PHN 2017-21 requires written employment contracts between executive directors and LHAs, “the terms of which are governed by the DHCD Guidelines for Executive Director Contracts[, PHN 2017-25,] or the DHCD Guidelines for At-Will Employment of Executive Director[, PHN 2017-18].” PHN 2017-25 “set[s] forth the minimum requirements for the contract of employment, including the mandatory contract cover sheet, required basic terms, other material terms ..., restrictions on any such terms, as well as prohibited terms.” PHN 2017-25 includes a list of “mandatory contract provisions” and requires that these provisions comply with certain requirements. For example, a contract must provide for termination of an executive director “for cause” and binding arbitration as the mechanism for dispute resolution. Further, PHN 2017-25 limits the amount of accrued but unused vacation or sick time for which an executive director may be compensated upon termination and the circumstances in which such post-termination compensation can occur, and prohibits “longevity payments” and provisions allowing indemnification of an executive director. PHN 2017-25 also provides that “[e]very contract of employment executed by a housing authority and an executive director is subject to review and written approval by DHCD, to ensure that the guidelines and standards for executive director employment contracts have been met” and sets out the procedure for DHCD approval. DHCD “highly recommends use of [its Contract for Employment of Executive Director template] in order to facilitate [DHCD’s] prompt review and approval, and will provide expedited review for housing authorities utilizing the contract template.”

### III. Plaintiffs' Complaint

Plaintiffs allege that DHCD has rejected “virtually all” Executive Director contracts that have not used DHCD’s template. Plaintiffs further allege that when LHAs do not use DHCD’s template, DHCD takes such actions as rejecting LHAs’ budget submissions and making negative findings during LHAs’ performance reviews. Finally, if LHAs do not acquiesce to DHCD’s guidelines, DHCD has “impose[d] its will upon” LHAs, to the detriment of LHAs and their employees, including executive directors.

### DISCUSSION

To withstand a motion to dismiss under Mass. R. Civ. P. 12(b)(6), a complaint must allege facts plausibly suggesting entitlement to relief. *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008). While a complaint need not set forth detailed factual allegations, a plaintiff is required to present more than labels and conclusions and must raise a right to relief above the speculative level. *Id.*

Plaintiffs argue that the PHNs issued by DHCD are not the “guidelines” the Legislature instructed it to promulgate; instead, they are “mandates,” which exceed DHCD’s statutory authority under Section 7A. They also contend that some of the PHNs requirements, such as those that mandate written employment contracts between LHAs and executive directors, the total number of hours that executive directors may work, the benefits that may be offered to executive directors, the salary that may be offered to executive directors, and the job qualifications of executive directors, deprive LHAs of their statutory authority to determine executive director qualifications, duties, and compensation under § 7. The court disagrees.

The Legislature ordered DHCD to promulgate guidelines for executive director contracts and the court assumes, as it must, that the Legislature was aware that Section 7 stated that LHAs

determine qualifications, duties, and compensation when it amended G.L. c. 121B to add Section 7A. See *Charland v. Muzi Motors, Inc.*, 417 Mass. 580, 582 (1994); *Commonwealth v. Russ R.*, 433 Mass. 515, 520 (2001) (“[T]he Legislature is presumed to be aware of existing statutes when it amends a statute or enacts a new one.”); *Commonwealth v. Washington*, 2012 Mass. App. Unpub. LEXIS 252 \*3-4 (2012) (Legislature is presumed to know effect of amendments on statutes with which amendments relate).

If possible, the court is to interpret Section 7A in harmony with the rest of G.L. c. 121B to give rise to a consistent body of law. See *Charland*, 417 Mass. at 583; *Chief of Police of Dracut v. Dracut*, 357 Mass. 492, 499 (1970) (“In its enactment the Legislature presumably knew the existing statute .... All the statutes must be construed, where capable, so as to constitute a harmonious whole consistent with the legislative purpose disclosed in the new act.”); *Haines v. Town Manager of Mansfield*, 320 Mass. 140, 142 (1946) (“The legislative intent is to be ascertained from the statute as a whole, giving to every section, clause and word such force and effect as are reasonably practical to the end that ... the statute will constitute a consistent and harmonious whole, capable of producing a rational result consonant with common sense and sound judgment.”).

As stated earlier, the Supreme Judicial Court (“SJC”) identified DHCD’s predecessor, DCA, as the “administrative superior with power to oversee most phases of the operations of the local housing authorities, and to that end it is given various powers of approval and veto of the activities of those authorities together with rule making power and power to demand reports and other information.” *West Broadway Task Force, Inc.*, 363 Mass. at 747. The SJC later agreed with DCA that the Legislature intended LHAs to be subject to the broad supervision and control

of DCA. See *Commissioner of the Dep't of Community Affairs*, 363 Mass. at 830 (citing various legislative history put forth by DCA).<sup>5</sup>

And indeed, there are numerous provisions in G.L. c. 121B exhibiting the Legislature's intent to give DHCD extensive oversight and control over LHAs. See, e.g., G.L. c. 121B, § 32 ("The prorated cost of operations [of a housing project] shall be computed on the basis of the operating budget of the housing authority *as approved by the department* with provisions for a full operating reserve.") (emphasis added); G.L. c. 121B, § 26B ("If the department finds clear and convincing evidence of a demonstrable threat to tenant safety attributable to the conduct of the executive director or financial misconduct or criminal activity by the executive director, *the department may terminate the employment of the executive director in accordance with the executive director's employment agreement with the authority as approved by the department.*") (emphasis added); G.L. c. 121B, § 29 (DHCD "shall investigate the budgets, finances and other affairs of housing authorities and the housing authority's dealings, transactions and relationships"); see also 1970–1971 Op AG, No. 49 (if housing authority determines compensation of its executive director in accordance with § 7, DCA, in reviewing proposed operating budget of authority, may require such authority to change executive director's compensation to amount that meets approval of DCA). And as noted in footnote 3, *supra*, DHCD exercised this control and oversight before the Legislature enacted Section 7A.

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<sup>5</sup> In that case, the SJC also rejected the argument of the plaintiff LHA that DCA had "no legislative authority to make rules for the internal operation of local housing projects, that the DCA regulations, instead of prescribing 'standards' and 'principles,' restrict the operations of the LHA and take away any individual discretion in its essential operating and management functions, and that G.L. c. 121B, § 32, spells out in detail the requirements the LHA must follow in the internal operation of its affairs." *Commissioner of the Dep't of Community Affairs*, 363 Mass. at 830.

Moreover, the Legislature has a responsibility to protect the public fiscal and ensure that public dollars supporting LHAs are being used to support the mission of providing sanitary, safe, affordable housing across the Commonwealth.

The court thus concludes that it is harmonious to interpret Sections 7 and 7A as providing that LHAs shall determine an executive director's qualifications, duties, and compensation within the parameters set by DHCD's guidelines. That the Legislature intended to strengthen DHCD's oversight and control over LHAs in enacting Section 7A is consistent with the history of G.L. c. 121B as interpreted by the SJC.

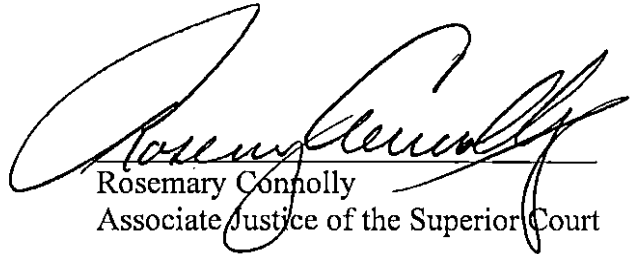
Moreover, an agency's interpretation of a statute set out in the agency's guidelines, although not carrying the force of law as do properly promulgated regulations, is entitled to substantial deference. *Global NAPs, Inc. v. Awiszus*, 457 Mass. 489, 496-497 (2010) *Dahill v. Police Dep't of Boston*, 434 Mass. 233, 239 (2001), and cases cited. Cf. *Flagg v. AliMed, Inc.*, 466 Mass. 23, 32 n.19 (2013) (agency interpretations that are inconsistent with statutory provisions are not entitled to any deference and must be rejected). Giving DHCD the substantial deference it is due, the court determines that DHCD's interpretation of Section 7A as set out in the PHNs is not inconsistent with G.L. c. 121B.

As Plaintiffs have not shown that they have stated a claim upon which relief can be granted on their request that the court declare that DHCD's guidelines and its actions in enforcing those guidelines exceed DHCD's authority and usurp LHAs' authority, the complaint is dismissed. See *Buffalo-Water 1, LLC v. Fidelity Real Estate Co., LLC*, 481 Mass. 13, 17-18 (2018) ("[W]here a party moves to dismiss a properly brought declaratory judgment claim under rule 12 (b)(6) and where the judge concludes that the facts alleged in the complaint fail to state a claim upon which relief can be granted, the judge has the option of dismissing the claim or of

declaring that, based on the facts alleged in the complaint, the plaintiff is not entitled to the declaratory relief sought.”).

**ORDER**

For the reasons stated above, it is hereby **ORDERED** that Defendants’ Motion to Dismiss is **ALLOWED** and the Complaint is hereby **DISMISSED**.



Rosemary Connolly  
Associate Justice of the Superior Court

Dated: April 20, 2022

Art. XXX. Separation of legislative, executive and judicial..., MA CONST Pt. 1, Art. 30

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Massachusetts General Laws Annotated

Constitution or Form of Government for the Commonwealth of Massachusetts [Annotated]

Part the First a Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts

M.G.L.A. Const. Pt. 1, Art. 30

Art. XXX. Separation of legislative, executive and judicial departments

Currentness

Art. XXX. In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

Notes of Decisions (634)

M.G.L.A. Const. Pt. 1, Art. 30, MA CONST Pt. 1, Art. 30

Current through amendments approved February 1, 2022

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End of Document

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## Acts (2014)

### Chapter 235

#### AN ACT RELATIVE TO LOCAL HOUSING AUTHORITIES

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

SECTION 1. Section 1 of chapter 121B of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by inserting after the definition of “Substandard area” the following definition:-

“Tenant member”, a member of the board of the housing authority who is directly assisted by that housing authority pursuant to this chapter.

SECTION 2. The first paragraph of section 5 of said chapter 121B, as so appearing, is hereby amended by adding the following sentence:- Every member of a housing or redevelopment authority shall be a fiduciary of the housing or redevelopment authority.

SECTION 3. Said section 5 of said chapter 121B, as so appearing, is hereby further amended by striking out, in line 8, the word “four” and inserting in place thereof the following figure:- 3.

SECTION 4. Said section 5 of said chapter 121B, as so appearing, is hereby further amended by striking out, in line 11, the word “years,” and inserting in place thereof the following words:- years and.

SECTION 5. Said section 5 of said chapter 121B, as so appearing, is hereby further amended by striking out, in lines 12 and 13, the words “, and the one receiving the next highest number of votes shall serve for one year”.

SECTION 6. Said chapter 121B is hereby further amended by inserting after section 5 the following 2 sections:-

Section 5A. The department shall promulgate regulations establishing election procedures for tenants to elect a tenant as a member of the housing authority in the town and regulations establishing appointment by the board of selectmen of the town, if no election may be held; provided, however, that 1 member of the housing authority board shall be a tenant. The department shall provide regulations creating waiver of this section if federal law requires the town to maintain a tenant member as 1 of the 5 members or if a tenant has been elected under section 5.

Section 5B. The department shall establish and implement a comprehensive training



program for members of a housing or redevelopment authority. The training program shall be developed by the department in consultation with representatives of local housing authorities, municipal officials, public housing residents, public housing industry professional organizations and relevant state agencies.

The department shall provide instructions and training to members on the proper management of a housing or redevelopment authority. The instructions and training shall include, but not be limited to, the following laws and topics: (i) the open meeting law established pursuant to sections 18 to 25, inclusive, of chapter 30A; (ii) the public records law established pursuant to chapter 66; (iii) the conflict of interest law established pursuant to chapter 268A; (iv) the uniform procurement act established pursuant to chapter 30B; (v) state finance provisions established pursuant to chapter 29; (vi) fraud prevention; (vii) fiduciary responsibilities; (viii) fair housing laws; (ix) tenant occupancy and tenant participation policies; (x) the laws prohibiting discrimination in publicly assisted housing established pursuant to clauses 6 to 7B, inclusive, of section 4 of chapter 151B; and (xi) best practices relating to the general inspection, maintenance and repair of existing units and capital improvements in public housing. The department may consult with the attorney general and the inspector general in developing instructions and training programs pursuant to this section.

The department shall further provide independent technical assistance training to tenant members. The department shall develop the training with the goal of enabling tenant members and members of local tenant organizations to participate fully in the oversight of the housing authority's operation and capital planning. The department shall permit tenants and local tenant organizations who are not members to attend technical assistance training.

Upon appointment and reappointment or election and reelection, all members shall complete a training program, as developed by the department, within 90 days of assuming the member's position. Members shall complete a training program every 2 years. Failure to complete a training program within 90 days of assuming a position as a member or failure to complete a training program every 2 years may constitute neglect of duty and that member may be subject to removal proceedings pursuant to section 6.

SECTION 7. Said chapter 121B is hereby further amended by inserting after section 7 the following section:-

Section 7A. The department shall promulgate guidelines for contracts to be executed by the housing authority and an executive director. The department may review all contracts between the housing authorities and executive directors and all terms for payments or monetary remuneration relevant to state payments; provided, however, that the department shall review all contracts and all 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.

SECTION 8. Said chapter 121B is hereby further amended by inserting after section 26A the following 3 sections:-

Section 26B. (a) A housing authority shall participate in the performance-based monitoring program as established by the department in accordance with this section.

(b) The department shall establish and implement a performance-based monitoring program and develop and provide uniform assessment standards for evaluating housing authority operations. The assessment standards may incorporate public housing industry standards and measures and federal monitoring standards as applicable. The monitoring program and assessment standards established by the department shall be structured to enable the department to identify housing authorities that are failing to meet the minimum standards and to develop and implement corrective action plans and targeted assistance by the department to improve performance to a satisfactory level.

(c) The monitoring program and assessment standards established by the department under this section shall be developed and implemented by the department in consultation with representatives of housing authorities, municipal officials, public housing residents and public housing industry professional organizations. At a minimum, the department shall include assessment standards for: (i) executive director and senior staff training; (ii) board member training; (iii) senior staff certification in public procurement procedures; (iv) budget management; (v) minimum experience and education qualifications for the hiring of executive directors; (vi) maintenance and repair of existing units; (vii) vacant unit turnover procedures and timelines ; (viii) capital project planning; (ix) resident services, including job training initiatives and family self-sufficiency programming; and (x) participation in the capital assistance team program established in section 26C.

(d) The department shall establish guidelines for designating a housing authority as “chronically poor performing” under the monitoring program. The department shall develop these guidelines in consultation with representatives of local housing authorities, municipal officials, public housing residents and public housing industry professional organizations. If a housing authority is designated as “chronically poor performing”, the department may appoint a chief administrative and financial officer, hereinafter referred to as CAFO, who shall be responsible for the overall administration of the housing authority. The department shall appoint the CAFO for a term of not more than 3 years. The CAFO shall be appointed solely on the basis of administrative and executive qualifications and shall be a person especially fitted by education, training and experience to perform the duties of the office. The CAFO shall not be required to be a resident of the commonwealth or of the same municipality in which the housing authority to be administered is located. The powers and duties of the CAFO shall include the following: (i) coordinating, administering and supervising financial services and activities; (ii) implementing and maintaining uniform systems, controls and procedures for financial activities; (iii) reviewing proposed contracts and obligations; (iv) reviewing the spending plan for each department; and (v) evaluating the housing authority’s current annual plan under section 28A and implementing a written plan to meet the department’s assessment standards established

pursuant to this section, including, but not limited to, merging with another housing authority or regional housing authority. Annually not later than March 30, the CAFO shall submit a 4-year financial plan and a 5-year capital plan to the department that includes all capital needs of the housing authority. If the department finds clear and convincing evidence of a demonstrable threat to tenant safety attributable to the conduct of the executive director or financial misconduct or criminal activity by the executive director, the department may terminate the employment of the executive director in accordance with the executive director's employment agreement with the authority as approved by the department.

Section 26C. (a) The department shall establish a program based on best practices to allow authorities to work collaboratively and shall provide capital, maintenance and repair planning and technical assistance to housing authorities that shall facilitate the capturing of economies of scale through increased collaboration relative to, but not limited to, bulk purchasing, capital planning and capital projects. The program shall include 3 capital assistance teams, which shall aid housing authority members and executive directors in developing and managing the housing authority's capital, maintenance and repair program, including: (i) developing a capital, maintenance and repair plan as required in the housing authority's annual plan under section 26B; (ii) preparing applications for special capital project funds; (iii) implementing capital improvement, maintenance and repair projects; (iv) managing updates to the department's capital planning, maintenance and repair systems; (v) facilitating coordination among housing authorities to ensure efficient use of capital and maintenance funds; and (vi) other functions related to capital planning, renovation, maintenance, repair and redevelopment as the department considers necessary; provided, however, that the capital assistance team shall provide services to the housing authority without requiring payment for the services by the housing authority. The capital assistance teams shall be located in diverse regions to be designated by the department.

(b) All housing authorities may participate in the program; provided, however, that those housing authorities with 500 or fewer state-aided units shall participate in the program. The department may grant a waiver of this requirement to a housing authority that demonstrates that the assistance is not necessary based upon the housing authority's performance under the performance based monitoring and assessment standards of section 26B.

(c) Each capital assistance team shall be employed in offices at a host housing authority. Three host housing authorities shall be selected by the department. The department shall develop and issue a request for proposals to solicit proposals from housing authorities to serve as a host housing authority; provided, however, that the department shall select not more than 1 host housing authority in each of the designated regions. The department shall promulgate regulations to increase the salary of the host housing authority director.

(d) Each capital assistance team shall have a director to be hired by the host housing authority in consultation with the department. The director shall hire project management and

capital planning staff to work directly with housing authorities to provide the technical assistance described; provided, however, that no staff member shall individually oversee more than 2,500 units on a permanent basis.

(e) Each capital assistance team shall have an advisory board consisting of 11 members. The host housing authority shall appoint 1 of its own board members to the advisory board; the department shall appoint 1 member, who shall have at least 5 years of experience as the manager of not less than 200 units of privately owned housing; and the department shall promulgate regulations establishing election procedures for the selection of the remaining 9 members. The department shall limit eligibility for election to members of participating housing authorities in the region. The advisory board shall meet on a quarterly basis with the capital assistance team director, host housing authority director and the director of the department or a designee of the director of the department and shall discuss issues of program performance and coordination.

Section 26D. Housing authorities shall post on the wall of the community center for each of its developments the names, addresses, phone numbers, email addresses or other means of contact for all members and senior staff. Housing authorities shall maintain a website that shall display the same information.

The department shall promulgate regulations to implement this section.

SECTION 9. Said chapter 121B is hereby further amended by inserting after section 28 the following section:-

Section 28A. (a) Each housing authority shall submit to the department an annual plan. The annual plan shall state the housing authority's goals and objectives to meet or improve upon the department's performance based review and assessment standards under section 26B. The annual plan shall further include the housing authority's capital improvement, maintenance and repair plans for the following year and address deficiencies in meeting applicable performance standards.

(b) The housing authority shall make the annual plan available for public review and comment through an annual public hearing. Not later than 45 days before the date of a public hearing, the housing authority shall publish a notice informing the public of the agenda items which shall be covered at the hearing, including, but not limited to, the housing authority's: (i) proposed operating budget; (ii) proposed capital plan; and (iii) specific plan to meet or improve upon the performance based review and the assessment standards under section 26B.

(c) The department shall promulgate regulations to implement this section.

SECTION 10. Section 29 of said chapter 121B, as appearing in the 2012 Official Edition, is hereby amended by striking out the first paragraph and inserting in place thereof the following 4 paragraphs:-

The members of a housing authority shall annually, at a time to be determined by the department, file with the department a written report for its last preceding fiscal year. The report

shall be filed in the manner prescribed by the department and shall contain an agreed upon procedure for the review of housing authority financial records, an annual plan as provided for in this chapter and other information as the department may require.

Each housing authority shall contract with an independent external auditor to prepare the agreed upon procedures for review of housing authority financial records. An external compliance auditor shall perform not more than 5 consecutive agreed upon procedures for review of housing authority financial records for a housing authority; provided, however, that the department may grant a waiver of this requirement to a housing authority that proves unsuccessful in procuring bids from multiple external auditors qualified to perform the housing authority's state compliance audit. The department shall promulgate procedures, rules or regulations prescribing the requirements to be included in the agreed upon procedures for review of housing authority financial records.

The report, agreed upon procedures for review of housing authority financial records and the annual plan, shall be made available to the public on the department's website, as well as the housing authority's website required under section 26D. Failure of the members of a housing authority to provide the department with the required written report may constitute neglect of duty and may subject a responsible member to removal proceedings pursuant to section 6. Housing authorities shall be subject to audit by the state auditor, in accordance with generally accepted government auditing standards, as often as the auditor determines is necessary. The auditor shall have access to the written report required by this section and shall have the power to examine the property and records of housing authorities and to prescribe methods of accounting. In determining the audit frequency of housing authorities, the state auditor shall consider the materiality, risk and complexity of housing authority activities, as well as the nature and extent of prior audit findings. Each housing authority may be audited separately or as a part of an audit covering multiple housing authorities.

The department shall investigate the budgets, finances and other affairs of housing authorities and the housing authority's dealings, transactions and relationships. The department may, severally with the state auditor, examine the properties and records of housing authorities and prescribe methods of accounting and the rendering of periodical reports in relation to clearance and housing projects undertaken by such authorities. The department shall make, amend and repeal rules and regulations prescribing standards and stating principles governing the planning, construction, maintenance and operation of clearance and housing projects by housing authorities.

SECTION 11. Said section 34 of said chapter 121B, as so appearing, is hereby further amended by striking out, in lines 208 and 209, the words " the state auditor or".

SECTION 12. Said chapter 121B is hereby further amended by inserting after section 38B the following 2 sections:-

Section 38C. The department shall establish and implement a program to conduct annual

surveys of public housing residents. The department shall develop the annual survey in conjunction with stakeholders, including public housing residents. The survey shall be conducted by the department and shall preserve the anonymity of the residents. The survey shall be conducted in languages which reflect the native languages spoken by tenants residing in the housing authorities and the survey respondents shall be allowed to respond in their native language. The survey shall include, at a minimum, questions about maintenance and repair of units, housing authority communication to residents, resident participation in housing authority governance, resident safety and resident services, including, but not limited to, job training programs. The department shall establish procedures to conduct physical inspections of a representative sample of units in conjunction with the survey; provided further, that the results of the survey shall be used to evaluate the housing authority's performance under section 26B. Housing authorities shall have the right to respond to the results of the surveys in writing within 60 days of the results being transmitted to the housing authority by the department.

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.

SECTION 13. Notwithstanding any general or special law to the contrary, each capital assistance team established by the department of housing and community development pursuant to section 26D of chapter 121B of the General Laws shall complete a survey of all department or housing authority owned surplus land within 1 year of the effective date of this act. The capital assistance teams shall use the results of the survey to coordinate communication and resources between local housing authorities and the department to encourage development of the land for new units of affordable housing. The capital assistance teams and the department shall also work collaboratively with local veterans' service officers and veterans' service organizations to facilitate the use of surplus land and housing units for the development of affordable housing units for disabled veterans. The department shall report the results of the survey to the joint committee on housing within 90 days of the completion of the survey.

SECTION 14. Within 1 year of the effective date of this act, the department of housing and community development shall establish and implement a single statewide centralized wait list for state-aided public housing, after consultation with representatives of local housing authorities, municipal officials, public housing residents and public housing industry professional organizations. Such centralized wait list shall enable public housing applicants to submit a standardized application through a centralized internet website or through any housing authority. An applicant for tenancy in a housing authority may designate a preference by naming housing authorities. All housing authorities shall use the centralized wait list for selection of public housing tenants, with all local preferences and other preferences applied as required by law.

SECTION 15. The department shall conduct an investigation and study of the feasibility and benefits of an alternative to the requirement of section 5A of chapter 121B of the General Laws. The study shall evaluate alternatives, including but not limited to, permitting a town to establish a housing authority board of 7 or more members, 1 of whom is a tenant, permitting a town to establish a tenant advisory board to review a housing authority's financial and capital planning decisions and under what circumstances, if any, a town may be exempt from the requirements of said section 5A of said chapter 121B. The department shall make recommendations and shall submit its findings to the joint committee on housing not later than December 31, 2014.

Approved, August 6, 2014

## § 49. Public employee retirement administration commission;..., MA ST 7 § 49

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28a)

Chapter 7. Executive Office for Administration and Finance (Refs & Annos)

M.G.L.A. 7 § 49

§ 49. Public employee retirement administration commission; members; executive director

Effective: March 28, 2017

Currentness

(a) There shall be within the executive office of administration and finance, but not subject to its control, a public employee retirement administration commission consisting of seven members, three of whom shall be appointed by the governor, three of whom shall be appointed by the state auditor, and one of whom shall be chosen by the first six members and who shall be chairman. Of the three persons appointed by the governor, one shall be the governor or his designee, one shall be a representative of a public safety union, and one shall be qualified by having training and experience in the investment of funds as a result of having been principally employed in such occupation for a period of at least ten years. Of the three persons appointed by the state auditor, one shall be the state auditor or his designee, the president of the Massachusetts AFL-CIO or his designee, and one shall be a representative of the Massachusetts Municipal Association. Each member of the commission shall serve for a term of five years; provided, however, that in making initial appointments, the governor and the state auditor shall each appoint one member for a term of three years and one member for a term of four years. The members shall serve without compensation but shall receive their necessary expenses incurred in the discharge of their official duties. Upon the expiration of the term of an appointed member, or the chairman, or a vacancy otherwise created in said positions, the successor for said position shall be appointed in the manner aforesaid, or for the remainder of said term, whichever is applicable. In the event the representative of a public safety union or the designee of the president of the Massachusetts AFL/CIO is a public employee, he or she shall be granted leave, without loss of pay or benefits and without being required to make up lost time, if on duty, for regularly scheduled work hours while in the performance of responsibilities of the commission. The public employee retirement administration commission shall select an executive director, and enter into an employment contract with said director. The provisions of sections nine A, forty-five, forty-six, and forty-six C of chapter thirty, chapter thirty-one, and chapter one hundred and fifty E shall not apply to the executive director or any other employee of the commission.

(b) Four members of the board shall constitute a quorum; provided however, that a majority of members present and voting shall be needed to approve any motions.

(c) The executive director shall, with the approval of the commission:

(i) plan, direct, coordinate and execute administrative functions in conformity with the policies and directives of the commission;

(ii) employ an actuary, a general counsel and other employees as necessary, prescribe their duties and fix their compensation; provided, however, that the salaries of such employees shall not exceed the sum annually approved therefor by the commission; and

**§ 49. Public employee retirement administration commission;..., MA ST 7 § 49**

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(iii) report to the commission on all operations under his control and supervision.

(d) The commission shall adopt an annual budget and supplemental budgets as deemed necessary by the commission. The budgets shall be funded by the commonwealth and accounted for separately as specified in section 22C of chapter 32.

**Credits**

Added by St.1982, c. 630, § 2. Amended by St.1996, c. 306, § 1; St.1997, c. 88, § 3; St.2002, c. 438, § 1; St.2017, c. 5, § 3, eff. Mar. 28, 2017.

M.G.L.A. 7 § 49, MA ST 7 § 49

Current through Chapter 230 of the 2022 2nd Annual Session. Some sections may be more current, see credits for details

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## § 2. Regulations requiring hearings; adoptions, amendments or..., MA ST 30A § 2



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Proposed Legislation

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title III. Laws Relating to State Officers(Ch. 29-30b)

Chapter 30A. State Administrative Procedure (Refs &amp; Annos)

M.G.L.A. 30A § 2

§ 2. Regulations requiring hearings; adoptions, amendments or  
repeals; small business impact statement; emergency regulations

Effective: January 1, 2013

Currentness

A public hearing is required prior to the adoption, amendment, or repeal of any regulation if: (a) violation of the regulation is punishable by fine or imprisonment; or, (b) a public hearing is required by the enabling legislation of the agency or by any other law; or, (c) a public hearing is required as a matter of constitutional right.

Prior to the adoption, amendment, or repeal of any regulation as to which a public hearing is required, an agency shall hold a public hearing. Within the time specified by any law, or, if no time is specified, then at least twenty-one days prior to the date of the public hearing, the agency shall give notice of such hearing by (a) publishing notice of such hearing in such manner as is specified by any law, or, if no manner is specified, then in such newspapers, and, where appropriate, in such trade, industry or professional publications as the agency may select; (b) notifying any person to whom specific notice must be given, such notice to be given by delivering or mailing a copy of the notice to the last known address of the person required to be notified; (c) notifying any person or group filing a written request for notice of agency rule making hearings such request to be renewed annually in December, such notice to be given by delivering or mailing a copy of the notice to the last known address of the person or group required to be notified; and (d) filing a copy of such notice with the state secretary.

The notice shall refer to the statutory authority under which the action is proposed; give the time and place of the public hearing; either state the express terms or describe the substance of the proposed regulation; and include any additional matter required by any law.

A small business impact statement shall be filed with the state secretary on the same day that the notice is filed and shall accompany the notice. Notwithstanding section 6, the state secretary shall include the full text of said small business impact statement on the electronic website of the state secretary; provided, however, that the full text of the small business impact statement may also be inspected and copied in the office of the state secretary during business hours.

That small business impact statement shall include, but not be limited to, the following:

- (1) an estimate of the number of small businesses subject to the proposed regulation;
- (2) projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation;

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**§ 2. Regulations requiring hearings; adoptions, amendments or..., MA ST 30A § 2**

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(3) the appropriateness of performance standards versus design standards;

(4) an identification of regulations of the promulgating agency, or of another agency or department of the commonwealth, which may duplicate or conflict with the proposed regulation; and

(5) an analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth;

The public hearing shall comply with any requirements imposed by law, but shall not be subject to the provisions of this chapter governing adjudicatory proceedings.

If the agency finds that immediate adoption, amendment or repeal of a regulation is necessary for the preservation of the public health, safety or general welfare, and that observance of the requirements of notice and a public hearing would be contrary to the public interest, the agency may dispense with such requirements and adopt, amend or repeal the regulation as an emergency regulation. The agency's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency regulation as filed with the state secretary under section five. An emergency regulation shall not remain in effect for longer than three months unless during that time the agency gives notice and holds a public hearing as required in this section, and files notice of compliance with the state secretary.

This section does not relieve any agency from compliance with any law requiring that its regulations be approved by designated persons or bodies before they become effective.

**Credits**

Added by St.1954, c. 681, § 1. Amended by St.1969, c. 808, § 3; St.1976, c. 459, § 2; St.2010, c. 240, § 67, eff. Aug. 1, 2010; St.2011, c. 142, § 7, eff. Oct. 27, 2011; St.2012, c. 165, § 114, eff. Jan. 1, 2013.

Notes of Decisions (47)

M.G.L.A. 30A § 2, MA ST 30A § 2

Current through Chapter 230 of the 2022 2nd Annual Session. Some sections may be more current, see credits for details

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## § 3. Regulations not requiring hearings; small business impact..., MA ST 30A § 3



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Proposed Legislation

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title III. Laws Relating to State Officers(Ch. 29-30b)

Chapter 30A. State Administrative Procedure (Refs &amp; Annos)

M.G.L.A. 30A § 3

§ 3. Regulations not requiring hearings; small business  
impact statement; adoptions, amendments or repeals

Effective: January 1, 2013

Currentness

Prior to the adoption, amendment, or repeal of any regulation for which a public hearing is not required under section two, the agency shall give notice and afford interested persons an opportunity to present data, views, or arguments as follows:

The agency shall, within the time specified by law, or, if no time is specified, then at least twenty-one days prior to its proposed action: (a) publish notice of its proposed action in such manner as is specified by any law, or, if no manner is specified, then in such newspapers, and, where appropriate, in such trade, industry or professional publications as the agency may select; (b) notify any person to whom specific notice must be given, such notice to be given by delivering or mailing a copy of the notice to the last known address of the person required to be notified; (c) notify any person or group filing written request for notice of agency rule making proceedings, such request to be renewed annually in December, such notice to be given by delivering or mailing a copy of the notice to the last known address of the person or groups required to be notified; and (d) file a copy of such notice with the state secretary.

The notice shall refer to the statutory authority under which the action is proposed; give the time and place of any public hearing or state the anticipated time of agency action; state the manner in which data, views, or arguments may be submitted to the agency by any interested person; either state the express terms or describe the substance of the proposed action; and include any additional matter required by any law.

A small business impact statement shall be filed with the state secretary on the same day the notice is filed and shall accompany the notice. Notwithstanding section 6, the state secretary shall include the full text of said small business impact statement on the electronic website of the state secretary; provided, however, that the full text of the small business impact statement may also be inspected and copied in the office of the state secretary during business hours.

That small business impact statement shall include, but not be limited to, the following:

- (1) an estimate of the number of small businesses subject to the proposed regulation;
- (2) projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation;
- (3) the appropriateness of performance standards versus design standards;

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**§ 3. Regulations not requiring hearings; small business impact..., MA ST 30A § 3**

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(4) an identification of regulations of the promulgating agency, or of another agency or department of the commonwealth, which may duplicate or conflict with the proposed regulation; and

(5) an analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth;

The agency shall afford interested persons an opportunity to present data, views or arguments in regard to the proposed action orally or in writing. If the agency finds that oral presentation is unnecessary or impracticable, it may require that presentation be made in writing.

If the agency finds that the immediate adoption, amendment or repeal of a regulation is necessary for the preservation of the public health, safety or general welfare, and that observance of the requirements of notice and affording interested persons an opportunity to present data, views, or arguments would be contrary to the public interest, the agency may dispense with such requirements and adopt, amend or repeal the regulation as an emergency regulation. The agency's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency regulation as filed with the state secretary under section five. An emergency regulation shall not remain in effect for longer than three months unless, during that time, the agency gives notice and affords interested persons an opportunity to present data, views, or arguments as required in this section, and files notice of compliance with the state secretary.

This section does not relieve any agency from compliance with any law requiring that its regulations be approved by designated persons or bodies before they may become effective.

**Credits**

Added by St.1954, c. 681, § 1. Amended by St.1969, c. 808, § 4; St.1974, c. 361, § 2; St.1976, c. 459, § 3; St.1984, c. 189, § 37; St.2010, c. 240, § 68, eff. Aug. 1, 2010; St.2012, c. 36, § 5, eff. Feb. 17, 2012; St.2012, c. 165, § 115, eff. Jan. 1, 2013.

Notes of Decisions (40)

M.G.L.A. 30A § 3, MA ST 30A § 3

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## § 5. Regulations; filing; small business impact statement, MA ST 30A § 5

Massachusetts General Laws Annotated  
Part I. Administration of the Government (Ch. 1-182)  
Title III. Laws Relating to State Officers(Ch. 29-30b)  
Chapter 30A. State Administrative Procedure (Refs & Annos)

## M.G.L.A. 30A § 5

## § 5. Regulations; filing; small business impact statement

Effective: August 1, 2010

Currentness

Two attested copies of the regulations of each agency shall be filed with the state secretary together with a citation of the law by authority of which the same purport to have been issued, and together with the dates of approval by other boards or agencies if required and any other information necessary to show compliance with statutory requirements relative to issuance of such regulations. Upon receipt of agency regulations prepared in accordance with this chapter, the state secretary shall accept them for filing and endorse thereon the time and date of the filing.

No rule or regulation so filed with the state secretary shall become effective until an estimate of its fiscal effect including that on the public and private sector, for its first and second year, and a projection over the first five-year period, or a statement of no fiscal effect has been filed with said state secretary. In addition, no rule or regulation so filed, unless filed for the purposes of setting rates within the commonwealth, shall become effective until an agency has filed with the state secretary a statement considering the impact of said regulation on small business. The requirements to file small business impact statements under this section and sections 2, 3 and 5A shall be enforceable by a civil action for mandamus relief, but the sufficiency of the statement filed shall not be grounds for invalidating or staying the effect of the regulation. Said state secretary shall forthwith notify all agencies required to file rules or regulations pursuant to this section.

Prior to the adoption of a proposed regulation, an agency shall file an amended small business impact statement, which considers, without limitation, whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

- (1) establishing less stringent compliance or reporting requirements for small businesses;
- (2) establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (3) consolidating or simplifying compliance or reporting requirements for small businesses;
- (4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation;
- (5) an analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth; and

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**§ 5. Regulations; filing; small business impact statement, MA ST 30A § 5**

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(6) minimizing adverse impact on small businesses by using alternative regulatory methods.

The state secretary shall make and publish rules and regulations, not otherwise inconsistent with law, with respect to the deadlines to be met and the form to be employed by any agency in preparing and filing regulations, hearing schedules and any other materials which the secretary may require. Compliance with such rules and regulations shall be a condition precedent to the effectiveness of agency regulations.

**Credits**

Added by St.1954, c. 681, § 1. Amended by St.1969, c. 808, § 5; St.1970, c. 712, § 3; St.1976, c. 459, § 4; St.1980, c. 329, § 28; St.1989, c. 688, § 1; St.2010, c. 240, §§ 69, 70, eff. Aug. 1, 2010.

Notes of Decisions (14)

M.G.L.A. 30A § 5, MA ST 30A § 5

Current through Chapter 230 of the 2022 2nd Annual Session. Some sections may be more current, see credits for details

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## § 6. Massachusetts Register; publication of filed documents and..., MA ST 30A § 6



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Proposed Legislation

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title III. Laws Relating to State Officers(Ch. 29-30b)

Chapter 30A. State Administrative Procedure (Refs &amp; Annos)

## M.G.L.A. 30A § 6

§ 6. Massachusetts Register; publication of filed documents  
and regulations; legal effect; distribution of issues

## Currentness

Documents required or authorized to be published by this section shall be printed and distributed by the state secretary in a serial publication entitled the “Massachusetts Register”. The state secretary shall contract and arrange, subject to all pertinent statutes, for the biweekly printing and distribution of the Massachusetts Register. The prices to be charged for the Massachusetts Register may be set without reference to the statutory charges for public documents fixed by chapter two hundred and sixty-two.

There shall be published in the Massachusetts Register the following documents: (1) executive orders, except those not having general applicability and legal effect or effective only against state agencies or persons in their capacity as officers, agents or employees thereof; (2) all regulations filed in accordance with section five; (3) all notices filed in accordance with sections two and three, except that the secretary may summarize the content of any notice filed; provided, however, that he indicate that the full text of the notice may be inspected and copied in the office of the state secretary during business hours; and (4) any other item or portion thereof which the state secretary deems to be of sufficient public interest.

Each issue of the Massachusetts Register shall begin with a table of contents listing the documents contained therein which shall include a brief summary for each document identifying the purpose of any proposed regulations and whether small business is likely to be substantially affected by said regulations.

Each biweekly issue shall contain all documents required or authorized to be published, filed with the state secretary up to the day fixed by the secretary as the printing deadline for that issue, except that the secretary may omit from the biweekly issue of the register any document which he deems unduly cumbersome or expensive to publish. In such cases, he shall describe the nature of the omitted document and shall publish a supplemental issue of the register containing the text of the document as soon as practicable and in any event within thirty days. Supplemental issues shall be published as the state secretary deems necessary, and shall in all ways have the full force and effect of the regular biweekly issues of the register.

Regulations other than emergency regulations, which are adopted under section two and three, shall become effective only when published in accordance with this section, or, in the case of any regulation as to which a later effective date is required by any law, or is specified in such regulation by the agency adopting the same, upon such later date or upon such publication, whichever last occurs. Emergency regulations shall become effective when filed with the state secretary, or at such later time as may be required by law or be specified therein, and shall remain in effect no longer than three months following filing except as provided in sections two and three.

**§ 6. Massachusetts Register; publication of filed documents and..., MA ST 30A § 6**

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The state secretary shall make available upon request of any person or group the biweekly issues of the Massachusetts Register. He shall transmit, without charge, a copy of each issue thereof to (1) the clerk of the house of representatives; (2) the clerk of the senate; (3) the house counsel and senate counsel; and (4) the state librarian.

The state secretary shall mail upon receipt of the subscription price a sheet containing the table of contents or other information sufficient to enable the reader to determine whether he wishes to purchase that issue of the register.

The publication in the Massachusetts Register of a document creates a rebuttable presumption (1) that it was duly issued, prescribed, or promulgated; (2) that all the requirements of this chapter and regulations prescribed under it relative to the document have been complied with; and (3) that the text of the regulations as published in the Massachusetts Register is a true copy of the attested regulation as filed by the agency.

For the purpose of this section and section six A the word “regulation” shall not include any regulation whose principal purpose and effect is to prescribe or approve rates chargeable for goods, services, or other things by specifically named persons and shall not include any portion of an existing publication which has been adopted as and incorporated by reference in a regulation of any agency, and which the state secretary determines is unnecessary to republish by reason of its already being reasonably available to that portion of the public affected by said agency's activities.

The contents of the Massachusetts Register shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number.

**Credits**

Added by St.1954, c. 681, § 1. Amended by St.1962, c. 545; St.1969, c. 808, § 6; St.1970, c. 168, § 1A; St.1970, c. 712, § 4; St.1971, c. 862, § 2; St.1971, c. 1065, §§ 1, 2; St.1974, c. 66; St.1975, c. 29; St.1976, c. 459, § 5; St.1987, c. 113, § 2; St.1989, c. 688, § 2.

**Notes of Decisions (3)**

M.G.L.A. 30A § 6, MA ST 30A § 6

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**§ 5A. Waiver of requirement to appoint tenant member to..., MA ST 121B § 5A**

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Massachusetts General Laws Annotated  
 Part I. Administration of the Government (Ch. 1-182)  
 Title XVII. Public Welfare (Ch. 115-123b)  
 Chapter 121B. Housing and Urban Renewal (Refs & Annos)

**M.G.L.A. 121B § 5A****§ 5A. Waiver of requirement to appoint tenant member to housing authority board**

Effective: May 14, 2021

Currentness

A housing authority may request a waiver of the requirement to appoint a tenant member to a housing authority board if the department determines that a housing authority provided notice pursuant to section 5 and there is no person who is eligible and willing to serve as a tenant member on the board. The waiver shall be for a term of 1 year and may be renewed by the department. A housing authority shall submit a written statement to the department, explaining why a waiver is being requested and documenting the steps that it took to educate tenants about the right of a tenant to serve on a housing authority board; provided, however, that such steps shall include the housing authority meeting with all local tenants' organizations. Before issuing a waiver, the department shall, in addition to reviewing the written statement, make a determination that the housing authority provided notice pursuant to said section 5.

If the department grants a waiver, it shall notify the housing authority and the town that a person other than a person who is eligible to be a tenant member may be appointed to the tenant member seat on the board for a 1-year term. The housing authority shall notify any tenants' organizations of the waiver and post a notice of the waiver throughout common areas of the authority.

**Credits**

Added by St.2014, c. 235, § 6, eff. Nov. 4, 2014. Amended by St.2020, c. 358, § 72, eff. May 14, 2021.

M.G.L.A. 121B § 5A, MA ST 121B § 5A

Current through Chapter 230 of the 2022 2nd Annual Session. Some sections may be more current, see credits for details

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## § 7. Officers and executive director of housing and redevelopment..., MA ST 121B § 7

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XVII. Public Welfare (Ch. 115-123b)

Chapter 121B. Housing and Urban Renewal (Refs & Annos)

M.G.L.A. 121B § 7

§ 7. Officers and executive director of housing and  
redevelopment authorities; compensation of members

Currentness

A housing or redevelopment authority shall elect from among its members a chairman and a vice-chairman, and may employ counsel, an executive director who shall be ex officio secretary of the authority, a treasurer who may be a member of the authority and such other officers, agents and employees as it deems necessary or proper, and shall determine their qualifications, duties and compensation, and may delegate to one or more of its members, agents or employees such powers and duties as it deems necessary or proper for the carrying out of any action determined upon by it. So far as practicable, a housing or redevelopment authority shall make use of the services of the agencies, officers and employees of the city or town in which such authority is organized, and such city or town shall, if requested, make available such services, except, that in the city of Boston, the housing authority may contract with said city for the assignment of thirty-seven police officers of the police department of said city to police the buildings and grounds owned by said authority with the proviso that said authority shall reimburse said city for one third of the cost thereof.

A housing authority may compensate its members for each day spent in the performance of their duties and for such other services as they may render to the authority in connection with projects commenced prior to July first, nineteen hundred and sixty-five. Such compensation shall not exceed fifty dollars a day for the chairman and forty dollars a day for a member other than the chairman, provided that the total sum paid to all the members in any one month or year shall not exceed two per centum of the gross income of the housing authority during such month or year, respectively, nor shall the total sum paid in any year exceed twelve thousand five hundred dollars in the case of the chairman or ten thousand dollars in the case of a member other than the chairman. Such compensation shall be allocated by the housing authority among its various projects commenced prior to July first, nineteen hundred and sixty-five, in such manner and amounts as it deems proper. Members of a housing authority shall be allowed, or be reimbursed for, all expenses properly incurred by them within or without the city or town in the discharge of their duties. Such expenses shall be allocated by the housing authority among its various projects in such manner and amounts as it deems proper.

For the purposes of chapter two hundred and sixty-eight A or paragraph (7) of section forty-four D of chapter one hundred and forty-nine, each housing and redevelopment authority shall be considered a municipal agency and, without limiting the power of a city council or board of aldermen or board of selectmen to classify additional special municipal employees pursuant to said chapter, each member of such an authority, and any person who performs professional services for such an authority on a part-time, intermittent or consultant basis, such as those of architect, attorney, engineer, planner, or construction, financial, real estate or traffic expert, shall be considered a special municipal employee.

Any compensation paid to a tenant member of a housing authority for services as a member shall be included as income in determining rent, and the tenant shall be subject to appropriate rent increases, as provided for in authority policy and as regulated by the department; provided, however, that such compensation shall not be considered income for purposes of determining continued occupancy.

§ 7. Officers and executive director of housing and redevelopment..., MA ST 121B § 7

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**Credits**

Added by St.1969, c. 751, § 1. Amended by St.1983, c. 649, § 2; St.1988, c. 147.

Notes of Decisions (6)

M.G.L.A. 121B § 7, MA ST 121B § 7

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§ 7A. Guidelines for contracts to be executed by housing..., MA ST 121B § 7A

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Proposed Legislation

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XVII. Public Welfare (Ch. 115-123b)

Chapter 121B. Housing and Urban Renewal (Refs &amp; Annos)

## M.G.L.A. 121B § 7A

## § 7A. Guidelines for contracts to be executed by housing authority and executive director

Effective: November 4, 2014

Currentness

The department shall promulgate guidelines for contracts to be executed by the housing authority and an executive director. The department may review all contracts between the housing authorities and executive directors and all terms for payments or monetary remuneration relevant to state payments; provided, however, that the department shall review all contracts and all 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.

**Credits**

Added by St.2014, c. 235, § 7, eff. Nov. 4, 2014.

M.G.L.A. 121B § 7A, MA ST 121B § 7A

Current through Chapter 230 of the 2022 2nd Annual Session. Some sections may be more current, see credits for details

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## § 26. Powers of a housing authority, MA ST 121B § 26



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Proposed Legislation

Massachusetts General Laws Annotated  
 Part I. Administration of the Government (Ch. 1-182)  
 Title XVII. Public Welfare (Ch. 115-123b)  
 Chapter 121B. Housing and Urban Renewal (Refs & Annos)

M.G.L.A. 121B § 26

## § 26. Powers of a housing authority

Effective: July 18, 2021

Currentness

A housing authority shall have the following powers in addition to those set forth in section eleven or elsewhere in this chapter:--

- (a) To make studies of housing needs and markets, including data with respect to population and family groups and their distribution according to income groups, the amount and quality of available housing and its distribution according to rentals and sales prices, employment, wages and other factors affecting housing needs and markets, and surveys and plans for housing related to community development, including desirable patterns for land use and community growth, and to make such studies, surveys and plans available to the federal government, the department and other state agencies, other operating agencies, the public and the building, housing and supply industries;
- (b) To conduct investigations and disseminate information relative to housing and living conditions and any other matter deemed by it to be material in connection with any of its powers and duties;
- (c) To determine what areas within its jurisdiction constitute substandard, decadent or blighted open areas;
- (d) To prepare plans for the clearance of such decadent, substandard or blighted areas and to clear open areas whenever necessary or desirable to provide for the equivalent elimination of substandard buildings in accordance with section thirty-three provided that no housing authority in any city or town in which a redevelopment authority has been organized shall initiate such a clearance project without the approval of such redevelopment authority and the approval of the municipal officers of the city or town;
- (e) To provide housing projects for families of low income;
- (f) To provide projects or parts thereof for elderly persons of low income;
- (g) To provide housing for families of low income in rural areas in accordance with provisions set forth in section twenty-seven;
- (h) To undertake and provide relocation projects in order to house for a limited period families who are displaced by an urban renewal project or other public improvement involving the elimination of dwelling units whenever such project or public

## § 26. Powers of a housing authority, MA ST 121B § 26

improvement is determined upon and it or an urban renewal agency finds that there exists in the city or town an acute shortage of housing and that there are no adequate means available for immediate relocation of persons and families displaced from that project area;

(i) To lease, operate and, subject to section thirty-two, establish or revise schedules of rents for any project or part thereof undertaken by it; and

(j) To undertake as a separate project the renovation, remodeling, reconstruction, repair, landscaping and improvement of an existing housing project or part thereof, including the reduction of undesirable unit densities in an existing housing project as deemed necessary by the department for the improvement of an existing housing project assisted by the commonwealth pursuant to section thirty-four or forty-one; provided, that an equal number of low-rent relocation units are provided to replace those occupied units which are removed in the reduction of an undesirable unit density; and provided, further, that the plans for each such project shall be undertaken in accordance with rules and regulations promulgated by the department for such projects; and provided, further, that notwithstanding the provisions of any other law, where the funding for such project or any similar state or federally funded undertaking with respect to low-rent housing exceeds fifteen million dollars, the number of households living on the original site when funds are or were committed exceeds two hundred and a receiver has been appointed for the housing authority pursuant to section one hundred and twenty-seven H of chapter one hundred and eleven, the award of construction, reconstruction, installation, demolition, maintenance, alteration, remodeling or repair contracts shall be governed by the provisions of section thirty-nine M of chapter thirty, and shall include a requirement for certification of ability to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work, and shall not be subject to the provisions of sections forty-four A to forty-four H, inclusive, of chapter one hundred and forty-nine; and provided, further, that notwithstanding the provisions of any other law, where the funding for such project or any similar state or federally funded undertaking with respect to low rent housing exceeds fifteen million dollars, the number of households living on the original site when funds are or were committed exceeds two hundred and a receiver has been appointed for the housing authority pursuant to section one hundred twenty-seven H of chapter one hundred eleven, the receiver shall award contracts for construction, reconstruction, installation, demolition, maintenance, alteration, remodeling or repair of any building as provided in sections forty-four A to forty-four H, inclusive, of chapter one hundred and forty-nine and the receiver shall not only prequalify general bidders as set forth in section forty-four D but shall also prequalify sub-bidders for all classes of work for which sub-bids are required in accordance with prequalification requirements the receiver shall establish. The receiver shall also include as a prequalification requirement for both general bidders and for sub-bidders for each such contract that each general bidder and each sub-bidder be able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on each contract.

(k) To undertake as a separate project the demolition, clearance, preparation for sale, including the payment of relocation costs for occupants of such existing housing projects, and sale or other disposition of any of all of any existing housing project or part thereof assisted by the commonwealth, pursuant to section thirty-four, notwithstanding the provisions of clause (d) or section thirty-four, provided, that the department shall first have:

(1) found that all or a substantial portion of such existing housing project or part thereof no longer provides decent, safe and sanitary housing, as determined by the department of public health or the office of public safety and inspections of the division of occupational licensure, and, in the judgment of the department, such project or part thereof cannot feasibly be operated or renovated pursuant to the provisions of this chapter;

(2) approved the proposed project, including a relocation plan for occupants of the existing project and a plan to make housing available on the land where the existing project is situated, at least twenty-five per cent of the units of which shall be for low

**§ 26. Powers of a housing authority, MA ST 121B § 26**

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income persons or families, which project may include plans to use a portion of such land for a public purpose ancillary to such development and approved by the department;

(3) approved the sale and the terms thereof, if the land is to be sold, which shall be at the fair market value for the proposed reuse, as determined by MHFA and approved by the department, and in accordance with the cooperation agreement referred to below;

(4) determined that the availability of funds to the housing authority for such project is conditioned upon the occurrence of the initial mortgage loan closing for the development of new or rehabilitated housing on the land where the existing project is situated; and the execution of a cooperation agreement by the MHFA and the department which shall establish a procedure for selection of a developer best qualified to develop, own and operate the new or rehabilitated housing on the existing land, for providing for such development of the new housing within a reasonable time in accordance with MHFA-approved contracts, and for assuring continued occupancy of at least twenty-five per cent of the dwelling units in the new development by families of low income;

(5) determined that the proceeds of such sale or other funds available to the housing authority for such project, or both, shall not be less than the amount necessary to pay in full the principal of and interest on the outstanding obligations of the housing authority with respect to such existing project if the whole is sold or not less than that percentage of such obligations which the original cost of the part sold bears to the total original cost of the entire existing project if a part is sold. Such amount of proceeds or other funds necessary to pay in full such obligations or percentage thereof shall be deposited in trust for the benefit of the holders of such outstanding obligations and until and unless all such obligations are paid and discharged in full said proceeds and other funds shall be expended solely for payment of principal and interest thereon.

(6) found that representatives of all occupants of such existing housing project, selected by the occupants in a manner approved by the department, have fully participated in the development of the project proposal and that all occupants of such existing housing projects have adequate notice and an opportunity to review the proposed project and relocation plan and an opportunity to present their views at a public hearing which shall be held by the department.

(l) To provide housing projects or specific parts thereof, or cooperative apartments, community residences and such other forms of congregate housing, or housing in separate dwelling units, for low income handicapped persons or low income families, of which one or more than one person is handicapped, or persons whose mobility, flexibility, coordination and perceptiveness are significantly reduced by aging; provided, that such housing may be provided in newly constructed buildings, or in buildings purchased or leased, and that may be made renovated as necessary, or in buildings already owned by local housing authorities that may be made accessible; and to provide living facilities for persons essential for the well-being of such handicapped persons or families; and to provide other such facilities as are necessary to the well-being of the handicapped residents of such housing; and to contract with various corporations for the provision of services to the handicapped residents, including but not limited to staffing, management and maintenance of such housing; provided further, that such contracting shall be in accordance with guidelines and directives or rules and regulations, or either, promulgated or issued by the department, and that such contracting shall be approved by the department.

(m) To participate in the development of low and moderate income housing undertaken or assisted pursuant to federal legislation and to finance mortgage loans for the construction or rehabilitation of low and moderate income housing, which may include ancillary commercial facilities to the extent permitted by the then applicable regulations of the department, and to purchase, or participate in the purchase of, securities which are secured by such mortgage loans. A local housing authority may create, designate or approve agencies or instrumentalities to provide such housing and do all other things necessary or desirable to secure financial or other forms of assistance from the federal government including the exemption from federal income taxation

## § 26. Powers of a housing authority, MA ST 121B § 26

of interest on bonds or notes of such housing authority issued with respect to such housing. Low and moderate income housing shall be financed under this paragraph only after the housing authority shall, pursuant to regulations adopted by the department, have found (A) that persons and families whose annual incomes are less than eighty per cent of the median income in the area in which such housing is to be constructed or rehabilitated, as determined by the department, can afford the rentals, including the provision of heat, electricity and hot water, set for twenty per cent of the units in the project on the basis of the use of not more than thirty per cent of their annual income or such greater portion of their annual income as may be required by laws or regulations applicable to any housing subsidy program of any agency of the United States government or the commonwealth to be used in connection with the proposed project or any laws or regulations applicable to the exemption of the interest on the bonds or notes of the housing authority from federal income taxation and (B) either (1) that the other tenants occupying the project shall pay a rental not less than one-seventh of their annual income but in no event greater than the maximum rental which could be obtained for such unit in light of the rentals charged for comparable units within the same market area; or (2) that the project is located in a blighted open area, or any decadent area, or any substandard area. Any bonds, notes or other securities issued by any local housing authority, or any agency or instrumentality designated or approved by any such authority, pursuant to the provisions of this paragraph, shall not create or imply any obligation or indebtedness of any kind on the part of any local housing authority, the commonwealth, or any political subdivision thereof. The department may promulgate such rules and regulations as it may deem necessary to further the purposes of this paragraph.

(n) to disseminate to and receive from other housing authorities information, including personal data as defined in section one of chapter sixty-six A, which could have a direct bearing on a determination as to whether an individual or household is qualified for selection or placement in accordance with state or federal eligibility or tenant selection regulations; provided, that in instances where the department of housing and community development or a nonprofit corporation is administering a state or federal housing program, a housing authority may disseminate to and receive such information for the aforementioned purpose from the department of housing and community development or a nonprofit corporation. Such information may be disseminated for the aforementioned purpose among the department of housing and community development and any nonprofit corporations administering a state or federal housing program. Any personal data, as defined in section one of said chapter sixty-six A, which is received by a housing authority, the department of housing and community development, or a nonprofit corporation pursuant to this paragraph, shall be used, maintained and disseminated further in accordance with the provisions of said chapter sixty-six A and this paragraph. Whenever such information is disseminated by a local housing authority, the department of housing and community development, or a nonprofit corporation, a copy of all such information and the names of the agencies which received it shall be sent to said individual or household. The department of housing and community development shall promulgate such rules and regulation as it deems necessary to further the purposes of this paragraph.

(o) To provide in the case of a unit in a housing project occupied by an elderly person of low income or a handicapped person of low income, for the installation, removal, or maintenance of air conditioner units, stoves, and such other personal property of said elderly person or such handicapped person as the housing authority may determine necessary to maintain the building and to protect the safety of tenants residing therein.

(p) Notwithstanding this section or section 34 to the contrary, to dispose of or demolish any part or all of an existing housing project assisted by the commonwealth pursuant to chapter 689 of the acts of 1974, chapter 167 of the acts of 1987 or chapter 705 of the acts of 1966, if: (1) the department and the housing authority have determined that it is not financially feasible to bring the units up to a reasonable program standard for occupancy or permissible to convert the units to another low-rent housing program; (2) the inventory of available housing units remaining in the surrounding community is not substantially diminished as a result of such demolition; and (3) for units financed pursuant to chapter 705 of the acts of 1966, the units were vacant as of November 1, 2012, or, for units financed by the chapter 689 of the acts of 1974 or chapter 167 of the acts of 1987, the department has received written confirmation from both the department of developmental services and the department of mental health that those units are obsolete and inappropriate for housing their respective clients. Upon approval by the department, the authority may dispose of the property by sale, ground lease or other transfer of its interest in the property; provided, that the department



**§ 26. Powers of a housing authority, MA ST 121B § 26**

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shall review and approve of any appraisal and request for proposals related to the disposition, as well as the selection of the selected bidder. The request for proposals shall provide that, in reviewing responses to the request for proposals, first priority for selecting from among the responsive and responsible bidders shall be those bidders that offer a feasible plan to provide housing on the site that is permanently affordable to households under 80 per cent of area median income as defined by the department. Those bidders shall obtain the property for \$1, subject to an enforceable agreement to meet the requirements of its proposal. If no responsive and responsible bidder meets the above standard, the property shall be sold to the bidder offering the highest price for the property. Notwithstanding anything to the contrary in this chapter, proceeds from the disposition, after paying for the costs of the disposition, shall be deposited in an expendable trust controlled by the department, the purpose of which shall be to fund capital improvements that the department determines are necessary and appropriate at existing housing developments that serve households that would have been eligible for occupancy of the units that had been sited on the property.

**Credits**

Added by St.1969, c. 751, § 1. Amended by St.1970, c. 694, § 2; St.1973, c. 884, § 1; St.1974, c. 689, § 5; St.1976, c. 477, § 5; St.1978, c. 578; St.1981, c. 789, §§ 2, 3; St.1981, c. 808, § 27; St.1984, c. 189, § 99; St.1984, c. 233, § 36; St.1986, c. 557, § 117; St.1989, c. 653, § 91; St.1992, c. 286, § 189; St.1995, c. 208; St.1998, c. 161, § 456; St.2013, c. 38, § 104, eff. July 1, 2013; St.2017, c. 6, § 79, eff. Mar. 27, 2017; St.2021, c. 39, § 72, eff. July 18, 2021.

Notes of Decisions (1)

M.G.L.A. 121B § 26, MA ST 121B § 26

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 Chapter 121B. Housing and Urban Renewal (Refs & Annos)

M.G.L.A. 121B § 26B

§ 26B. Performance-based monitoring program; assessment standards

Effective: November 4, 2014

Currentness

(a) A housing authority shall participate in the performance-based monitoring program as established by the department in accordance with this section.

(b) The department shall establish and implement a performance-based monitoring program and develop and provide uniform assessment standards for evaluating housing authority operations. The assessment standards may incorporate public housing industry standards and measures and federal monitoring standards as applicable. The monitoring program and assessment standards established by the department shall be structured to enable the department to identify housing authorities that are failing to meet the minimum standards and to develop and implement corrective action plans and targeted assistance by the department to improve performance to a satisfactory level.

(c) The monitoring program and assessment standards established by the department under this section shall be developed and implemented by the department in consultation with representatives of housing authorities, municipal officials, public housing residents and public housing industry professional organizations. At a minimum, the department shall include assessment standards for: (i) executive director and senior staff training; (ii) board member training; (iii) senior staff certification in public procurement procedures; (iv) budget management; (v) minimum experience and education qualifications for the hiring of executive directors; (vi) maintenance and repair of existing units; (vii) vacant unit turnover procedures and timelines; (viii) capital project planning; (ix) resident services, including job training initiatives and family self-sufficiency programming; and (x) participation in the capital assistance team program established in section 26C.

(d) The department shall establish guidelines for designating a housing authority as “chronically poor performing” under the monitoring program. The department shall develop these guidelines in consultation with representatives of local housing authorities, municipal officials, public housing residents and public housing industry professional organizations. If a housing authority is designated as “chronically poor performing”, the department may appoint a chief administrative and financial officer, hereinafter referred to as CAFO, who shall be responsible for the overall administration of the housing authority. The department shall appoint the CAFO for a term of not more than 3 years. The CAFO shall be appointed solely on the basis of administrative and executive qualifications and shall be a person especially fitted by education, training and experience to perform the duties of the office. The CAFO shall not be required to be a resident of the commonwealth or of the same municipality in which the housing authority to be administered is located. The powers and duties of the CAFO shall include the following: (i) coordinating, administering and supervising financial services and activities; (ii) implementing and maintaining uniform systems, controls and procedures for financial activities; (iii) reviewing proposed contracts and obligations; (iv) reviewing the spending plan for each department; and (v) evaluating the housing authority's current annual plan under section 28A and implementing a written plan to meet the department's assessment standards established pursuant to this section, including, but not limited to, merging with another housing authority or regional housing authority. Annually not later than March 30, the CAFO shall submit a 4-

**§ 26B. Performance-based monitoring program; assessment..., MA ST 121B § 26B**

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year financial plan and a 5-year capital plan to the department that includes all capital needs of the housing authority. If the department finds clear and convincing evidence of a demonstrable threat to tenant safety attributable to the conduct of the executive director or financial misconduct or criminal activity by the executive director, the department may terminate the employment of the executive director in accordance with the executive director's employment agreement with the authority as approved by the department.

**Credits**

Added by St.2014, c. 235, § 8, eff. Nov. 4, 2014.

M.G.L.A. 121B § 26B, MA ST 121B § 26B

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§ 26D. Names and contact information of all members and..., MA ST 121B § 26D

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Massachusetts General Laws Annotated  
Part I. Administration of the Government (Ch. 1-182)  
Title XVII. Public Welfare (Ch. 115-123b)  
Chapter 121B. Housing and Urban Renewal (Refs & Annos)

M.G.L.A. 121B § 26D

§ 26D. Names and contact information of all members and senior  
staff to be posted on wall of community center and on website

Effective: November 4, 2014

Currentness

Housing authorities shall post on the wall of the community center for each of its developments the names, addresses, phone numbers, email addresses or other means of contact for all members and senior staff. Housing authorities shall maintain a website that shall display the same information.

The department shall promulgate regulations to implement this section.

**Credits**

Added by St.2014, c. 235, § 8, eff. Nov. 4, 2014.

M.G.L.A. 121B § 26D, MA ST 121B § 26D

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§ 28A. Annual plan; availability to public for review and comment, MA ST 121B § 28A

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Massachusetts General Laws Annotated  
 Part I. Administration of the Government (Ch. 1-182)  
 Title XVII. Public Welfare (Ch. 115-123b)  
 Chapter 121B. Housing and Urban Renewal (Refs & Annos)

## M.G.L.A. 121B § 28A

## § 28A. Annual plan; availability to public for review and comment

Effective: November 4, 2014

Currentness

(a) Each housing authority shall submit to the department an annual plan. The annual plan shall state the housing authority's goals and objectives to meet or improve upon the department's performance based review and assessment standards under section 26B. The annual plan shall further include the housing authority's capital improvement, maintenance and repair plans for the following year and address deficiencies in meeting applicable performance standards.

(b) The housing authority shall make the annual plan available for public review and comment through an annual public hearing. Not later than 45 days before the date of a public hearing, the housing authority shall publish a notice informing the public of the agenda items which shall be covered at the hearing, including, but not limited to, the housing authority's: (i) proposed operating budget; (ii) proposed capital plan; and (iii) specific plan to meet or improve upon the performance based review and the assessment standards under section 26B.

(c) The department shall promulgate regulations to implement this section.

**Credits**

Added by St.2014, c. 235, § 9, eff. Nov. 4, 2014.

M.G.L.A. 121B § 28A, MA ST 121B § 28A

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## § 29. Accounts and reports of housing authorities; review of..., MA ST 121B § 29



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Proposed Legislation

Massachusetts General Laws Annotated  
 Part I. Administration of the Government (Ch. 1-182)  
 Title XVII. Public Welfare (Ch. 115-123b)  
 Chapter 121B. Housing and Urban Renewal (Refs & Annos)

M.G.L.A. 121B § 29

§ 29. Accounts and reports of housing authorities; review of financial records; availability to public; audit; investigations by department; rules and regulations of department

Effective: November 4, 2014

Currentness

The members of a housing authority shall annually, at a time to be determined by the department, file with the department a written report for its last preceding fiscal year. The report shall be filed in the manner prescribed by the department and shall contain an agreed upon procedure for the review of housing authority financial records, an annual plan as provided for in this chapter and other information as the department may require.

Each housing authority shall contract with an independent external auditor to prepare the agreed upon procedures for review of housing authority financial records. An external compliance auditor shall perform not more than 5 consecutive agreed upon procedures for review of housing authority financial records for a housing authority; provided, however, that the department may grant a waiver of this requirement to a housing authority that proves unsuccessful in procuring bids from multiple external auditors qualified to perform the housing authority's state compliance audit. The department shall promulgate procedures, rules or regulations prescribing the requirements to be included in the agreed upon procedures for review of housing authority financial records.

The report, agreed upon procedures for review of housing authority financial records and the annual plan, shall be made available to the public on the department's website, as well as the housing authority's website required under section 26D. Failure of the members of a housing authority to provide the department with the required written report may constitute neglect of duty and may subject a responsible member to removal proceedings pursuant to section 6.

Housing authorities shall be subject to audit by the state auditor, in accordance with generally accepted government auditing standards, as often as the auditor determines is necessary. The auditor shall have access to the written report required by this section and shall have the power to examine the property and records of housing authorities and to prescribe methods of accounting. In determining the audit frequency of housing authorities, the state auditor shall consider the materiality, risk and complexity of housing authority activities, as well as the nature and extent of prior audit findings. Each housing authority may be audited separately or as a part of an audit covering multiple housing authorities.

The department shall investigate the budgets, finances and other affairs of housing authorities and the housing authority's dealings, transactions and relationships. The department may, severally with the state auditor, examine the properties and records of housing authorities and prescribe methods of accounting and the rendering of periodical reports in relation to clearance and housing projects undertaken by such authorities. The department shall make, amend and repeal rules and regulations prescribing standards and stating principles governing the planning, construction, maintenance and operation of clearance and housing projects by housing authorities.

**§ 29. Accounts and reports of housing authorities; review of..., MA ST 121B § 29**

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In the development or administration of a project which is not federally aided, a housing authority shall furnish the commissioner of labor and industries, upon his request, with a list of the classifications of work performed by all architects, technical engineers, draftsmen, technicians, laborers and mechanics employed therein, and shall notify him from time to time of any changes in said classifications. Said commissioner shall determine rates of wages and fees and payments to health and welfare plans for each such classification and shall furnish the housing authority with a schedule of such rates, fees and payments. The rates of wages and fees paid by each housing authority to such architects, technical engineers, draftsmen, technicians, laborers and mechanics shall not be less than those determined by said commissioner who shall set the rate at no less than eighty per cent of the prevailing wage in accordance with sections twenty-six and twenty-seven of chapter one hundred and forty-nine. In the event that any housing authority fails to furnish said commissioner with said list within two weeks after the date of his request, said commissioner shall determine said rates of wages and fees and payments to health and welfare plans.

A housing authority shall bargain collectively with labor organizations representing its employees and may enter into agreements with such organizations.

Notwithstanding any provision of law to the contrary the provisions of sections four, ten and eleven of chapter one hundred and fifty E shall apply to said authorities and their employees.

No employee of any housing authority, except an employee occupying the position of executive director, who has held his office or position, including any promotion or reallocation therefrom within the authority for a total period of five years of uninterrupted service, shall be involuntarily separated therefrom except subject to and in accordance with the provisions of sections forty-one to forty-five, inclusive, of said chapter thirty-one to the same extent as if said office or position were classified under said chapter.

Except as otherwise stated therein, compliance with this chapter, the rules and regulations adopted by the department and the terms of any low-rent housing project or clearance project authorized by this chapter, may be enforced by a proceeding in equity.

**Credits**

Added by St.1969, c. 751, § 1. Amended by St.1970, c. 851, § 3; St.1973, c. 286; St.1973, c. 1215, §§ 9, 9A; St.1977, c. 610; St.1978, c. 393, § 34; St.2014, c. 235, § 10, eff. Nov. 4, 2014.

Notes of Decisions (20)

M.G.L.A. 121B § 29, MA ST 121B § 29

Current through Chapter 230 of the 2022 2nd Annual Session. Some sections may be more current, see credits for details

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## § 39. Power to provide housing for elderly and handicapped..., MA ST 121B § 39



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Proposed Legislation

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XVII. Public Welfare (Ch. 115-123b)

Chapter 121B. Housing and Urban Renewal (Refs &amp; Annos)

M.G.L.A. 121B § 39

§ 39. Power to provide housing for elderly and  
handicapped persons of low income; priorities in placement

Effective: July 14, 2016

Currentness

The housing authority of each city or town organized under section three shall have power to provide housing for elderly persons of low income and handicapped persons of low income either in separate projects or as a definite portion of any other projects undertaken under sections twenty-five to forty-four, inclusive, of this chapter, or in remodeled or reconstructed existing buildings, or through the purchase of condominium units, and the provisions of sections one to forty-four, inclusive, of this chapter shall, so far as apt, be applicable to projects and parts of projects undertaken under sections thirty-eight through forty-one except as otherwise provided in section forty or elsewhere in this chapter. The power to provide such housing shall include the provision of facilities for congregate living, either in separate projects or as a definite portion of any other projects so undertaken. A housing authority with the approval of the department may in addition to, and to the extent not inconsistent with this section or section forty-one provide that on project sites which include convenience stores or ancillary commercial facilities housing projects may be planned and designed so as to permit the continued operation of such stores or facilities. Such stores or facilities may be rented or leased by such housing authorities. The provisions of the preceding two sentences shall apply also to any low rent housing project for families of low income undertaken pursuant to this chapter.

In any town in which a veterans' housing project or project for the housing of elderly persons has already been constructed or established, the local housing authority shall not be empowered to erect a new housing project for elderly persons nor shall a contract for financial assistance applicable to the construction of a new project for the housing of elderly persons be entered into pursuant to the provisions of section forty-one until there shall have been submitted to, and approved by vote of, an annual town meeting or a special town meeting called therefor, the question whether the local housing authority should be empowered to erect such new housing project, for one of the purposes authorized by law, as said authority should thereafter determine to be reasonably necessary and feasible.

Notwithstanding any general or special law to the contrary, a housing authority which manages units provided under this section and section forty shall give priority in placement to non-elderly handicapped persons of low income, who are eligible to receive such housing and who are qualified under the criteria established in regulations promulgated by the department, in thirteen and one-half percent of said units. If a local housing authority determines that there are insufficient numbers of eligible and qualified non-elderly handicapped persons of low income to fill thirteen and one-half percent of the housing units, the local housing authority shall then place eligible and qualified elderly persons of low income in said units. The thirteen and one-half percent of units for which eligible and qualified non-elderly handicapped persons of low income receive priority in placement shall include the percentage of units for which handicapped persons of low income without regard to age, and their families, are given priority pursuant to subsection (f) of section forty, when such units are occupied by non-elderly handicapped persons of low income.



## § 39. Power to provide housing for elderly and handicapped..., MA ST 121B § 39

Notwithstanding any general or special law to the contrary, a housing authority which manages units provided under this section and section forty shall give priority in placement to elderly persons of low income, who are eligible to receive such housing and who are qualified under the criteria established by regulations of the department, in eighty-six and one-half percent of said units. If a local housing authority determines that there are insufficient numbers of eligible and qualified elderly persons of low income to fill eighty-six and one-half percent of said units the local housing authority shall give priority in placement to eligible and qualified handicapped persons of low income who are on a waiting list for housing developed pursuant to this section or section forty, and who have attained the age of fifty, but who are less than sixty years old. If a local housing authority determines that there are insufficient numbers of elderly persons of low income and handicapped persons of low income who have attained the age of fifty but who are less than sixty years old, who have applied for occupancy in housing developed pursuant to this section and section forty to fill eighty-six and one-half percent of said units, the local housing authority shall place other non-elderly handicapped persons of low income who have applied for occupancy in said housing in said units.

Preference for accessible or modified units pursuant to subsection (f) of section forty may be given to handicapped persons of low income, without regard to age, who need one or more of the special design features of said units.

Among persons who are eligible and qualified for housing pursuant to this section, a preference shall be given to veterans.

The numerical percentages stated herein shall be deemed policy objectives and in no way shall be an entitlement to any form of housing necessary for compliance with the provisions of this chapter.

The department shall, after consultation with the secretaries of elder affairs and health and human services, promulgate rules and regulations concerning the implementation of the priorities in placement, as set forth herein not later than October first, nineteen hundred and ninety-five, and may establish placement ratios among elderly persons of low income and non-elderly handicapped persons of low income to provide for an equitable transition to encourage the percentage policy objectives stated herein for said persons of low income. Until such time that said percentage policy objectives, stated herein, are substantially met, said placement ratios shall not be less than one elderly person of low income for each placement of one non-elderly handicapped person of low income. Said placement ratios shall only be implemented at local housing authorities where non-elderly handicapped persons of low income represent less than thirteen and one-half percent of the total residents at said authority; provided, that said placement ratios shall not be implemented at any local housing authority where non-elderly handicapped persons of low income represent greater than thirteen and one-half percent of the total residents. The priorities in placement established herein shall not be implemented by local housing authorities until such rules and regulations have been promulgated. Any person who is lawfully residing in housing developed pursuant to this section and section forty when such rules and regulations are promulgated may not be evicted or otherwise required to vacate a housing unit solely as a consequence of the priorities in placement established herein.

Nothing stated herein shall give rise to enforceable legal rights in any party or an enforceable entitlement to any form of housing and further, nothing stated herein shall be construed as giving rise to such enforceable legal rights or such enforceable entitlement.

### Credits

Added by St.1969, c. 751, § 1. Amended by St.1974, c. 689, § 6; St.1977, c. 996, § 4; St.1981, c. 789, § 4; St.1985, c. 748, § 19; St.1995, c. 179, § 11; St.2016, c. 141, § 19, eff. July 14, 2016.

Notes of Decisions (1)

M.G.L.A. 121B § 39, MA ST 121B § 39

Current through Chapter 230 of the 2022 2nd Annual Session. Some sections may be more current, see credits for details

§ 39. Power to provide housing for elderly and handicapped..., MA ST 121B § 39

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## § 40. Provisions applicable to housing for elderly and..., MA ST 121B § 40



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Proposed Legislation

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XVII. Public Welfare (Ch. 115-123b)

Chapter 121B. Housing and Urban Renewal (Refs &amp; Annos)

M.G.L.A. 121B § 40

## § 40. Provisions applicable to housing for elderly and handicapped persons of low income

Effective: July 14, 2016

Currentness

The following provisions shall be applicable to housing for elderly persons of low income and handicapped persons of low income:

(a) There shall be no requirement that the occupants of such housing constitute families, and housing may be provided in separate dwelling units for elderly persons and handicapped persons living alone or with such other persons who are either eligible under the provisions of sections thirty-eight to forty-one, inclusive, or necessary to the physical welfare of the elderly occupant; provided, that such other necessary person is eligible for low-rent housing or is a live-in staff member of a cooperative apartment, community residence or other such form of congregate housing. Single handicapped persons or families of one or more persons, one of whom is handicapped, shall be eligible for admission to such housing, regardless of their age, provided that such persons or families satisfy the eligibility standards required for admission under section thirty-two.

(b) Projects for such housing may and shall, when practicable, be established near the neighborhoods where the elderly persons reside.

(c) Housing for elderly persons of low income and handicapped persons of low income shall conform to standards established by the department after consultation with the department of public health, the department of public welfare, the secretary of elder affairs and the board of standards and shall be designed so as to alleviate the infirmities characteristic of the elderly or the handicapped; provided that nothing in this paragraph shall be construed to prevent the occupancy of an elderly person in a unit designed for the handicapped or a handicapped person in a unit designed for the elderly.

(d) In all housing for elderly persons of low income and handicapped persons of low income there shall be a preference in admission for eligible and qualified applicants who are veterans.

(e) Rents for dwelling units in projects or parts of projects constructed for elderly persons of low income shall be computed as provided in section thirty-two; provided that in the case of persons receiving old age assistance under chapter one hundred and eighteen A, directly or indirectly in whole or in part, from the commonwealth, dwelling units in projects or parts of projects constructed under section thirty-nine shall be deemed to be adequate housing for elderly persons and shall qualify for and rent at the maximum rental allowance under the old age assistance laws, regulations, and policies. Notwithstanding any provision of law to the contrary no elderly person of low income or handicapped person of low income shall be required to pay more than

**§ 40. Provisions applicable to housing for elderly and..., MA ST 121B § 40**

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twenty-five per cent of his or her income without utilities or thirty percent with utilities for rent for dwelling units in projects or parts of projects constructed or leased or purchased under this chapter. For purposes of calculating the rent of elderly tenants in state-aided public housing, local housing authorities shall treat pharmacy costs reimbursed pursuant to section 16B of chapter 118E as deductible medical expenses. Any deficiency in the budget of a housing authority caused by such reduced rental shall be paid by the commonwealth and paid to the housing authority in an amount equal to the difference between the tenant's rent and the prorated cost of operating that unit. The commonwealth, acting through the department, may make payments in advance on account of such deficiency at such times and in such amounts as it deems proper. The prorated cost of operations shall be computed by the department with provision for a full operating reserve.

(f) The department shall, after consultation with the secretary of elder affairs, promulgate rules and regulations relative to uniform standards for tenant selection which shall establish the order of priority governing the selection of tenants, and a housing authority thereafter shall be bound by such standards in its selection of tenants. Such rules and regulations shall provide that handicapped persons and their families, who are eligible under the provisions of paragraph (a), shall receive priority in placement in not less than five per cent of all dwelling units provided under any authorization for housing of elderly persons of low income approved after January first, nineteen hundred and seventy-seven.

(g) following receipt of project plans and descriptions submitted to the department and the department of elder affairs, the department shall consult with the department of elder affairs in all phases of the development and approval of said plans and submissions. No contracts between the department and a housing authority for state financial assistance under sections thirty-eight to forty-one, inclusive, shall be entered into without prior review and comment of the secretary of elder affairs.

(h) A housing authority shall not provide such housing to any person who is a current illegal user of one or more controlled substances as defined in section one of chapter ninety-four C. A person's illegal use of a controlled substance within the preceding twelve months shall create a presumption that such person is a current illegal user of a controlled substance, but the presumption may be overcome by a convincing showing that the person has permanently ceased all illegal use of controlled substances. The prohibition of the provision of housing contained in this subsection shall not apply to housing provided through residential treatment programs for illegal users of controlled substances.

**Credits**

Added by St.1969, c. 751, § 1. Amended by St.1970, c. 740; St.1970, c. 812, §§ 4 to 6; St.1970, c. 853; St.1973, c. 1168, §§ 25 to 27; St.1973, c. 1215, § 12; St.1974, c. 689, §§ 7 to 10; St.1977, c. 996, § 5; St.1979, c. 669, § 2; St.1991, c. 6, §§ 39 to 42; St.1995, c. 179, § 12; St.1997, c. 170, § 28; St.2016, c. 141, § 20, eff. July 14, 2016.

M.G.L.A. 121B § 40, MA ST 121B § 40

Current through Chapter 230 of the 2022 2nd Annual Session. Some sections may be more current, see credits for details

# 840 CMR: PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

## 840 CMR 15.00: MISCELLANEOUS

### Section

- 15.01: Affidavit of Retired Members and Beneficiaries
- 15.02: Purchase of Prior Membership Creditable Service; Purchase of Creditable Service for Non-membership Service; Rates of Contribution Upon Return to Active Service
- 15.03: Regular Compensation
- 15.04: Benefit Calculation Factors

#### 15.01: Affidavit of Retired Members and Beneficiaries

(1) No less frequently than once every two years, each retirement board shall require each member or beneficiary who receives a pension, retirement allowance, or survivor's allowance to file with the retirement board an affidavit under the penalties of perjury, at such time and in such form as the board shall prescribe, containing the following information:

- (a) the name of the member or beneficiary;
- (b) the current address of the member or beneficiary-;
- (c) a statement certifying that the member or beneficiary is currently living;
- (d) a statement describing the beneficiary's current marital status where marital status is relevant to continued receipt of benefits;
- (e) a statement describing the beneficiary's current dependency status where dependency is relevant to continued receipt of benefits; and
- (f) such additional information as the board may require to determine whether the member or beneficiary is entitled to continued receipt of benefits.

(2) The retirement board shall withhold the retirement benefits of any member or beneficiary who fails to file the affidavit within the time prescribed pending receipt of the affidavit. Upon receipt of the affidavit, any benefits so withheld shall be paid to the retired member or beneficiary.

(3) The retirement board may review and verify the accuracy of any affidavit submitted and shall audit a random sample of at least five per cent of the affidavits received.

#### 15.02: Purchase of Prior Membership Creditable Service; Purchase of Creditable Service for Non-membership Service; Rates of Contribution Upon Return to Active Service

(1) Purchase of Prior Membership Creditable Service. Any member authorized by law to purchase prior creditable service may purchase such service by paying an amount equal to the accumulated regular deductions withdrawn by the member, together with regular interest. Any member may make a lump sum payment or installment payments over a period not exceeding five years and may, with the approval of the board, make installment payments over a period exceeding five years.

(2) Upon submission of documentation satisfactory to the retirement board, a member will be allowed to purchase creditable service for periods of non-membership employment. The amount of creditable service that may be purchased shall be determined by the retirement board in a manner consistent with the retirement board's supplementary regulations that have been approved by the Commission pursuant to 840 CMR 14.00. The member may purchase less than all non-membership service available for purchase; provided, however, that in such event the member must purchase the most recent time first.

(3) Rates of Contribution Upon Return to Active Service. The rates of contribution for members formerly in service who have returned to the service of the same or another governmental unit shall be as follows:

- (a) for any member who contributed to a retirement system and did not receive a refund of accumulated deductions when he or she left service, the contribution rate upon the member's return to service shall be the same rate as the member was contributing at the time he or she left service;

## 840 CMR: PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

15.02: continued

(b) the contribution rate for any member who contributed to a retirement system, and received a refund of accumulated deductions after termination of service, shall be the contribution rate in effect when the member re-established membership, whether or not the member purchases prior creditable service; and

(c) for any member who contributed 8% of regular compensation as regular deductions during the member's prior service, the contribution rate shall be 8% upon the member's return to service.

15.03: Regular Compensation

(1) During any period of active service prior to July 1, 2009 the term "regular compensation" as defined by M.G.L. c. 32, § 1, shall be determined subject to the following:

(a) To be considered regular compensation, any compensation to an employee must:

1. have been actually paid to or on behalf of a member;
2. be made as remuneration for services actually rendered, for recurring payments for accrued sick leave, or for payments made pursuant to M.G.L. c. 41, § 111F in the year or part of a year to which the compensation is attributed;
3. be ordinary, normal, recurrent, repeated, and of indefinite duration;
4. be made pursuant to an official written policy of the employer or to a collective bargaining agreement;
5. be made on a non-discriminatory basis and be generally available for employees who are similarly situated relative to the purpose of the payment (e.g. a longevity payment made recurrently to all employees in a bargaining unit having attained a specific length of service) provided that the ability of a payment to be denied due to merit shall not exclude it for that reason from regular compensation.

(b) Regular compensation shall include any part of such salary, wages, or other compensation derived from federal grants, except as otherwise provided in M.G.L. c. 32, § 3(2)(a)(xi);

(c) Lump-sum or retroactive payments which would have been regular compensation if paid in the periods in which the services remunerated thereby were actually rendered will be allocated to said periods rather than being entirely attributed to the time of receipt for the purpose of determining a member's regular compensation.

(d) Provided they meet the general criteria in 840 CMR 15.03(1)(a) through (c), payments to be considered regular compensation shall include:

1. a member's annual rate of compensation as provided in an approved salary schedule;
2. any non-cash maintenance allowances in the form of full or partial boarding and housing, as provided in M.G.L. c. 32, § 22(1)(c);
3. any premiums paid by any governmental unit for the purchase of an individual or group annuity contract as authorized by M.G.L. c. 15, § 18A or by M.G.L. c. 71, § 37B;
4. any amounts paid as educational incentives;
5. any amounts paid for length of service;
6. any amounts paid as premiums for shift differentials; and
7. any amounts paid as cost-of-living bonuses or cost-of-living pay adjustments.

(2) During any period of active service prior to July 1, 2009, any extraordinary or ad hoc payment amount shall be excluded from regular compensation. Exclusions shall include, but not be limited to:

- (a) any amounts paid for hours worked beyond the member's normal work schedule;
- (b) any amounts paid as premiums for working holidays, except as authorized by law;
- (c) any amounts paid as bonuses other than cost-of-living bonuses, provided that any payment to an employee or group of employees which will not recur or which will recur for only a limited or definite term will be considered a bonus, and further provided that any payments to an employee or group of employees as part of a salary augmentation plan or salary enhancement program which is provided for in an individual contract in effect on or before January 25, 2006 or in a collective bargaining agreement in effect on or before January 25, 2006, including payments under such a plan or program which will not recur or which will recur for only a limited or definite term, shall be treated as regular compensation; and further provided, that any employee who is covered by such an agreement or contract on January 25, 2006 and who begins, at any time during the life of a collective bargaining

## 840 CMR: PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

15.03: continued

agreement or individual employment contract in effect on or before January 25, 2006, to receive benefits and make retirement contributions pursuant to a salary augmentation plan or salary enhancement program under such a collective bargaining agreement or individual employment contract, may complete the plan or program under that agreement or contract or under a successor collective bargaining agreement or individual employment contract, provided that the successor collective bargaining agreement or individual employment contract contains a salary augmentation plan or salary enhancement program; and further provided that the amount of the salary augmentation plan or salary enhancement program under a successor collective bargaining agreement or individual employment contract which shall be treated as regular compensation shall not exceed the amount of the salary augmentation plan or salary enhancement program provided under the collective bargaining agreement or individual employment contract in effect on or before January 25, 2006, and further provided that any member who has previously retired and is receiving benefits as of April 7, 2006 under the provisions of a salary augmentation plan or salary enhancement program shall have that plan deemed in compliance with the provisions of M.G.L. c. 32.

(d) any amounts paid in lieu of or for unused vacation, sick leave, or other leave;

(e) severance pay;

(f) any amounts paid as early retirement incentives; and

(g) any other payments made as a result of the member giving notice of retirement.

(3) During any period of active service subsequent to July 1, 2009 the term "regular compensation", as defined by M.G.L. c. 32, § 1, shall be determined subject to the following:

(a) to be considered regular compensation, any compensation to an employee must be compensation received exclusively as wages by an employee for services performed in the course of employment for his employer;

(b) "wages" shall mean the base salary or other base compensation of an employee paid to that employee for employment by an employer including pre-determined, non-discretionary, guaranteed payments paid by the employer to similarly situated employees, provided, that "wages" shall include payments made by the employer to the employee because of the character of the work, because of the employee's length of service, because of the time at which the work takes place as a condition of employment in a particular position, because of educational incentives, and payments for holding the training, certification, licensing or other educational incentives approved by the employer for the performance of services related to the position the employee holds and payments made by the employer to the employee calculated as a percentage of base pay;

(c) Any amount, benefit or payment included in the definition of "regular compensation" by law or by regulation prior to July 1, 2009 and included in any applicable collective bargaining agreement or individual contract for employment in effect on May 1, 2009, shall continue to be included in the definition of "regular compensation" during the term of that collective bargaining agreement or contract; provided, however, that any such amount, benefit or payment received after the term of said collective bargaining agreement or contract ends or after June 30, 2012, as the case may be, shall continue to be considered regular compensation unless such payment does not meet the criteria set forth in 840 CMR 15.03(3)(b) or is excluded by the provision of 840 CMR 15.03(3)(f);

(d) Regular compensation shall include any part of the wages derived from federal grants except as provided in M.G.L. c. 2 and (2)(a)(xi);

(e) Lump-sum retroactive payments which would have been wages if paid in the periods in which the services remunerated thereby were actually rendered will be allocated to said periods rather than being entirely attributed to the time of receipt for the purpose of determining a member's regular compensation;

(f) "Wages" shall not include, without limitation, overtime, commissions, bonuses other than cost-of-living bonuses, amounts derived from salary enhancements or salary augmentation plans which will recur for a limited or definite term, indirect, in-kind or other payments for such items as housing, lodging, travel, clothing allowances, annuities, welfare benefits, lump sum buyouts for workers' compensation, job-related expense payments, automobile usage, insurance premiums, dependent care assistance, one-time lump sum payments in lieu of or for unused vacation or sick leave or the payment for termination, severance, dismissal or ally amounts paid as premiums for working holidays, except in the

## 840 CMR: PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

15.03: continued

case of police officers, firefighters and employees of a municipal department who are employed as fire alarm signal operators or signal maintenance repairmen money paid for holidays shall be regarded as regular compensation, amounts paid as early retirement incentives or any other payment made as a result of the employer having knowledge of the member's retirement, tuition, payments in kind and all payments other than payment received by an individual from his employing unit for services rendered to such employing unit, regardless of federal taxability; provided further, that notwithstanding the foregoing, in the case of a teacher employed in a public day school who is a member of the teachers' retirement system, salary payable under the terms of an annual contract for additional services in such school and compensation for services rendered by a teacher in connection with a school lunch program or for services in connection with a program of instruction of physical education and athletic contests as authorized by M.G.L. c. 71, § 47 shall be regarded as "regular compensation" rather than as bonus or overtime and shall be included in the salary on which deductions are to be paid to the annuity savings fund of the teachers' retirement system.

15.04: Benefit Calculation Factors

All retirement allowances effective on or after January 12, 1988 shall be computed on the basis of the Combined Annuity Table of Mortality set back one year and interest at the rate of 3% per annum and Option C factors, when applicable, pursuant to St. 1987, c. 697.

## REGULATORY AUTHORITY

840 CMR 15.00: M.G.L. c. 7, § 50; c. 32, and 21.





Charles D. Baker, Governor ♦ Karen E. Polito, Lieutenant Governor  
Jennifer D. Maddox, Undersecretary

Department of Housing and Community Development

### **Public Housing Notice 2022-16**



*State Veterans Development, Revere Housing Authority*

FY23 Local Housing Authority Budget Guidelines

September 21, 2022

Ben Stone, Director, Division of Public Housing



## Commonwealth of Massachusetts DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

Charles D. Baker, Governor ♦ Karyn E. Polito, Lieutenant Governor ♦ Jennifer Maddox Undersecretary

September 20, 2022

To Our Housing Partners,

Once again, Local Housing Authorities (LHAs) have moved mountains over the past year as we slowly transition from the emergency phase of the pandemic into a new normal with new challenges. LHAs worked to limit evictions and linked their residents to services and emergency eviction prevention programs like SHERA, all while continuing to deal with staff absences due to COVID, changing public health guidelines, and all the “normal” challenges of running a housing authority. 2022 brought new challenges in the form of inflation and a historically tight labor market that have pressured LHA budgets and made it difficult to replace staff, and opportunities in the form of \$150M in ARPA funding appropriated by the legislature to address critical capital needs.

Thanks to the support of the legislature, Governor Baker, and strong trends in rental income these budget guidelines authorize an **increase** in Allowable Non-Utility Expense Levels (ANUEL) of **9% above FY2022 levels**, following ANUEL increases of 10% in FY18, 4% in FY19, 10% in FY20, 0% in FY21, and a 4% increase in FY22.

We are hopeful that this increase will help LHAs stay on top of material and labor inflation and continue providing quality services to residents. We anticipate that strong rents and the increased appropriation will enable the subsidy account to cover projected steep increases in utility costs over Winter 2022/23 while supporting the ANUEL increase, but we ask that LHAs take all reasonable efforts to reduce energy costs to mitigate impact on the subsidy and enable increases going forward. DHCD’s goal going forward, *subject to operating subsidy appropriation and rent and utility trends*, is to offer predictable, moderate ANUEL increases year over year.

In addition to the ANUEL increase, these budget guidelines include the following policy initiatives and adjustments for FY23:

- 5% increase to *maximum* unit-based Executive Director Salaries with board approval in accordance with [PHN 2022-02 Executive Director Salary & Qualifications Schedule](#) released January 26, 2022;
- 5% max increase to administrative salaries line item; increases above that threshold require submission of re-organization plan with budget;
- DHCD ability to modify Executive Director Salary if over approved salary maximum in HAFIS Schedule of All Positions and Salaries if submitted over approvable maximum;
- Air Source Heat Pump budget exemption increase to \$150 from \$75 for each unit with a heat pump to support maintenance of Air Source Heat Pumps;

- New c. 689/167 rent structure and minimum rent threshold as set out in [PHN 2022-12: Updates to c.167&c.689 Housing Contracts](#);
- Assessed Vacancy fees automatically populated into year-end operating statements; see [PHN 2022-15](#) for more details; and
- Updated maximum fees for Agreed Upon Procedures (AUP); and
- Budget Dialogue Box required for requesting DHCD approved exemptions, LHA staff re-orgs, and submitted budget revisions. DHCD will revert submitted budgets that lack comments for exceptions from these budget guidelines.

We at DHCD recognize the hard work that all of you do day-to-day in providing affordable housing to low-income elderly households, young disabled individuals, and families throughout the state. On behalf of the Administration, DHCD, and the entire staff of the Division of Public Housing, thank you all for your unwavering commitment to preserve and enhance public housing across the Commonwealth.

Sincerely,

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Ben Stone, Director, Division of Public Housing

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## **I. INTRODUCTION & KEY HIGHLIGHTS**

These Budget Guidelines apply to fiscal year 2023, which begins July 1, 2022 and includes local housing authorities (LHAs) with budget years of:

- July 1, 2022 – June 30, 2023,
- October 1, 2022 – September 30, 2023,
- January 1, 2023 – December 31, 2023, and
- April 1, 2023– March 31, 2024.

It is the responsibility of the LHA to understand the Budget Guidelines and implement them effectively and in accordance with applicable provisions of the Accounting Manual for State-Aided Housing Programs. We encourage you to contact the Department of Housing and Community Development (DHCD) staff if any part of the Guidelines or the Accounting Manual is unclear to you.

There are several key points to highlight in the Guidelines this year, as noted below.

### **KEY HIGHLIGHTS:**

#### **1. Allowable Non-Utility Expense Level (ANUEL)**

The Allowable Non-Utility Expense Level (ANUEL) **will be increased by 9% above FY2022 levels for FY2023**. Please do not submit a budget that exceeds the housing authority's approvable ANUEL. All budgets received that exceed the ANUEL and DHCD-approved budget exemptions will be reverted and must be modified.

#### **2. Budget Reduction for LHAs in non-compliant MBTA Communities**

On August 10, 2022, DHCD issued [final guidelines](#) relative to the multi-family zoning requirement for MBTA communities, pursuant to [Section 3A of the M.G.L. ch. 40A](#). As outlined in the law, an MBTA community that does not have a compliant multi-family zoning district shall not be eligible for funds from: (i) the Housing Choice Initiative; (ii) the Local Capital Projects Fund; or (iii) the MassWorks Infrastructure Program.

The Local Capital Projects Fund receives 4.5% of the Gaming Revenue Fund, which consists of the revenues collected from the resort gaming licenses in Massachusetts. In recent years, the Local Capital Projects Fund has been used to support a portion of the operating subsidy for local housing authorities in the annual budget. For the FY2023 General Appropriations Act, the public housing operating account (7004-9005) is supported in part (10.63%) by the Local Capital Projects Fund.

Please be advised that affected MBTA communities that have not achieved district compliance must achieve interim compliance by 1/31/2023 in order to remain eligible for these funding sources. Housing Authorities in noncompliant MBTA communities may not receive funding from the Local Capital Projects Fund, and will have budgets reduced in proportion until such time as their community complies with the final guidelines. Any Housing Authorities in MBTA communities that are currently noncompliant with Section 3A by not satisfying the 2022 requirement will receive direct outreach from DHCD. This will include specific guidance for this budget cycle



### 3. Increase to Salaries Line (#4110 and #4410)

#### A. Administrative Salaries:

LHAs have flexibility to propose salary changes for all administrative staff, except the Executive Director, provided that the total increase in overall salaries charged to state programs (excluding the Executive Director's salary), does not exceed 5% of last year's (FY2022) approved #4110 account.

LHAs may exceed this 5% cap if they can present a staffing reorganization plan. LHAs should justify increases above 5% in this line item in the **Budget Dialogue Box** with their budget submission. DHCD will review the justification for reasonableness and whether the LHA's ANUEL can support the reorganization.

**The LHA must be able to support any salary increase within the FY23 ANUEL and must be able to appropriately prorate the salary to state and/or federal funds based on program units.** LHAs may **NOT** charge bonuses to any state-funded housing programs.

#### B. Maintenance Salaries:

The Maintenance Labor Account #4410, excluding seasonal help and overtime, must use the current rate published by the Department of Labor and Workforce Development (DLWD) and cannot exceed that rate without prior DHCD review and approval in the LHA annual operating budget.

Maintenance staff in a supervisory capacity are allowed to exceed the DLWD rate by up to \$3.00 per hour at the discretion of the LHA. The LHA must support the increased rate within its ANUEL.

LHA shall notify DHCD in writing of its intention to begin collective bargaining with unionized maintenance employees.

The Top 5 Compensation Form Clarification Memorandum released April 6, 2022, clarifies how to report total compensation paid to part-time LHA employees that are included on the Top 5 Compensation Form (Top 5). The Top 5 form generally includes the Executive Director and the next four highest paid employees, which for small and medium sized LHA's generally includes maintenance staff.

#### C. Executive Director Salary:

- DHCD issued an Executive Director Salary and Qualifications Schedule on January 26, 2022 as Public Housing Notice 2022-02.

The Executive Director, subject to Board approval, may receive up to a 5% increase to maximum unit-based salary in FY23. The family and program factors have not changed. See updated salary chart (Attachment A) and the Executive Director Salary Worksheet (Attachment B) for FY23 as well as [Addendum 1 to PHN 2022-02](#).

- Executive Director Salary Cap:

- An Executive Director's total salary, from direct employment at one or two LHAs, shall not exceed a maximum aggregate of \$198,450 for all LHA budgets governed by DHCD's FY2023 Budget Guidelines.

- An Executive Director's total salary that includes a portion of salary from other program activities, such as Management Services Agreement fees for day-to-day operations of another LHA and other contracts with any other public or private entities that are temporary or otherwise may terminate, shall not exceed a maximum aggregate of \$218,295.
  - An increase in Executive Director salary paid from the management fee where the Executive Director's salary exceeds the global salary cap can receive a bonus capped at 10% of the management fee, subject to approval by the Board of the Management Agent. This increase CANNOT be added to the Executive Director's composite salary nor used as a calculation towards retirement benefits. The bonus must be recorded on a separate line (Line 2) in the Schedule of Positions and Salaries
- Executive Director Salary Increases:
- An Executive Director whose salary is less than the adjusted maximum may, pursuant to a Board vote, receive up to the allowable maximum per the Executive Director Salary and Qualification Schedule, in FY2023 (FY2024 for 3/31/2023 FYE LHAs), so long as the increase can be absorbed in the LHA's FY2023 ANUEL. While LHAs must reflect these changes in budget submissions, the LHA does not need to amend and submit the contract itself to DHCD if the Board is only adjusting the salary within the allowable maximums.
  - Executive Directors whose contract salary is less than \$35,598 are allowed to earn additional compensation for hours worked above their contract hours, but only up to the point where their total compensation meets this \$35,598 threshold.
  - An Executive Director whose current DHCD-approved salary already exceeds the maximum in the adjusted Schedule may continue to receive said salary without increase until such time that DHCD issues a new Schedule showing that the existing salary is less than the allowable maximum.

**The LHA must be able to support any salary increase within the ANUEL and must be able to appropriately prorate the salary to state and/or federal funds based on program units.** Bonuses cannot be charged to any state housing programs. Longevity payments are allowed, provided the payment is considered a bonus and is not paid from state funds. Longevity payments like other bonuses are not considered salary and should not affect retirement calculations. Do not include bonuses on the Salary Calculation Worksheet.

Effective FY23, any budget submission that includes an Executive Director salary in excess of the guidelines will not be rejected by DHCD. Instead, DHCD will modify the Executive Director salary in accordance with the guidelines, thus disapproving the submitted salary, and will approve the budget submission with the allowable salary allowing the LHA to spend at the approvable ANUEL level.

#### **4. Air Source Heat Pump (ASHP) Budget Exemption**

Many LHAs have installed ASHPs through DHCD Sustainability funding or the Utility-funded LEAN program. While these ASHPs lower utility costs and greenhouse gas emissions and provide an important cooling function for residents, they require significantly more maintenance than

electric baseboard heat. As DHCD covers utility costs for deficit LHAs, these LHAs do not directly see the benefits of the utility savings from ASHPs while bearing the cost of maintenance. In order to recognize the cost of maintaining ASHPs and incentivize continued installation of these systems, DHCD is providing a \$150 annual budget exemption for each unit with an ASHP. This is an increase over the \$75 per unit granted in FY21 and FY22. The exemption is provided for each unit with an ASHP where:

- i) The ASHP replaced electric baseboard heat, and said baseboard is disconnected in primary living space; and
- ii) The LHA is a “deficit” authority based on the FY23 ANUEL; and
- iii) LHA certifies that they perform or contract for the annual maintenance on each ASHP unit.

See Attachment C: Air Source Heat Pump Count by LHA for data in CPS and anticipated budget exemption. If these figures are incorrect, please update CPS and contact your Housing Management Specialist and Sustainability Program Developer, Greg Abbe ([gregory.abbe@mass.gov](mailto:gregory.abbe@mass.gov)), to revise the budget exemption.

LHAs should enter this budget exemption on the ANUEL & Subsidy Worksheet, Section 4. LHAs should also include a comment in **Budget Dialogue Box** that they perform or have contracted to perform annual maintenance on each ASHP unit.

Please note that in the event of major failures of multiple ASHP units despite annual maintenance, DHCD will support remediation and replacement through the capital program or through seeking funding through the LEAN program; this budget exemption helps compensate LHAs for appropriate routine maintenance.

## 5. Chapter 689 and Chapter 167 minimum rent

The minimum rent for c. 689/167 properties since 2009 included a flat maintenance fee of \$167 a month per property in addition to the per-unit minimum rent. This fee was not adjusted for Social Security Cost of Living Adjustments (COLA). As stated in [PHN 2022-12](#), there will no longer be a separate maintenance fee. The maintenance fee is now included in an updated minimum rent, the entirety of which will adjust annually by the Social Security COLA.

The new minimum rent, effective for contracts signed or amended after July 14, 2022 is \$304 per unit, per month. This will adjust after the issuance of the 2023 Social Security COLA.

## 6. Vacant Unit Fee Assessment

Since October 1, 2016, DHCD’s vacant unit re-occupancy policy has assessed daily fees on units that are vacant without a DHCD-approved waiver. Effective July 1, 2022, DHCD has revised the fees to establish separate fees for the c. 667 elderly/handicapped program and for the c. 200 and c. 705 family program (see [PHN 2022-15](#)). Each vacant unit without a waiver is charged a daily rate based on the formula in PHN 2022-15. DHCD calculates fees on a quarterly basis and provides LHAs with a report showing, by unit, any assessments due, approximately 2 months after the end of each quarter.



DHCD will automatically import assessed fees into the year-end settle-up calculating earned subsidy. This automation will reduce the administrative work of LHAs manually entering this data and will allow for an accurate reconciliation of subsidy earned.

**7. Conversion of Section 8 New Construction/Substantial Rehabilitation (NC/SR) Properties out of State-Aided Public Housing Program**

By the end of FY23, the remaining Section 8 NC/SR properties are anticipated to convert out of the State-Aided Housing Program and fully onto the HUD Section 8 Project-Based Rental Assistance Program. Most Section 8 NC/SR have already seen their contract administrator transition from DHCD, which is one of four steps in the conversion process. After the conversion is completed by the LHA, these properties will no longer be subject to most state reporting requirements, assistance, and DHCD oversight. LHAs with a Section 8 NC/SR property conversion deadline of FYE 2023 (FYE 2024 for 3/31 LHAs) or earlier will count these properties under their federal program in HAFIS. Only these LHAs will need to revise the HAFIS Unit Count and proration to be part of the LHA's federal program as part of their budget submission. See **Attachment D** for instructions as to how to reflect this change in HAFIS. HAFIS has a "Sec 8 NCSR" input box under the federal program to accommodate the proration change.

DHCD emailed a memo with more details on the administrative transition to the 24 affected authorities on August 30, 2021. Questions specific to this section (Section 7) can be directed to Courtney Curran, [courtney.s.curran@mass.gov](mailto:courtney.s.curran@mass.gov).

**8. Resident Service Coordinator (RSC) and Mixed Population Service Coordinator Awards**

If your LHA received an RSC award or Mixed Population Service Coordinator Award, the total amount of the award (salary costs; flexible funds for RSC awards only) should be budgeted as DHCD Approved Exemptions Direct Reimbursements, regardless of whether your LHA is a surplus or deficit housing authority. In addition, the RSC/Mixed Population Service Coordinator salary should be budgeted on the Schedule of All Positions and Salaries. Please note, if any portion of these funds will be used for employee benefits, benefits should be budgeted on the Schedule of Insurance and Employee Benefits. The flexible spending funds should be budgeted on the Schedule of Admin. Other. In the case of Regional RSC Awardees, only the lead LHA (the LHA that received the award letter) will need to budget these costs, as the RSC funding will be paid to the lead LHA.

**9. Updated Agreed Upon Procedures (AUP) maximum fees**

These guidelines update maximum fees LHAs may pay for AUP auditors. DHCD increases maximum hourly costs from \$210 to \$250, based on the 19% cumulative increase in ANUEL from FY19 (last time DCHD adjusted AUP fees) to FY22. DHCD updates these maximum fees in order to increase LHA's ability to procure auditors in a timely manner.

LHA Size	Maximum Hours	Fy19-22 Maximum Cost	FY23 Maximum Cost

1-50	15	\$3,150	\$3,750
51-199	18	\$3,780	\$4,500
200-499	21	\$4,410	\$5,250
500-999	24	\$5,040	\$6,000
1,000+	26	\$5,460	\$6,500

## 10. Budgeting for Legal Costs

DHCD recommends an increase to the *minimum* recommended budget for legal expenses of \$4,000 for an LHA having 200 or fewer state-aided conventional public housing units and \$6,000 for an LHA with more than 200 state-aided conventional public housing units. Previously recommended minimum funding was \$3,500 and \$5,500 respectively.

## 11. Budget Submission Dates

These Budget Guidelines apply to fiscal year 2023 (2024 for March FYEs), which begins July 1, 2022 and includes LHA budget years of:

Budget Year	Budget Due By
July 1, 2022 – June 30, 2023	November 15, 2022
October 1, 2022 – September 30, 2023	December 15, 2022
January 1, 2023 – December 31, 2023	December 31, 2022
April 1, 2023 – March 31, 2024	February 28, 2023

## 12. REMINDER - Budget Dialogue Box

LHAs must include notes regarding any budget line item that does not conform to these budget guidelines as well as budget revisions submitted by the LHA. These notes should be detailed in the Dialogue Box section of the Budget. **If an LHA does not enter notes in the comments section of the budget form, submission for line items that deviate from these budget guidelines will be reverted.**

These budget comments greatly reduce back-and-forth between the LHA and DHCD and expedite review and approval of LHA budgets. We appreciate your help in this process.

**LHAs do not need to enter comments for line items that conform to budget guidelines.**

Examples of items that require comments include:

- Requests for budget exemptions;
- Items that do not conform to budget guidelines, such as
  - Admin salary increases >5% (requires explanation of reorganization plan)

An LHA will see the Dialogue Box prior to budget submission.

☒ Board has signed Budget Certification.  
☒ Budget Certification has been e-mailed to DHCD.  
☒ DHCD accepted Budget Certification.

Message to the Housing Management Specialist

Submit Budget Cancel

LHAs that use the HUD Central Office Cost Center (COCC) cost allocation methodology should communicate in the Dialogue Box of its budget submission that: 1) the LHA uses the COCC methodology; 2) explain how it arrived at the COCC number in the Schedule of All Positions and Salaries; and 3) identify the COCC per unit cost for both state and federal units. DHCD will be reviewing budgets to ensure that this information is included in the Dialogue Box (as shown above) - see more details under Budget Line Items – Operating Expenses – Administrative Salaries on Page 27.

Example of the notes to be included in the Dialogue box:

*The submitted budget includes a 7% increase in the state share of administrative salaries. This is 2% above the increase allowed by the budget guidelines. This increase is due to a reorg that includes the creation of an Asst. ED position and the elimination of a Director of Leasing. The duties of the two positions will be combined. Other items revised and/or new included an increase to the federal travel budget, the increase from \$100 per week to \$150 per week for the maintenance on-call stipend, and the inclusion of \$40,000 for a new truck purchase.*

*This **revision** of the 12/31 budget includes the following: A new directed cost exemption (\$14,000) for a legal case; an increase in extraordinary maintenance (\$25,000 for heating replacement); A reduction in 4110 of \$45,000 due to the elimination of a full-time administrative assistant position. The schedule of administrative salaries has been revised to reflect the mid-year hiring of a new Executive Director. ED salary is represented on 2 lines (6 months – former ED and 6 months new ED at hiring salary of \$65,000).*

## **II. HOUSING AUTHORITY BUDGETS: AN OVERVIEW**

Every year, each LHA is responsible for preparing an operating budget for its programs for submission to state and federal funding agencies (DHCD and HUD), and for reviewing its approved capital budgets. These budgets show how an LHA will fund its activities during the upcoming fiscal year. The budget is the basic document through which housing authorities convey their plan for their use of public funds to the state and federal agencies, their residents, the public, and most importantly to the authorities themselves.

A housing authority budget will have real value, only if: (a) it is carefully and openly prepared with the full understanding of the authority's board and of its tenants; (b) it is fairly reviewed by the funding agencies, so that each authority is measured against the same guidelines; and (c) the authority lives within its approved budget.

DHCD will monitor housing authority spending for adherence to the budget, compliance with regulations, and sound management practices. The LHA's residents, as well as the public, will be able to review and comment on the approved budget through the Annual Plan process. The LHA, however, is responsible for formulating and living within the budget. To assist the authority, the fee accountant or the authority staff accountant, will provide to the executive director quarterly operating statements which will include budget-to-actual reports for all state programs including a report of variances from approved budgets of +/- ten percent (10%) or more. The executive director will provide the report and a written explanation of variances to each of the board members quarterly.

DHCD understands that a budget is only a plan for how an authority intends to allocate its resources and as such is subject to change. LHA expenditures should generally not vary from approved budget by more than plus or minus ten percent (10%) by line item, with the exception of administrative salary and travel, which are more tightly monitored and may affect the operating subsidy allocated to the LHA for the fiscal year.

Retained revenue LHAs that are budgeting above the allowable expense level for non-utilities should budget these expenses in the correct line items and take special care that projected revenues are realized. See Attachment B for Budget Flexibility for Housing Authorities with Retained Revenue. The following sections answer some of the basic questions about the budget itself, and the budget submission process.

#### **A. What does a housing authority budget represent?**

A housing authority's budget is the document through which its financial resources are managed. The budget establishes the estimated amount that will be spent on any particular line item for a particular program within a particular period of time, usually one year. **The Commonwealth's obligation to fund this budget will be limited to the allowable non-utility expense level (ANUEL) set for the budget, plus utilities and any approved budget exemptions, minus income.** DHCD approves Authority budgets with the understanding that the established budget limits will accurately represent how the authority will fund its operating costs. DHCD, in particular approves operating subsidy (deficit) under the following formula:

$$\begin{array}{rcl}
 \text{Budgeted ANUEL} + \text{Approved Budget Exemptions} & & \\
 \text{plus Actual Utility Cost for the fiscal year} & & \\
 \text{Minus Revenue from Designated Accounts (3110+311+3115+3190+3690+3693)} & & \\
 = & \text{Adjusted Budget Deficit (Operating Subsidy)} &
 \end{array}$$

In light of the emphasis placed on local responsibility in the budget process, salary, travel and bottom-line non-utility budget overruns will be treated very seriously. These items will be reviewed and may affect the operating subsidy allocated to the LHA for the fiscal year. Deficit LHAs with overruns in administrative salaries (account #4110) and travel (account #4150) may have their earned operating subsidy reduced by that overrun amount. Housing authorities will be held accountable to operate within

the approved budgets, and their fiscal performance will be reviewed throughout the year and at year end by DHCD. Attention will be paid to each total income/expense category and the bottom line.

LHAs may budget expenditures up to their projected income level or the allowable non-utility expense level (ANUEL), plus utilities, whichever is higher. DHCD, however, only guarantees subsidy to an LHA under the formula above and will not cover LHA non-utility expenses in excess of ANUEL, unless they are approved budget exemptions. LHAs should conservatively estimate projected income and costs such that the financial position of the LHA will not be placed in jeopardy.

Any amount approved in excess of the approved expense level is the sole responsibility of the authority. DHCD's approval is merely of the authority's plan of expenditure of excess income generated from tenant rents and other income.

With regard to utility expenditures, DHCD recognizes the fact that energy costs are difficult to budget, given uncertainties regarding energy costs and the severity of the winter heating and summer cooling season. Accordingly, DHCD will reimburse deficit LHAs for actual utility costs incurred. DHCD strongly encourages LHAs to pursue measures to reduce utility consumption and greenhouse gas emissions to meet the state's climate goals as well as allow for future increases in ANUEL within the operating subsidy.

We urge all LHAs to take a "hard look" at utility costs and pursue energy saving opportunities through the Mass Save Income-Eligible program and DHCD sustainability funding for energy-saving capital projects. DHCD strongly recommends that all authorities, especially those that have not conducted a comprehensive review of their energy consumption systems in the past three years, perform such an audit this year. A reduction in energy costs will benefit everyone; retained revenue LHAs, of course, will retain 100% of any savings, while lower utility costs at deficit LHAs have funded significant increases in the ANUEL for all LHAs over the past ten years by reducing the demand for operating subsidy.

Please contact Sustainability Program Developer Greg Abbe ([greg.abbe@mass.gov](mailto:greg.abbe@mass.gov)) with questions about sustainability programs.

## **B. How is an authority's performance rated?**

On August 6, 2014, Chapter 235, "[An Act Relative to Local Housing Authorities](#)," was signed into law. Included in this law is a requirement that DHCD establish and implement an annual Performance Management Review (PMR) of local housing authorities.

The PMR reviews the administrative and management operations of each housing authority in several key areas:

- occupancy rates
- tenants accounts receivable (TAR)
- board member training
- certifications and reporting submissions
- adjusted net income (ANI)
- operating reserves (OR)
- tenant selection through Common Housing Application for Massachusetts Public Housing (CHAMP)
- inspection standards and practices
- vacancy turnover standards and practices

- preventative maintenance standards and practices
- work order types and systems
- Annual Plan submission
- capital spending
- staff certifications and training

Beginning with the June 2021 FYEs, DHCD administers PMRs for most housing authorities on a *biennial basis* – meaning only half of LHAs will have Published PMRs each year. *Please see [PHN 2022-09](#) and [PHN 2022-10](#) for the updated PMR Criteria/Scoring and Biennial Year 2 LHAs.*

In the future, PMR ratings *may* play a role in the budget approval process at DHCD. For FY2023 however, *DHCD will not consider any performance review in the budget process.*

### **C. In preparing its budget how much flexibility will an authority be given?**

An authority will be given significant latitude in formulating its budgets. Three specific restrictions will apply to all local housing authorities as follows:

- Increases in administrative salaries will be restricted (See Section H, page 12),
- Increases in maintenance salaries will be restricted (See Section I, page 14); and
- Bottom line cap with exceptions to some retained revenue housing authorities will apply.

In addition, it should be noted that all LHAs will continue to face certain obligations as provided in the General Laws and DHCD regulations. For example, MGL c.121B requires all housing authorities to provide support for the local tenant organization (LTO) (account #4191). These provisions are spelled out in greater detail in Section III, Detailed Instructions for Budget Preparation on page 21.

### **D. Budget Consolidation**

Budget consolidation applies only to your state conventional programs (c.667, c.200 and c.705). All federal, rental assistance and most c.167/689 programs, as well as those in development, must remain separate. The c.167/689 budgets for expense approval and reporting will be consolidated on a program basis with only the project reserves and tenants accounts receivable remaining separate on your balance sheet. Budgets for the c.689 programs can only be consolidated when the same vendor operates the programs. **The c.167/689 budget must reflect the number of units (beds) provided for in the applicable CFA, not the number of residents.** If you are unsure of that number, please contact your Housing Management Specialist (HMS).

With the exception of those authorities that manage federal Section 8 New Construction/Substantial Rehabilitation projects for the Commonwealth, and a very small number of certain mixed-finance redevelopments, the only program designations that should be used are c.400, c.167/689 and state rental assistance. If a new development is added to the LHAs portfolio, you must contact your Housing Management Specialist to arrange for a designated budget to be set-up on-line during the Initial Operating Period (IOP).



### **E. Quarterly Operating Statements and Year End Statements by Program**

LHAs must file a cost breakdown by program each quarter and at year-end (4<sup>th</sup> quarter). LHAs should attribute charges to the program that actually incurred the expense to the greatest extent possible. LHAs need to delegate expenses by program from the beginning of the fiscal year, to ensure the required information is available for year-end reporting. Both expenses and income must be reported by program (c.667, c.200 & c.705). The c.167/689 program statements must clearly show reserve balances for each c.167/689 property. Reserve amounts for the c.167/689 program cannot be consolidated regardless of the vendor.

Quarterly operating statements and year-end operating statements (4<sup>th</sup> quarter) must be submitted within sixty (60) days after the quarter-end. DHCD will not advance operating subsidy to a deficit housing authority until the statements are submitted. If the year-end (4<sup>th</sup> quarter) operating statements are not submitted within the required time frame, DHCD will not advance operating subsidy for the second quarter of that LHA's current fiscal year, or for any future fiscal quarters, until the statements are submitted.

DHCD will restrict the use of surplus LHA's Operating Reserves (OR) for LHAs that fail to meet the quarterly operating statement submission deadline until the statements are submitted. If the year-end (4<sup>th</sup> quarter) operating statements are not submitted within the required time frame, DHCD will restrict surplus LHAs from using their OR for the second quarter of their current fiscal year, or for any future fiscal quarters until the statements are submitted.

### **F. c. 167/689 Program Budgets**

The c.167/689 program expense level is limited by the contribution available under the contract between the housing authority and the sponsor. Authorities are allowed -- but not required -- to make c.167/689 related program payments in lieu of taxes (PILOT) to their communities. PILOT payments should be computed using the same formula used for the c.705 program. DHCD expects that PILOT payments, as well as all operating costs, can be accommodated within current operating receipts from the sponsor.

In accordance with [PHN 2022-12 Updates to c.167 and c.689 Housing Contracts](#) and effective July 14, 2022, the minimum monthly rents for these programs are set at \$304 per CFA unit (per bed) with the understanding that the majority of rents will be above that minimum. LHAs must negotiate with vendors and include justification for higher rents. If your current monthly rent is less than \$304 per CFA unit (bed), please contact your service provider/vendor to discuss increasing the rent. The new minimum rent of \$304 now incorporates the \$167 monthly maintenance fee, which is discontinued.

Note that your c.167/689 lease includes the expectation that the rent will increase each year by at least the amount of the Social Security Cost of Living Adjustments (COLA), which was 5.9% in calendar year 2022.

In formulating budgets for the c.167/689 program, LHAs should ensure that adequate maintenance services are assigned to each program development. Housing authorities are expected to prorate costs such as administrative salaries and related benefits, and other administrative costs in direct proportion to the percentage of an authority's portfolio that the leased units (beds) comprise. Other costs such as

travel, insurance, and accounting services should be charged based on actual cost to the c.167/689 program. If you have questions on pro-rations, call your Housing Management Specialist for clarifications before you submit your budget. Those developments which are seeing a change in configuration as a result of Department of Mental Health (DMH) and Department of Developmental Services (DDS) policy changes should negotiate rents that are sufficient to cover all costs. This may result in higher per unit (bed) monthly rents as they still need to pay rent based on the number of units (beds) as listed in the CFA.

LHAs are required to maintain separate reserve balances for each of their c.167/689 properties, regardless of whether an LHA has the same vendor providing services for a number of the LHA's c.167/689 properties, LHAs must record and maintain reserve amounts separately for each property. Reserve balances and expenses for each c.167/689 property must be attributable to the subject property and shown as such.

For a more complete discussion of budgeting for the c.689 program, LHAs should refer to the c.689 Management Handbook, [PHN 2009-14](#) and updated rent policies in [PHN 2022-12](#).

### **G. Rental Assistance Budgets**

The rental assistance spending level is based on the administrative fee for the program. The Massachusetts Rental Voucher Program (MRVP) administrative fee is \$50 per unit per month as updated on February 1, 2020. Any expenditure from MRVP reserve funds needs prior written approval from DHCD. DHCD will not approve any budget submission or expenditure which will exhaust the operating reserve for the rental assistance program. LHAs must closely monitor any loss of units in the program and adjust expenses accordingly. The LHA will need to project voucher-months leased multiplied by the \$50 fee to calculate the projected administrative income for the upcoming year.

Alternative Housing Voucher Program (AHVP) income and expenses should be included in the authority's MRVP budget. The AHVP and DMH project-based rental assistance administrative fee is also \$50 per unit per month.

Housing authorities are expected to prorate costs, such as administrative salaries and related benefits, and other administrative costs in direct proportion to the percentage of an authority's portfolio that the leased units comprise. Other costs such as travel, insurance, and accounting services should be charged on the basis of actual cost to MRVP. If you have questions on pro-rations, contact your Housing Management Specialist for clarifications before you submit your budget.

Please remember: MRVP is a state program and as such is subject to all limitations on salaries and other restrictions as outlined in these Budget Guidelines.

### **H. Increases in Administrative Salaries**

#### **Administrative Salaries:**

LHAs have flexibility to propose salary changes for all administrative staff, except the Executive Director, provided that the total increase in overall salaries charged to state programs, excluding the Executive Director's salary, does not exceed 5% of last year's (FY2022) approved #4110 account.



The 5% cap is not intended to apply to LHA reorganizations where positions are changed and/or added. LHAs can determine appropriate staffing levels and positions. A reorganization of the administrative staff, including increases of duties and responsibilities of existing staff and/or addition of administrative position(s) are acceptable, however, the increase in salary and benefits must be budgeted within the LHA's approvable ANUEL.

Where a reorganization applies, the **LHA must include in the Budget Dialogue box for the administrative salaries line item** a description of the re-organization for DHCD review to ensure reasonableness and that the re-organization can be supported within the LHA's ANUEL.

The "Schedule of All Positions and Salaries" must list all positions with salaries and bonuses. It must reflect total compensation of all administrative positions in the LHA's operating budget submission. All positions must be shown even if the LHA does not charge any salary for that position to state programs. DHCD will not accept an excel spreadsheet for the "Schedule of All Positions and Salaries". Each individual position must be listed on the Schedule. Bonuses, from non-state funds, must be clearly listed on the schedule on a separate line from the salary in a way that clearly identifies the reason for the bonus and what position will be receiving the bonus. Compensation for an Executive Director should be captured in Line 1 (Salary only), and if receiving a bonus, it must be captured on Line 2 (Bonus only) of the schedule.

**The LHA must be able to support any salary increase within the ANUEL.** Bonuses cannot be charged to any state housing programs, and longevity payments are only allowed if funded from a non-state source and not included as salary or in retirement calculations.

### **Executive Director Salary:**

[Public Housing Notice 2022-02](#) sets salary limits for LHA executive directors based on unit count, a program factor, and a family factor for state-aided family units.

Effective for FY 2023 budgets (FY2024 budgets for 3/31 FYE LHAs) the executive director, pursuant to a Board vote, may receive up to a 5% maximum increase to unit-based salary. See [updated salary bands here](#). The family and program factors have not changed.

An executive director whose salary is less than the maximum may, pursuant to a Board vote, receive up to the allowable maximum for FY2023 budgets governed by these guidelines per the Schedule, so long as the increase can be absorbed within the LHA's ANUEL.

If the executive director receives a salary increase pursuant to a Board vote, the LHA must submit, no later than the LHA's budget submission/revision deadline, to their assigned Housing Management Specialist (HMS) the completed, chairperson-signed "DHCD Local Housing Authority Executive Director Salary Calculation Worksheet," (refer to [Public Housing Notice 2022-02](#)) and reference [Exhibit B of this PHN](#). The Budget Certification includes a space to input the Board-approved salary. An executive director whose current approved salary already exceeds the new maximum may continue to receive said salary without increase until such time that DHCD issues a new Schedule showing that the existing salary is less than the allowable maximum.

An executive director's total salary, from direct employment at one or two LHAs, shall not exceed a maximum aggregate of \$198,450 for all LHA budgets governed by DHCD's FY2023 Budget Guidelines. Additionally, an executive director's total salary that includes a portion of salary from other program activities, such as Management Services Agreement fees for day-to-day operations of another LHA and other contracts with any other public or private entities that are temporary or that may otherwise terminate (e.g., providing management or administrative services on behalf of other housing authorities, private developers, non-profit entities, grant recipients, municipalities, etc.), shall not exceed a maximum aggregate of \$218,295,

○ Program Factor:

- DHCD will not approve salaries that count HUD's Section 8 Mobility Program (also known as Section 8 Portability) as a distinct program. This program is already part of the Section 8 Housing Choice Voucher Program.
- Chapter 167 and Chapter 689 units count as one program for purposes of salary calculation (i.e., if an LHA has 4 c. 167 units and 8 c.689 units, they can only add one program to the program count)

○ Family Factor:

- The State Family Factor component of the executive director's salary, as calculated in accordance with the Executive Director Salary and Qualifications Schedule, must only be included in the "Other S-1" column, to ensure the state proration is accurate.

**The LHA must be able to support any salary increase within the ANUEL.** Bonuses cannot be charged to any state housing programs, and longevity payments are allowed if funded from a non-state funding source and are not included as salary or included in retirement calculations.

## **I. Maintenance Salaries**

The Maintenance Labor Account #4410, excluding seasonal help and overtime, must use the current rate published by the Department of Labor and Workforce Development (DLWD) and cannot exceed that rate without prior DHCD review and approval in the LHA annual operating budget.

If the LHA is currently paying wages in accordance with a union contract at a rate that exceeds the DLWD rate, then in accordance with [760 CMR 4.10 \(1\) \(a\)](#), the LHA shall notify DHCD, in writing, of its intention to begin collective bargaining, and promptly schedule and participate in a pre-bargaining conference with DHCD to discuss pertinent matters pertaining to the collective bargaining. The LHA shall provide DHCD with a description of the bargaining unit. In consultation with DHCD, the LHA may increase the rate, subject to DHCD review and approval of the LHA annual operating budget.

Maintenance staff in a supervisory capacity are allowed to exceed the DLWD rate by up to \$3.00 per hour at the discretion of the LHA.

**The LHA must be able to support any rate/salary increase within the ANUEL.** Bonuses cannot be charged to any state housing programs, and longevity payments are only allowed if funded from non-state sources and not included as salary or included in retirement calculations.

## **J. Security-Related Expenses**

An LHA can expend state operating funds on security, within its existing bottom line. The LHA must submit a written request to the Bureau of Housing Management that includes the following:

1. Documentation of a compelling need for additional security measured by such factors as: extremely high crime rates, dramatic increases in certain types of crimes, or unique crime problems;
2. A "maintenance of effort" agreement with the municipality and police chief executed by the LHA; and
3. A statement that documents the following information for all persons who will perform LHA security functions:
  - Whether or not they will carry firearms;
  - Confirm if they are graduates of a police academy certified by the Massachusetts Criminal Justice Training Council and have passed a standard psychological screening for law enforcement personnel;
  - Assert all security personnel must participate in continuing education/training, and be recertified annually for firearms use, as appropriate.

Once DHCD approves the security expense, the LHA does not need to submit yearly documentation unless requested by DHCD.

## **K. Submission Deadlines**

These Budget Guidelines apply to fiscal year 2023, which begins July 1, 2022 and includes LHA budget years of:

<b>Budget Year</b>	<b>Budget Due By</b>
July 1, 2022 – June 30, 2023	November 15, 2022
October 1, 2022 – September 30, 2023	December 15, 2022
January 1, 2023 – December 31, 2023	December 31, 2022
April 1, 2023 – March 31, 2023 <sup>4</sup>	February 28, 2023

Budgets will be reviewed and approved as soon as possible, but within no more than sixty (60) working days of acceptance of a complete LHA budget submission. The LHA's budget submission must be complete and incorporate all relevant explanatory material. Incomplete submissions will be reverted to an authority for correction or completion, restarting the "60 day" time limit. Budgets requesting special exemption or requiring follow-up documentation may take longer.

## **L. Required Elements of Budget Submission**

An authority must submit an operating budget for each state housing program having contracted/leased units. All submissions must be submitted electronically through the DHCD on-line Housing and Financial Information System (HAFIS). These budgets must include all required data and all applicable justification, with detailed notes on budget lines not in conformance with budget guidelines in the Dialogue Box Section (Comments) of the Budget. Data and applicable justification include the Executive Director Salary Calculation Worksheet for any proposed Executive Director Salary increases and for newly hired Executive Directors, which must be submitted outside of HAFIS.

### **Board Approval and Budget Certification**

All budgets require Board approval prior to submission, and **all** board members must sign the Budget Certification Form. An electronic Budget Certification for each program budget (400-1, 400-9, c. 689, MRVP, and 400-A etc.) must be submitted and accepted by DHCD to allow for the submission of the LHAs operating budget(s).

LHAs must complete the fillable Budget Certification Form. The form is set up to allow you to move from each point that needs to be completed using the tab key. Information to be completed is indicated by red text. Once you complete a field that repeats in the form, such as the housing authority name, it will automatically populate where needed throughout the form.

The fillable Budget Certification Form includes the executive director's annual salary for the fiscal year. The LHA Board must vote to approve the executive director's salary, which must be included in the LHA's fiscal year's operating budget. The Budget Certification will provide evidence of Board approval for both the annual operating budget and the executive director's annual salary.

This fillable Budget Certification Form must be used by an LHA prior to submitting an original or revised state budget for each fiscal year. Once the form is completed, the LHA must submit a scanned/pdf copy of the fully completed and executed Budget Certification to DHCD via email to: [dhcdhafiscert@mass.gov](mailto:dhcdhafiscert@mass.gov). An authorized administrator from DHCD will review the submission and send an email to the LHA within seven (7) working days of receipt accepting the submission or stating that the submission is not acceptable and identifying incomplete or missing information and requesting correction and resubmission. Please refer to [PHN 2016-12](#).

LHAs cannot submit the Operating Budget(s) prior to notification from DHCD that the Budget Certification(s) is acceptable.

Once you receive notification of acceptance of the Budget Certification, the LHA will submit the Operating Budget(s) through HAFIS.

### **M. Budget Review Process**

Once the LHA submits its budget, the Housing Management Specialist (HMS) will receive a HAFIS system generated email stating the budget has been submitted to DHCD. Then the review process is as follows; each step is sequential to the one preceding:

1. The HMS has **seven (7) calendar days to accept budget(s)**.
  - a. The HMS verifies that the **LHA has submitted a budget for each of the state funded programs** administered by the LHA. HMS will re-verify that the budget certification has been accepted for all state programs and record date of the budget certification submission in the Tracking Notes in HAFIS.
    - If a program budget has not been submitted (e.g., c. 689, MRVP, etc.), HMS will call the LHA, verify that programs exist, request the missing budget to be submitted in **seven (7) calendar days**, and **the budget(s) will be reverted to the LHA**. HMS will follow-up with an email.

2. The HMS has **seven (7) calendar days to verify the unit count and salaries:**
  - a. Unit count must include state, federal, and all other programs/units the LHA owns and manages directly. LHAs should not include program/units contained in a Management Services Agreement or other management contract in this unit count.
    - HMS will call the LHA with questions regarding unit count. If the unit count is incorrect or HMS is unable to verify, HMS will **revert the budget(s) to the LHA** to correct the unit count and will request the information be submitted within **seven (7) calendar days**. HMS will follow-up with an email.
  - b. HMS will review administrative salaries, the executive director salary, and maintenance salaries to determine if salaries, including any increases and salary pro-rations, comply with the DHCD Budget Guidelines.
    - HMS will call the LHA with questions regarding salaries. If salaries, including any increases and salary pro-rations, do not comply with the DHCD Budget Guidelines HMS will revert the budget(s) to the LHA to correct any increases and salary pro-rations and will request the budget(s) be re-submitted within **seven (7) calendar days**. HMS will follow-up with an email.
  - c. HMS will verify that LHA utilized the Dialogue Box to detail exemptions. LHAs must include notes regarding any budget line items that do not conform to these budget guidelines as well as any budget revisions submitted by the LHA. These notes should be detailed in the Dialogue Box section of the Budget. **If the LHA does not include required notes in the Dialogue Box, DHCD will revert the budget for LHAs to add those comments.**

**Please note that the total time for HMS review is fourteen (14) calendar days, if the budget(s) is not reverted to the LHA for correction.**

3. The HMS forwards LHA budget(s) to Finance with comments in the Tracking Notes that will include details such as: Budget Certification has been reviewed and accepted, all program budget(s) have been submitted, budget(s) includes all programs and units counts, and salaries, including any increases and salary pro-rations are in compliance with DHCD Guidelines. HMS will also note if there is a Management Services Agreement in place and identify the contracting authorities
4. Finance receives budget(s), reviews the Tracking Notes and the Dialogue Box and begins the budget review process **within seven (7) calendar days**.
5. Finance will begin reviewing a complete budget(s) or revert the budget(s) to the HMS and the HMS will revert the budget(s) to the LHA if any of the required schedules are missing.
6. Review Schedules for adherence to Budget Guidelines (required schedules):
  - a. Program Specific Pages

- b. Schedule of All Positions and Salaries for both administrative salaries and maintenance wages.
  - c. Schedule of Insurance & Employee Benefits
  - d. Schedule of Capital and Other Expenses, listed as Extraordinary Maintenance, Equipment Replacement Capitalized, Betterments & Additions Capitalized, Equipment Purchases Non-Capitalized
  - e. Expenditures in Excess of ANUEL
  - f. ANUEL and Subsidy Worksheet
  - g. Schedule of Exemptions
  - h. Operating Reserve Analysis
  - i. Admin Other (4190)
  - j. Contract Costs (4430)
  - k. Schedule of Management Agreements
7. Finance records notes regarding ANUEL, reserve level, and any other modifications to the budget in the Tracking Notes and the Dialogue Box in HAFIS. This is to be completed **within thirty (30) calendar days**.
- a. Recommends approval of the budget(s) and forwards budget(s) to Finance Manager/Budget Director
  - b. If unanswered questions or discrepancies, budget(s) are reverted to LHA for correction.
8. Finance Manager/Budget Director receives budget for review and approval
- a. Reviews for completeness, accuracy, and approval **within nine (9) calendar days**
  - b. If questions, reverts budget to Finance
  - c. Approves budget(s) electronically and by letter

**Budgets electronically submitted that fully comply with the DHCD Budget Guidelines will be processed and approved within sixty (60) days.**

#### **N. Approved Budget Implementation**

An authority's approved operating budget is that budget which has been approved electronically by the DHCD's Finance Manager/Budget Director for the Bureau of Housing Management. An authority must present an approved budget to the Board of the authority for formal Board acceptance if there have been any modifications.

The effective date for the implementation of the new budget is the first day of the new fiscal year, or the date approved by the Finance Manager/Budget Director, whichever is later. **Until the LHA has received an approved budget, it is authorized to spend at a level no greater than the prior fiscal year's approved level, less any one-time budget exemptions. No new expenditures for additional staffing or salary increases may be made until the new budget has been formally approved by DHCD.**

#### **O. Increase to Allowable Non-Utility Expense Level (ANUEL).**

The Allowable Non-Utility Expense Level (ANUEL) will increase by 9% for FY2023. All budgets that exceed the LHA's FY2023 ANUEL will be reverted and must be modified. Increase is subject to



the provisions of paragraph 2. in the Key Highlights section (p. 5), *Budget Reduction for LHAs in non-compliant Communities*.

#### **P. How is an Initial Occupancy Period (IOP) budget established?**

When an authority has a new development going into occupancy, it must prepare and submit an operating budget for that development. In addition, the authority must consider the effects of the new development on its existing program budgets in terms of changes in prorated charges (See Section III, Detailed Instructions for Budget Preparation, page, 21).

Authorities frequently need assistance in formulating IOP (Initial Occupancy Period) budgets and often ask what level of non-utility costs is typical for c.667, c.200 and c.705 developments. In formulating IOP budgets for these programs, we encourage authorities to contact their Housing Management Specialist (HMS).

In preparing an IOP budget for a c.689 development a housing authority should refer to the c.689 Management Handbook and to its lease agreement with the development's sponsoring agency.

#### **Q. Budget Revisions**

LHAs are encouraged to review quarterly operating statements for adherence to the budget and make the necessary changes to ensure that expenditures are no more than plus or minus 10% of the budgeted amounts. This could require increases in collections, changes to spending and perhaps revisions to the budget.

Revisions are required under certain exceptional circumstances, such as large, extraordinary maintenance or legal settlement expenses, the addition or disposition of state-aided public housing units, or the termination of a management agreement.

As noted above in Section II A, “What Does a Housing Authority Budget Represent,” DHCD will treat salary, travel and bottom-line non-utility budget overruns very seriously. These items will be reviewed and may affect the operating subsidy allocated to the LHA for the fiscal year. Deficit LHAs with overruns in salaries (account #4110) and travel (account #4150) will have their earned operating subsidy reduced by that overrun amount. Housing authorities will be strictly held accountable to operate within the approved budgets, and their fiscal performance will be reviewed throughout the year and at year end by DHCD.

A budget revision requires Board approval prior to submission, and **all** board members are required to sign the Budget Certification Form. LHAs must submit an electronic Budget Certification for each program budget revised (400-1, 400-9, c. 689, MRVP, or 400-A etc.) and DHCD must accept it to process the LHA’s operating budget(s).

When submitting a budget revision, columns 1 and 2 of the budget page will automatically reflect the approved budget for the current fiscal year. Columns 3 and 4 should reflect the LHA's requested amounts proposed for the revised budget. The appropriate schedule of costs should be revised where applicable. A budget revision must be complete when it is submitted, with the appropriate supporting data and applicable information and justification, including detailed notes of which line items were adjusted in the Dialogue Box Section of the Budget.

If a budget revision includes a salary increase for the executive director pursuant to a Board vote, the LHA must submit, no later than the LHA's budget submission/revision deadline, to their assigned Housing Management Specialist (HMS) the completed, chairperson-signed "DHCD Local Housing Authority Executive Director Salary Calculation Worksheet," (see [Public Housing Notice 2022-02](#)). The Budget Certification includes a space to input the Board-approved salary.

LHAs must submit any Budget revisions electronically to DHCD no later than the first (1<sup>st</sup>) day of the eleventh (11<sup>th</sup>) month of the authority's current fiscal year. The Budget Certification with all the Board member signatures, and any supporting documentation required that cannot be submitted through HAFIS, should be received by DHCD before submitting the Budget revision in HAFIS.

### **R. Calculation of Reimbursable Deficits**

The amount that an authority is reimbursed is called the Adjusted Budget Deficit. The deficit will be calculated as follows:

Budgeted ANUEL + Approved Budget Exemptions  
**PLUS** Actual Utility Cost for the fiscal year  
**MINUS** Revenue from Designated Accounts (3110+311+3115+3190+3690+3693)  
 = *Adjusted Budget Deficit*

### **S. Program Based Reporting**

DHCD conducts an analysis of expenses by total consolidated program. LHAs must keep records by program. LHAs are required to submit, at year-end, a breakdown of expenses by program with its year-end consolidated operating statements. Rental income will need to be reported by **program**.

Quarterly operating statements and Year End operating statements must be submitted within sixty (60) days after the quarter ends.

For deficit LHAs that fail to meet the quarterly operating statement submission deadline, operating subsidy will not be advanced to the housing authority until the statements are submitted. If the year-end (4<sup>th</sup> quarter) operating statements are not submitted within the required time frame, deficit LHAs will not be advanced operating subsidy for the second quarter of their current fiscal year, or for any future fiscal quarters until the statements are submitted.

For surplus LHAs that fail to meet the quarterly operating statement submission deadline, DHCD will restrict the use of the LHA's Operating Reserves (OR) until the statements are submitted. If the year-end (4<sup>th</sup> quarter) operating statements are not submitted within the required time frame, surplus LHAs will be restricted from using their OR for the second quarter of their current fiscal year, and for any future fiscal quarters until the statements are submitted.

### **Other Program Based Certifications and Submission Reporting Requirements**

LHAs must submit the required LHA certifications and submissions of various reports. Please refer to [Public Housing Notice 2022-06](#), or any update to said Schedule for specific reporting requirements. LHAs are required to use the web-based monthly reporting system for submission of the following:



- Board Attendance Report & Certification (Due 30 days after month end).
- Energy Reports (Due 30 days after month end).
- Mod & Development Quarterly Cost Report (Due 30 days after quarter end);
- Quarterly Certification & Vacancy System Utilization Report (Due 30 days after quarter end);
- Budget Submission & Certifications (Due 30 days before the commencement of the LHA's fiscal year or per DHCD Budget Guidelines);
- Operating Statements & Year-end Statements (Due 60 days after quarter end);
- Certification of Tenant Lead Notification (Due 60 days after fiscal year end);
- Certification of Salary and Compensation – "Top Five" (Due 60 days after fiscal year end);
- CIP Submission (Due two (2) months prior to the LHA's fiscal year end); and
- LHA Annual Report/Plan (Due two (2) months prior to LHA's fiscal year end).

## **T. Vacant Unit Fee Assessment**

### **New Process and Fee Structure:**

As per [PHN 2022-15](#), for budget years starting July 1, 2022, the Housing Authority Financial Information System (HAFIS) will automatically import assessed vacancy fees from the vacancy waiver systems into Section 12 of the ANUEL and Subsidy Worksheet. The automation of reporting assessed vacancy fees in the LHA year-end operating statements will be effective for FYE 6/30/2023 and beyond.

DHCD also updates vacancy fees in FY23 to apply different fees for vacancies without approved waivers that occur in the c. 667 program vs the family program (c. 200 and c. 705).

Finally, this notice clarified documentation needed and the waiver lengths approvable for various waiver categories. Please refer to [PHN 2022-15](#) for more details.

## **III. DETAILED INSTRUCTIONS FOR BUDGET PREPARATION**

The following sections explain the budget forms and how they are to be prepared.

### **Individual Program Budgets vs. Consolidated Budgets**

For the conventional housing programs, (c.667, c.200, c.705) one budget should be prepared for the consolidated operation and listed in the spaces provided. Budgets are required for all occupied developments even if not yet financially closed into "management." This period of occupancy, prior to the closing from development into management, is called Initial Occupancy Period (IOP). A separate budget must be submitted for these units, then consolidated the following year. Authorities must prepare and electronically submit a budget for any such development thirty (30) days prior to the projected date of lease-up. For Rental Assistance, one budget should be submitted encompassing all program components, including AHVP.

### **Program/Units**

The cover sheet for each program's budget should indicate the total number of units, by bedroom size, currently in each housing program. For example, in the 400-1 budget, the LHA must list each individual

development (i.e., 667-1, 40 one-bedroom units; 667-2, 30 one-bedroom units; 200-1, 10 two-bedroom units, 10 three-bedroom units, 5 four-bedroom units; 705-1, 5 two-bedroom units; 705-2, 10 three-bedroom units). MRVP and Section 8 units should list both the number of contract units and the number projected for occupancy as of the first day of the fiscal year. For budgetary purposes, the number of MRVP and Section 8 units will remain constant for the fiscal year. AHVP, although included in the MRVP budget for expense purposes, needs to be reported separately as the number of occupied units. LHAs must include federal public housing units and any other units managed by the LHA (e.g., local funded initiatives, non-profit partnerships) in the LHA's budget submission. LHAs managing units for another LHA (Owner LHA) should not include units managed by a management agreement. The Owner LHA should report its units even when it has entered into an agreement to have another LHA manage the units. LHAs that do not submit all program units will have their budget reverted.

### Calculating Per-Unit-Month (PUM) Costs

A Per-Unit-Month (PUM) cost is calculated to determine the monthly operating cost of a single unit of housing. It serves as a basis for comparing operating costs of local housing authorities. The computer calculates the PUM automatically when the LHA inputs cost totals. (NOTE: Currently, the PUMs reported in HAFIS by program (i.e., c.667, c.200, c.705) are estimates. DHCD will modify this in a future update to the HAFIS system.)

### Budget Description (Forms 050 and 070)

The electronic version of the budget has both a PUM and a total amount column for the prior year approved budget, rather than just one field.

## **BUDGET LINE ITEM: REVENUE**

The following section explains how each of the line items under "Revenue" is to be prepared.

### 3110: Shelter Rent

Included in this account are the total rent receipts anticipated from residents assuming an occupancy rate of not less than 98% for the projected twelve-month period. *Should the LHA believe that it will not achieve a 98% annual occupancy rate, the LHA must submit detailed information explaining the reasons for a lower occupancy rate together with information on the LHA's efforts to mitigate the reduced occupancy rate.* In addition, the shelter rent projection should be based on the current rent roll plus anticipated increases expected from annual rent re-determinations, as well as increases which would be realized as a result of regulatory amendments. Rents for residents of family public housing are calculated at 27%, 30% or 32% of household income. Residents of elderly/handicapped housing are calculated at 25% or 30% of household income. LHAs should include notes in the Dialogue Box Section of the budget that include how the rent projection was calculated (i.e., current rent roll of \$x per month, with an anticipated increase of x% due to COLA increases).

DHCD allows LHAs to request a regulatory waiver to perform rent re-determinations every two years rather than every year for tenant households residing in c.667 developments. However, the failure to capture the usual rent increase from the Social Security Cost of Living Adjustment (COLA) for the "off" year would likely require additional state subsidy costs, which DHCD cannot afford to divert for this

purpose. Therefore, LHAs seeking a waiver of [760 CMR 6.04\(4\)](#) will need to increase tenant rents in the “off” year by an amount equal to the percentage increase in the COLA. It is important to note that **this rent increase only applies to the fixed income benefit from social security, not wages or any other source of income.** Before doing so, the LHA will also need to execute an amendment to the tenant’s lease. Tenants will continue to have the right to request a re-determination if the rent calculated in the manner described exceeds the rent due under the regulations. Contact your Housing Management Specialist for guidance.

Any tenant household that is over-housed and 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. In addition, a late fee penalty of \$25 will be charged to any tenant household that fails to pay rent within 30 days of its due date.

Fraud/Retroactive balances owed should not appear as part of account number 3110, instead, they should be separated out into account 3111.

#### 3111: Shelter Rent – Tenants – Fraud/Retroactive

This account should be used to report total rent receipts from residents due to unreported income. These are often called fraud or retroactive balances.

In cases where deficit LHAs discover, pursue cases, and enter into a written fraud/retroactive re-payment agreement **with a tenant in possession or a vacated tenant that has not reported income**, the LHA will be allowed to retain two-thirds of the funds recovered. One third of the total dollar amount recovered should be included in the LHA’s quarterly or year-end Operating Statement as Shelter Rent, account #3111, and two-thirds of this total dollar amount should be included in Other Revenue-Retained, account #3691.

#### 3115: Shelter Rent – Section 8

This account applies only to those developments receiving support through the federal Section 8 New Construction and/or Substantial Rehab Programs. This account should be credited and Account #1121 on the balance sheet should be debited for the Federal Section 8 Subsidy support on, c.200, c.667, c.705 and c.689 programs.

If MassHousing is the contract administrator for your Section 8 New Construction/Substantial Rehab property, you do not need to enter anything in this line item.

#### 3190: Non-Dwelling Rental

This account should be credited with the rent, including charges for utilities and equipment, billed to lessees of non-dwelling facilities and of dwelling units rented for non-dwelling purposes.

Include income from space rented to non-residential agencies. Before an authority enters into an agreement for rental of space for non-dwelling purposes, it must obtain written authorization from the Bureau of Housing Management. The Bureau of Housing Management must also approve any lease agreement. The request should include all pertinent details for the proposed arrangement, including evidence of adequate lessee insurance and an executed lease, even if no rent is to be paid. The authority should also include justification that such use of the space does not deprive the authority of needed operating or dwelling space and is in the best interest of both the authority and its residents. In general, rent should cover all operating expenses to the authority including janitorial, maintenance, and utility

costs. An authority should not incur costs as a result of space being rented to other agencies and should not give space to federal programs free of charge. When the LHA's central administration or maintenance offices are located in a state-aided development, rent should be charged to federal programs on a prorated basis. Rental charges should be shown as income to the specific program providing the facilities.

#### 3400: Administrative Fee – MRVP/AHVP

This account should be credited with Administrative Fees to be received for the MRVP/AHVP Program. The MRVP/AHVP administrative fee is \$50.00 per unit per month. Actual cash amounts received will agree with the amounts approved on line 7 of Form 076.

#### 3610: Interest on Investments – Unrestricted

This account should be credited with interest earned on unrestricted administrative fund investments. See DHCD Accounting Manual, Section 16 (B), Investment Policy and Cash Management.

A local housing authority should review its investment policy and practices periodically. Interest rates fluctuate and future investments may vary substantially from the past, both as to amount and time. The budget estimate of interest income should be based on a realistic appraisal of these circumstances as indicated by future operating plans, projection of funds available for investment, and a commitment to maximize investment income while safeguarding investment funds.

For IOP budgets, authorities must be careful to assign the appropriate share of investment income to both its management and development books. The proration of investment income should be based on the relationship of unused development funds to available operating reserves.

MRVP/AHVP program interest income should be estimated based on the program's operating reserve. Interest earned on subsidy funds is not income to an authority and will be returned to DHCD through the subsidy requisition process.

DHCD's Accounting Manual for State-Aided Housing Programs includes a sample Investment Policy for LHAs. Housing authorities are encouraged to review Section 16 of the Manual. Please note that the Manual describes a requirement for collateralization of LHA deposits. Insurance may be available to cover LHA deposits. For example, [FDIC provisions](#) offer coverage up to \$250,000 per investor per institution. LHAs are required to ensure that their depositories, with the exception of the Massachusetts Municipal Depository Trust, fully secure the uninsured balance on deposit with them. LHAs are reminded that under M.G.L. c.121B, they are prohibited from placing any state funds or any other funds entrusted to the state/LHA from the federal government at risk. Therefore, the only acceptable investments are those outlined in the DHCD Accounting Manual, Section 16.

#### 3611: Interest on Investments – Restricted

This account should be credited with interest earned on restricted administrative fund investments. See DHCD Accounting Manual, Section 16 (B), Investment Policy and Cash Management.

#### 3690: Other Operating Revenues

This account should be credited with income from the operation of the project that cannot be otherwise classified. Income credits to this account include, but are not limited to: penalties for delinquent payments, rental of equipment, charges for use of community space, charges to other projects or programs for the use of central office management and maintenance space, commissions and profits from vending machines

including washing machines, and rental of space in community or administration buildings for laundry equipment on a contractual or other basis.

Example sources of income include:

(a) Funds from shared commercial ventures such as coin-operated laundry facilities. This is an area that requires close attention from a senior staff member at the LHA. Income from coin-operated machines may not be transferred to local tenant organizations, but rather must be shown in the Other Operating Receipts line item.

In addition, all local housing authorities must enter into a written agreement regarding the upkeep of the machines, the method of income collection, and the percentage split of the income between the vendor and the LHA. Agreements may contain multi-year terms but should not have automatic renewal clauses or extend beyond five years and are not valid until approved by the Bureau of Housing Management.

(b) Charges to residents for additional services, materials, and/or repairs of damage caused by neglect or abuse in accordance with the Department's regulations on lease provisions. LHAs may choose, rather than showing these payments as income, to treat them as reimbursements to the accounts from which the charges were originally made. This is allowable provided the following criteria are met: the charges are actually collected, the work has an itemized list of materials used, and any charge for labor are only for hours outside the normal workday. This means you can charge tenants for maintenance time, but only those hours outside of the normal workday may be reimbursed to the labor line. Reimbursement for normal working hours must be treated as income to the local housing authority.

### 3691: Other Revenue - Retained

This account should be credited with all miscellaneous revenue to be retained by the LHA. These items are not included in the computation of operating subsidy. The most common example for this account is receipts for the rental of roof antennas. Also include in this account any other revenue items that are approved by DHCD that do not enter into the computation of operating subsidy.

This should include any net meter credits earned from Net Meter Power Purchase Agreements (PPA's) which the LHA is permitted to retain pursuant to these Budget Guidelines. Many LHAs have entered into Net Meter Credit Power Purchase Agreements (PPA's). In these deals, an LHA executes a contract with a solar power developer who constructs and owns an off-site solar electricity-generating site. In exchange for contracting to purchase a percentage of the solar power produced, the LHA receives a credit on its utility electric bill for each kWh purchased (or, in some cases, the credits are paid as cash to the LHA by their utility company).

Beginning in FY2021 and continuing in FY2023, DHCD permits deficit LHAs to retain 50% of their net meter credit savings, while the other 50% will be used **to offset** their need for operating subsidy. Surplus LHAs will continue to retain 100% of their net meter credit savings. DHCD has revised the reporting requirements for net meter credits and incorporated them in the descriptions of the individual budget line items in this Section III. See Attachment E: "[Schedule of Net Metering Credits](#)", for assistance in organizing the net meter credit data to be entered. Also, **please refer to [PHN #2020-36](#), which describes this process in more detail.** This policy does not apply to credits earned in previously completed and closed LHA fiscal years other than those authorized in the FY17 through FY21 Budget Guidelines. It

also does not apply to the small number of LHAs that have pledged a portion of their credit savings for capital improvements through the HILAPP program or other agreements. This latter group will be reviewed on a case-by-case basis.

Example: If you earned total net meter credits worth \$80,000 and paid \$50,000 to the solar operator in account #4391 (below), your “net savings” would be \$30,000 (\$80,000 - \$50,000). In this case, a surplus LHA would typically enter the full \$30,000 in this line. Per DHCD’s original policy, a deficit LHA would normally enter 25% of the net savings, or \$7,500 in this line, and the balance in Line 3693 (Other Revenue – Energy Net Meter). **However, as noted above, for the period 7/1/20 through 6/30/23, all deficit LHAs may keep 50% of their net meter credit savings (or \$15,000 in the example above.)**

#### 3692: Other Revenue – Operating Reserves

This account should be credited with funds that LHAs plan to utilize from their operating reserve accounts in excess of the Allowable Non-Utility Expense Level (ANUEL). To be approvable, LHA must maintain the DHCD prescribed operating reserve minimum level after deducting the amount budgeted. The only exception to this is when the expenses are for health and safety issues. LHAs must also provide the details of the expenses in the schedule of Expenditures in Excess of ANUEL and budget said expenses in the correct line-item accounts.

#### 3693: Other Revenue – Energy Net Meter

**Please note that for FY20 through FY23 all surplus LHAs may retain 100% of their total net meter credit savings, while all deficit LHAs may retain 50% of their total net meter credit savings, with the other 50% being recorded in this line. For detailed information and examples on how to enter net meter credit financial information in your operating statements, please see [PHN 2020-36](#).** Per DHCD’s original policy, this account would normally be credited with 75% of the total net meter credit.

#### 3801: Operating Subsidy – DHCD (400-1)

This account represents all operating subsidy received and/or earned for the fiscal year. This account should be credited with all operating subsidy forward funding payments received during the fiscal year. At the end of each quarter the operating subsidy earned is calculated on the DHCD schedule called Operating Subsidy Calculation “ANUEL”.

During the first three quarters the advance is debited or credited respectively to Account 2291 for financial statement purposes only. At the end of the fiscal year the underpayment is debited to Account 1125 and credited to Account 3801, and the overpayment is debited to Account 3801 and credited to Account 2118.

#### 3802: Operating Subsidy – MRVP/AHVP Landlords

The credit balance in this account represents the anticipated total receipts from DHCD during the fiscal year for housing assistance payments to landlords. At the end of each fiscal year this account will be adjusted to equal the actual subsidy earned. The balance in this account at the end of each fiscal year should be equal to the total housing assistance payment as recorded in account 4715. For the difference between the actual receipts and the amount determined to be earned, account 1125 will be debited for amount due from DHCD and account 2118 will be credited for amount due to DHCD.



3920: Gain/Loss from Sale or Disposition of Property (Capitalized or Non-Capitalized).

The debit or credit balance of this account represents the following items:

- a) Cash proceeds from the sale of property that was either: 1) non-capitalized; or 2) capitalized and has been fully depreciated.
- b) Realized gain or loss from the sale or disposition of capitalized property that has not been fully depreciated.

**BUDGET LINE ITEMS: OPERATING EXPENSES**

The following section explains how each of the line items under "Expenses" is to be prepared.

4110: Administrative Salaries

This account should be charged with the gross salaries of LHA personnel engaged in administrative duties and in the supervision, planning, and direction of maintenance activities and operating services during the operations period. It should include the salaries of the executive director, assistant executive director, accountants, accounting clerks, clerks, secretaries, project managers, management aides, purchasing agents, engineers, draftsmen, maintenance superintendents, and all other employees assigned to administrative duties.

Please see Key Highlights, pages 2-3 and Section II (H), Increases in Administrative Salaries, pages 12-14 for details regarding administrative salaries and the executive director's salary.

If DHCD's Executive Director Hiring Guidelines and staff hiring procedures are not adhered to, DHCD reserves the right to withhold or withdraw state funding for those positions as provided for in 760 CMR 4.04. All positions must be shown in the "Schedule of All Positions and Salaries", whether or not there is a pro-ration of any share of the salary charged to state programs. DHCD will not accept an excel spreadsheet for the "Schedule of All Positions and Salaries." Each position must be listed on the Schedule.

The "Schedule of All Positions and Salaries" must list all positions and salaries and must reflect total compensation of all administrative positions in the LHA's operating budget submission. In FY2020, the Schedule of All Positions and Salaries was revised to include as a source, fees from management contracts budgeted as salary for each administrative and maintenance staff. The revised Schedule includes a new field titled "Mgmt. Contracts" as a source of salary. In this field LHAs must include the budgeted salary from Management Services Agreement and other management contract fees for each **administrative** and **maintenance** staff, as applicable. LHAs will continue to enter executive director salary earned from these fees in the Schedule of Management Contracts.

Executive Director's at or beyond the global cap of \$218,295 in FY2023 can request a compensation increase from the management fee, with approval from the Owner board, to be received as a bonus to the Executive Director's salary. This represents a specific exemption to the general DHCD policy disallowing bonuses from state payments and the bonus cannot be added to the Executive Director's composite salary, nor used as a calculation towards retirement benefits. In addition, any bonus requested and approved by each Board for Executive Director's at or beyond the global maximum will be capped at 10% of the allowable management fee. Any other Executive Director awarded bonuses must be paid from non-state funds. Bonuses are to be recorded in the Schedule of All Positions and Salaries on line Two (2) directly under the Executive Director composite salary. See PHN 2022-02, page 13.

For those LHAs that maintain a Central Office Cost Center (COCC), the LHA should input the amounts in the “Other F-1” field, only. This applies to all HAFIS Schedules where the LHA is applying COCC. If the LHA is maintaining a COCC, the LHA must also include in the budget submission Dialogue Box: 1) the LHA uses the COCC methodology; 2) explain how it arrived at the COCC number; and 3) include the COCC per unit cost for both the state and federal units. DHCD will be reviewing budgets to ensure that this information is included in the Dialogue Box. If additional space is required, the LHA may use the Comments Section of the Schedule of All Positions and Salaries to supplement its explanation.

y funding received that is not state funding or would be considered part of a COCC should be entered as “Other F2” or “Other Sources”. This could include, but is not limited to, management agreements or development fees associated with nonprofit-owned housing or USDA Housing Assistance.

If the LHA is receiving fees for services (i.e. from Management Services Agreement(s), or other management contracts where the LHA is providing a service for a separate public or private entity), the LHA must also include those fees in the Schedule of Management Contracts. The total salary input for the executive director in the Schedule of Management Contracts will be auto-calculated in the executive director line item of the Schedule of All Positions and Salaries. However, as stated above, the LHA should input the salary for all other administrative and maintenance staff taken from management fees in the Schedule of All Positions and Salaries.

Authorities must indicate under the column headed “Code” on the Schedule of All Positions and Salaries which pro-ration is used and include a description of each code. During the development period for a property, the annual salary as approved by DHCD's Bureau of Housing Development and Construction for the executive director or any other personnel must be listed under "Development" on the schedule.

Other important guidance to note:

- The state Family Factor component of the Executive Director’s salary, as calculated in accordance with the Executive Director Salary and Qualifications Schedule, must only be included in the “Other S-1” column, to ensure the state proration is accurate.
- LHAs should maintain the executive director line item as one position, despite any change that may occur to personnel holding that position within a given fiscal year.
- LHAs should explain any change that may occur to personnel holding that position within a given fiscal year in the dialogue box.
- Although bonuses and longevity payments for the Executive Director are permitted, they cannot be charged to any state housing program(s). Permitted bonuses and longevity payments (i.e., not from state sources) should be entered as a separate line item in the Schedule of All Positions and Salaries. Bonuses should be booked under the sources in which the bonuses are being paid or “Other - F2” or “Other Sources,” as appropriate.

The Budget Certification, which must be executed by the Board, provides two statements addressing the existence or non-existence of relationships at LHAs. The Board must select the appropriate statement and provide documentation as necessary upon execution of the Budget Certification. **A complete disclosure**



**of all relationships of staff to any Board or other staff member must be part of the budget submission. This must be done on an annual basis.**

- LHAs are reminded that as programs, unit counts, or unit composition change, the allowable state share of salaries also changes. If new state-aided units are added to the LHA stock, then the state share increases; if, however, the new units are federal, or other (i.e., private affordable housing) units, then the state percentage and share is reduced. If an LHA loses federal or state units, the percentage and the allowable state share of salaries must be re-determined.

LHAs have control over staffing levels and positions, provided they operated within the Budget Guidelines' ANUEL and administrative salary limits. LHAs do not need to seek DHCD approval to re-organize their staffing levels and responsibilities, provided they implement the re-organization within these criteria. However, the LHA must provide DHCD with the changes and the reasons for implementation of the re-organization if administrative salaries will increase by greater than 5%. In these situations, the LHA must include in their Budget submission a description of the re-organization for DHCD review to ensure reasonableness and that the re-organization can be supported within the LHA's ANUEL. DHCD will also review new management agreement submissions to ensure that there is staffing presence at the Owner LHA office during regular hours.

**4120: Compensated Absences**

The debit balance in this account represents the actual cost incurred during the fiscal year for vacation, paid holidays, vested sick leave and earned compensatory time. This account includes both the direct compensated absences cost and associated employer payroll expenses (employment taxes, pension cost, etc.).

**4130: Legal Expenses**

This account should be charged with retainers and fees paid to attorneys for legal services relating to the operation of the state-aided developments. DHCD recommends a *minimum* budget for legal expenses of \$4,000 for an LHA having 200 or fewer state-aided conventional public housing units and \$6,000 for an LHA with more than 200 state-aided conventional public housing units. These costs would include filing costs, service fees, document and scanning expenses, and legal fees for services that are not provided by a Regional Attorney, Regional Legal Services Program, or through the Retained Risk Liability Program.

An authority's expense for legal services should be fixed in its budget, and as legal fees can escalate quickly, Authorities should keep a close watch on legal costs and contact DHCD's risk management department for guidance when a legal matter appears to have costs escalating beyond the Authority's ability to pay.

**Budgeting instructions for specific legal service arrangements:**

**LHA engages counsel of its own choosing:** Where a housing authority directly engages legal services from attorneys of their own choosing, the terms of an authority's approved contract with its attorney, which specifies an amount for either an hourly rate or set fees for legal work of a specific or extraordinary nature, should be consistent with DHCD guidelines for legal contracts and must be approved by the Department. If an authority chooses not to enter a contract for legal services, but rather engage services on an as-needed basis, it should contact its Housing Management Specialist. Legal charges must be reasonable and not exceed Department guidelines. Please note that funds for legal service contracts may not be expended until the Department approves said contracts.

**LHA works with Regional Attorney:** Authorities with a DHCD Regional Attorney available should maintain adequate funding for legal expenses in its annual operating budget. For legal costs, expenses and other incidental costs related to legal issues DHCD recommends a *minimum* budget of \$4,000 for an LHA having 200 or fewer state-aided conventional public housing units and \$6,000 for an LHA with more than 200 state-aided conventional public housing units. Each LHA is required to directly pay for all of its costs for mailing of notices or responses as well as costs associated with filing litigation, including court filing fees and constable service. As the LHA approaches its fiscal year end, any funds budgeted for legal services that remain unexpended or uncommitted may be transferred to another line item as allowed under these budget guidelines. Any LHA with concerns about budgeting for the minimum recommended legal expenses should discuss with their Housing Management Specialist and develop a plan to build up this line item over time.

**LHA participates in Regional Legal Services Program with pre-qualified Attorney:** This program is available to eligible LHAs in Western Massachusetts as well as LHAs formerly served by Regional Attorneys Andrew Bailey, Mary John Boylan and Patricia Grace. LHAs eligible for the Regional Legal Services Program will be reimbursed up to a DHCD designated dollar amount for legal services provided by pre-qualified attorneys.

In addition to including the recommended budget amount for legal services stated above (\$4,000 or \$6,000), LHAs that have signed the Regional Legal Services Participation Agreement should also add the designated annual amount for legal expenses in this line item.

For example, an LHA with 250 state-aided units has signed the agreement and has been allotted \$7,000, as its designated amount, for the Regional Legal Services Program expenses. This LHA should enter \$13,000 in the Legal Services budget line; \$6,000 from its own funds, and \$7,000 to be included as a DHCD Directed budget exemption. DHCD will reconcile the exemption amount to the actual expenses not to exceed \$7,000 at the LHAs fiscal year end. If, at year end, this LHA has not spent its budgeted \$6,000 these funds can be reallocated. The DHCD Directed budget exemption amount of \$7,000 for the Regional Legal Services Program that is not expended at the end of the fiscal year will not be transferable or reimbursed. For further information, please see the program documents or you can contact Sarah O'Leary ([sarah.oleary@mass.gov](mailto:sarah.oleary@mass.gov)) or Ayo Yakubu-Owolewa ([ayo.yakubu-owolewa@mass.gov](mailto:ayo.yakubu-owolewa@mass.gov)) for more information.

**Retained Risk Liability Program:** When an Authority incurs legal expenses through DHCD's Retained Risk Liability Program it should follow the specific budgeting instructions contained in the Payment Authorization letter from the program administrator.

**Account Exclusions:** This account should not be charged with legal fees incurred for collection of amounts owed by former tenants. Such fees, if not recovered through the court action shall be charged to Account 4190.

#### **4140: Compensation to Authority Board Members**

A local authority may compensate its members for performance of their duties and such other services as they may render to the authority in connection with its Chapter 200 development(s). Compensation for any other program is not authorized. Because of this, LHAs must base such compensation only on the actual rent receipts for these developments plus a prorated share of other operating receipts of funds on a per unit basis. The precise amount that members may be compensated is [defined by statute](#) to a maximum of \$40 per member or \$50 for the chairperson per day. The total of all compensation to all board members is not to exceed two percent (2%) of actual gross income of Chapter 200 developments in any given year,

consistent with the approved budget amount. In no case shall the payment of compensation exceed \$12,500 annually for the chairperson, or \$10,000 for any member other than the chairperson. Please note the statute requires the member to perform housing authority business in order to receive compensation.

#### 4150: Travel and Related Expense

Travel practices and policies are to be consistent with Department policy. Legitimate travel expenses incurred by board members and staff in the discharge of their duties for any **state-aided program** are reimbursable from this account based upon the following considerations:

1. Registration fees for conferences are allowable for a reasonable number of LHA members and the Executive Director.
2. Charges for overnight accommodations are allowable if the conference is located at a site at least 40 miles from the community where the LHA is located. If two people, one of whom is not associated with the LHA, are occupying the room being rented by the LHA, the allowable reimbursable amount is based upon the single occupancy. The difference between single and double occupancy is borne by the individual LHA member or staff member.
3. Private auto mileage incurred in the course of authority business is reimbursable at the rate of sixty-two cents (\$0.62) per mile. In addition, reasonable associated costs for parking and tolls for authorized business travel are reimbursable. A flat rate, either calculated on a weekly or monthly basis, for the business use of private vehicle is not allowable under any circumstances.
4. When employees use an authority-owned vehicle for travel, reimbursement for tolls and parking is permissible, as long as, parking charges are reasonable and cover solely the period of time during which business is conducted. All state-funded authority owned vehicles must be permanently marked with the authority name. In addition, such vehicles must be garaged at the authority, not at the employee's home, and must be used only for authority business (not commuting to work, etc.). Exceptions to this rule must have prior written approval from the Director of the Bureau of Housing Management.
5. Reimbursement for meals is allowed as below:
 

Breakfast:	Travel begins no later than 6:00 a.m. - \$6.00 maximum allowable.
Lunch:	Travel must exceed 24 hours - \$8.00 maximum allowable.
Supper:	Travel must end after 6:00 p.m. - \$16.00 maximum allowable.

Those traveling 24 hours may take advantage of a more flexible policy that allows reimbursement of \$30 a day rather than a meal specific policy.

6. Limited out-of-state day travel is allowable provided that the LHA can document that such travel directly benefits the LHA's administration of state housing programs. The LHA must receive prior

written approval from the Director of the Bureau of Housing Management for any such travel. Allowable travel costs are limited.

In summary, the following items are not allowable as reimbursable from state funds:

- Flat rate allowances for cars, trucks, or other vehicles;
- Flat rate allowances for cell phone use;
- Payment for meals in excess of allowable amounts;
- Reimbursement for alcoholic beverages; this applies even if the total food bill is less than the maximum allowable;
- Reimbursement for car rentals; and
- Travel outside of Massachusetts without prior written DHCD approval.

All expenses must be vouchered and have the proper documentation attached prior to payment. No expenses are allowable that exceed the approved budgeted amount in Account 4150, Travel and Related Expenses.

State funds should only be used for conferences and events relevant to state-aided housing programs.

Remember, training is shown and broken down on its own as a subdivision of 4190.

#### 4170: Contractual Accounting Services

. Only the accounting services provided routinely and performed on a contractual basis (fee accountant) should be included in this item. Full or part-time LHA accounting staff that provide routine accounting services should be included in Account 4110, Administrative Salaries. The major elements measured by the Department in evaluating accounting services are the timeliness with which the required financial reports are filed and their accuracy. An authority should be careful that it is satisfied that its contractual accounting services are fulfilling the authority's financial obligations since those services reflect on the authority's performance. Authorities should be sure that the fee accountant is providing the required services as outlined in the Accounting Manual.

LHAs have the flexibility to negotiate accounting fees, which they determine to be appropriate within the ANUEL.

#### 4171: Audit Costs

This account includes the state program's prorated share of audit fees paid to an Independent Public Accountant (IPA). The procurement of an IPA is necessary to satisfy the Federal Government's requirements of Circular A-133 and the single audit requirements. Costs for these services should be shared with all state and federal programs of the LHA. **Audit costs are to be absorbed within the ANUEL.** The new Agreed Upon Procedures (AUP) audit costs should also be included in this account.

#### Agreed Upon Procedures (AUP)

LHAs must contract every year with a DHCD pre-qualified Independent Certified Public Accounting firm, to conduct an Agreed Upon Procedures (AUP) financial review of the LHA's state-aided programs, including MRVP and AHVP, for the prior 12 months as of the LHA's fiscal year end. LHAs must procure a new auditor at least once every 5 years.

The review will include: rent collections/tenant accounts receivable/account write-offs; payroll/fringe benefits; disbursements/accounts payable; inventory (fixed assets); procurement/public bidding for goods and services; cash management and investment practices; and operating subsidy; and annual rent calculation and compliance.

LHAs are required to absorb the cost of the AUP financial review within the LHA's ANUEL.

Please refer to [PHN 2021-12](#) and [PHN 2020-26](#) for AUP reminders and updates. See [PHN 2018-15](#) for DHCD guidelines on Seeking CPA firms for the AUP Program and the most recently issued guidelines regarding compensation firms may receive, as detailed below.

#### Compensation for AUP Services

These guidelines update the maximum fees LHAs may pay for AUP auditors. DHCD increases maximum hourly costs from \$210 to \$250, based on the ~19% increase in ANUEL from FY19 (last time DCHD adjusted AUP fees) to FY22. DHCD updates these maximum fees in order to increase LHA's ability to procure auditors in a timely manner. The following table reflects the maximum compensation firms may earn for the AUP, not including reimbursable expenses. Note, compensation for services is based upon the number of units that are under management by the LHA. Please see [Addendum 1 to PHN 2018-15](#).

<b>LHA Size</b>	<b>Maximum Hours</b>	<b>FY19-22 Maximum Cost</b>	<b>FY23 Maximum Cost</b>
1-50	15	\$3,150	\$3,750
51-199	18	\$3,780	\$4,500
200-499	21	\$4,410	\$5,250
500-999	24	\$5,040	\$6,000
1,000+	26	\$5,460	\$6,500

#### Reimbursable Expenses:

At the completion of the AUP report, firms should submit to the LHA invoices for payment for reimbursable expenses incurred. These submissions should be supported by invoices or receipts. The following are the only allowable reimbursable expenses:

- The cost of printing more than five copies of required submissions.
- Mileage reimbursement for driving in MA only, at a rate of \$0.62 per mile.
- Any other specially authorized reimbursement deemed essential by the Department in writing.

#### Non-Reimbursable Expenses:

- An LHA shall not reimburse the firm for telephone, postage, and delivery.
- The firm shall not be entitled to compensation for the services of sub-consultants.

#### 4180: Penalties and Interest

The LHA is expected to manage its cash flow and accounts payable effectively. Any expenses incurred from penalties, fees, and interest paid on delinquent accounts shall be included in this line item.

#### 4190: Administrative Other

This account is provided for recording the cost of administrative items for which no specific amount is prescribed in this 4100 group of accounts. It includes, but is not limited to, the cost of such items as: reports and accounting forms; stationery and other office supplies; postage; telephone and internet services; messenger service; armored car service; rental of office space; advertising for bids; and fiscal agent fees. This account shall also be charged for the following and only for charges directly related to state-aided housing programs.

##### 1. Publications

- A. Costs incurred for publications (i.e. preparation, printing and distribution of annual reports and other informational literature relating to low-income programs).
- B. Cost of periodicals, books and other literature deemed useful to the low-income housing programs.

##### 2. Membership Dues and Fees:

- A. Agency membership must be limited to professional organizations supplying housing information relevant to state-aided programs whether or not an Agency membership includes individual board members and /or staff. If it does not, the cost of membership for those individuals is not borne by the authority, but by the individual. For example, Agency membership in the Massachusetts Chapter of the National Association of Housing and Redevelopment Officials (NAHRO) includes the five Board members and the executive director, but an “Agency” membership in National NAHRO includes only the agency and not the individuals which it encompasses.
- B. Dues and fees for membership in, and payment of services of, organizations supplying technical service for computer or professional information and/or service concerning housing programs, computer licenses.

##### 3. Telephone:

A housing authority’s expense for telephone service depends in large part on the size of its programs and staff and the complexity of its organization.

The LHA shall reimburse an LTO for the minimum cost of basic in-state telephone service so long as the telephone service has been used solely for in state calls concerning representation of residents in state-aided public housing and for no other purpose, and so long as the LTO's need for in-state telephone service continues and is adequately documented when the LHA so requests. The LTO must present the monthly statement to the LHA for reimbursement.

Cell Phones: The use of cellular phones at LHAs is a common practice. As a result, and as stated in the [FY2007 DHCD Budget Guidelines](#), a few basic rules need to be applied to the use of such phones.



- a. Employee access will need to be approved by the board.
- b. Use should be work-related only. In instances where there are charges due to personal calls, reimbursement must be made by the user to the authority.
- c. An itemized bill will need to be received and signed by the employee using the cell phone.
- d. There should be a statement attached to the bill, where the employee signs and attests to the fact that no personal phone charges have been made by him/her on the phone, and that all personal charges have been reimbursed to the authority.

DHCD strongly recommends providing an agency cell phone to staff that require a cell-phone for work. LHAs should not reimburse staff or provide flat-rate allowance for use of personal phone.

4. Rental Office Space:

If state programs rent space in a federal development, include yearly rental charge here. All rental agreements relating to the authority renting office space require prior written Department approval.

5. Forms, Stationery, And Office Supplies:

This includes consumable supplies as well as service contracts on office machinery. Large authorities should purchase supplies in bulk and should consider A&F's Operational Services Division's statewide contracts, Commodities and Services whenever viable.

6. Shipping Charges:

This includes incidental express, freight, or other shipping charges not identified with the charges to the same account as the article shipped.

7. Training:

This includes all conference fees, staff training, educational rebates and other such costs.

8. Management Fee:

Service contracts paid by LHA to another entity for cost of managing day to day operations.

9. Other:

This includes all administrative costs, including contract computer support not described elsewhere. Internet access should be budgeted here. Legal costs specifically related to collection of debts owed by former tenants, which are not paid by the debtor, should also be included here.

4191: Tenant Organization

1. LTO Funding by the LHA.

- Upon request, the LHA shall fund all LTOs in a city or town at the annual rate of \$6.00 per state-aided public housing unit occupied or available for occupancy by residents represented by such LTO(s), or an annual total of \$500.00 prorated among all such LTO(s), whichever is more. For more information on the creation and funding of LTOs, refer to [760 CMR 6.09](#).

- The LHA shall disburse such funds to an LTO pursuant to an approved budget, which provides that funds will be used only for the LTO's ordinary and necessary business expenses and authorized activities (excluding social activities) with respect to state-aided housing programs. The LTO shall not make any expenditure of funds received from the LHA except in accordance with a budget approved by the LHA which approval shall not be unreasonably withheld. The LTO must submit a financial statement to the LHA at the end of the LHA's fiscal year, accounting for all LTO income from the state-aided housing portfolio and all expenditures of such funds in accordance with their approved budget. The next year's LTO funding will not be awarded until such statement has been reviewed and approved by the LHA.
  - These funds shall only be provided to the tenant organization for purposes that enable it to carry out its primary function. Namely, effective participation in the administration and management of the housing authority. Examples of allowable expenses include: office equipment; special stationery; telephone costs beyond basic service; attendance at relevant conferences; payment of dues to state tenant organizations. Ineligible expenses would include: any item or activity prohibited by law; political or religious contributions; recreational or social events; or payments to benefit individual tenants or household members.
  - In addition, pursuant to Tenant Participation Regulations, each housing authority should make available to each duly recognized tenant organization upon request: reasonable space for an office; a reasonable supply of office furniture and consumable office supplies; the installation and basic service costs for a private telephone line (the tenant organization must pay for its own long-distance calls) or reimbursement for the minimum cost of basic in-state telephone service; and the use of available common rooms for tenant organization meetings.
2. Authorities which operate computer learning centers, which are funded in the state consolidated budget or by other sources (which are typically recorded in line #3691 as "Other Revenue Retained"), should budget the cost of the centers on this line.

#### 4310: Water

This account should be charged with the cost of water and sewer charges purchased for all purposes.

#### 4320: Electricity

This account should be charged with the total cost of electricity purchased for all purposes. Many LHAs have entered into Net Meter Credit Power Purchase Agreements (PPA's). In these deals, an LHA executes a contract with a solar power developer who constructs and owns an off-site solar electricity-generating site. In exchange for contracting to purchase a percentage of the solar power produced, the LHA receives a credit on its utility electric bill for each KWH purchased or in some cases receives a direct cash payment from their utility company. **Please ensure that the amount charged to this account is the total cost of electricity BEFORE any reductions due to the receipt of net meter credits.** The LHA electric bill should state both this total cost of electricity used, as well as the payment due, which will be smaller than the total cost if the LHA has had credits applied to the bill. **Please enter the pre-credit cost here.**

#### 4330: Gas

This account should be charged with the cost of gas used as part of the utilities (natural, propane, or liquefied) purchased for heating and water supply as well as for ranges and stoves.



4340: Fuel

This account should be charged with the cost of coal, fuel oil, steam purchased, and any other fuels (except electricity and gas) used in connection with Local Housing Authority operation of plants for the heating of space or water supplied to tenants as a part of rent.

4360: Net Meter Utility Debit/Energy Conservation

This account should record the total net meter credits earned as reported in Line 4392, MINUS the Solar Operator Costs reported in Line 4391, with the result expressed as a positive number. For example, if you reported -\$20,000 in Net Meter Utility Credits in Line 4392 and \$15,000 in Solar Operator Costs in Line 4391, you would add the \$15,000 reported on Line 4391 to the -\$20,000 reported on Line 4392, and post the remainder of \$5,000 on Line 4360, as a positive number. This number essentially represents the “net” savings the LHA earned from its net meter credit contract, representing it as positive income. (Note: In addition, this account is to be charged with costs incurred for energy conservation measures. Authorities are encouraged to identify conservation measures with a short-term payback period, approximately one year or less, and to budget funds in Account 4360 of the utility section of the budget to implement those measures.

4390: Other Utilities

This account should be charged with the cost of utilities which are not provided for in accounts 4310 through 4360.

The cost of utility services is also a substantial element of operating expense. Good budgetary planning requires a thorough study of operating policies and practices that control the supply, use, and costs of utility services.

Budgeted amounts for utility expenses should be related to actual costs experienced by the authority as opposed to a previous budget amount. A useful tool for the LHA in preparing the budget is the web-based monthly energy consumption report. You are reminded that these reports are to be submitted to DHCD 30 days after the close of the previous month.

In addition, with continued emphasis on conservation, authorities should build consumption savings into budget estimates.

DHCD will assist LHAs with funding for capital projects to reduce utility consumption or will assist LHAs with securing projects through the utility-funded LEAN program.

Please remember: LHAs may include septic system pumping in the other utility section of the budget rather than in the maintenance contract cost section.

4391: Solar Operator Costs

Many LHAs have entered into Net Meter Credit Power Purchase Agreements (PPA's). In these deals, an LHA executes a contract with a solar power developer who constructs and owns an off-site solar electricity-generating site. The LHA makes regular (usually monthly) payments to the developer for its contracted share of the solar electricity produced by the site. Those payments should be entered in this account.

4392: Net Meter Utility Credit (Negative Amount)

As noted in account #4391 above, many LHAs have executed Net Meter Credit Power Purchase Agreements (PPA's). In exchange for contracting to purchase a percentage of the solar power produced, the LHA receives a credit on its utility electric bill for each KWH purchased from the developer, which reduces the balance on its electric bill, or, in some cases, the credits are paid in cash to the LHA by the utility company. The total gross amount of the net meter credits that appear on the LHA's utility bills, or that it receives in cash payments, should be carried in this account and entered as a negative number. In cases where credits are paid in cash for multiple solar project off takers to a "Host" LHA, the net balance retained by the Host LHA after paying out the amounts due the participating housing authorities should also be carried in this account and entered as a negative number.

4410: Maintenance Labor

This account should be charged with the gross salaries and wages, or applicable portions thereof, for LHA personnel engaged in the routine maintenance of the development.

Include all labor charges, including working maintenance supervisor, directly attributable to maintenance activities, such as repairs and maintenance of structure and grounds. The state prorated share of salaries should be equal to the dollar value of all approved position(s) or parts of position(s) approved for funding in the various state programs.

The Maintenance Labor Account #4410, excluding seasonal help and overtime, will be allowed the current rate published by the Department of Labor and Workforce Development (DLWD) with the following exceptions: If non-unionized maintenance personnel are currently at a rate that exceeds the DLWD, those employees will remain at the current approved rate until the DLWD rate exceeds this amount.

If the LHA is currently paying wages in accordance with a union contract at a rate that exceeds the DLWD rate, then in accordance with 760 CMR 4.10(1)(a), the LHA shall notify DHCD, in writing, of its intention to begin collective bargaining, and promptly schedule and participate in a pre-bargaining conference with the DHCD to discuss pertinent matters pertaining to the collective bargaining. The LHA shall provide DHCD with a description of the bargaining unit. In consultation with DHCD, the LHA may increase the rate.

Maintenance staff in a supervisory capacity may exceed the DLWD rate by up to \$3.00 per hour at the discretion of the LHA.

Bonuses cannot be charged to any state housing programs, and longevity payments are not permitted from any funding source.

4420: Materials & Supplies

This account should be charged with the cost of materials, supplies, and expendable equipment used in connection with the routine maintenance of the project. This includes the operation and maintenance of automotive and other movable equipment (such as gasoline, oil, grease, batteries, tires and tubes, etc.).

This account should also be charged with the cost of materials, supplies, and expendable equipment used in connection with operating services. This includes such items as janitorial services, elevator services, extermination of rodents and household pests, and rubbish and garbage collection.

The cost of materials, supplies, and expendable equipment furnished by a contractor (firm or individual) in connection with the performance of routine maintenance or operating services should not be charged to this account, but to Account 4430.

#### 4430: Contract Costs

This account should be charged with contract costs (i.e., the cost of services for labor, materials, and supplies furnished by a firm or by persons other than Local Authority employees) incurred in connection with the routine maintenance of the project, including the maintenance of automotive and other movable equipment (such as washing, greasing, polishing, and repair services). This account should also be charged with contract costs incurred in connection with such operating services as janitorial services, elevator service, extermination of rodents and household pests, and rubbish and garbage collection.

Include on this line the projected cost for all maintenance work not performed by housing authority maintenance staff. This includes contracts for snow removal, landscape services, refuse collection, extermination, oil burner maintenance, etc. Also included are payments to outside tradesmen who may be called for minor electrical or plumbing repairs outside the scope of the skills of authority staff.

Include on this line any condominium fees. Also include a request for a budget exemption for condo fees. The exemption amount and the amount recorded on this line should be included in section 4 of the Operating Subsidy Calculation “ANUEL” page. Please include a brief comment in the budget dialogue box describing the basis for the condo fees. Supporting document is not required with the budget submission. DHCD reserves the right to request an LHA to submit the paperwork in support of the amount requested.

Remember that all purchases of materials and supplies as well as service contracts must comply with [M.G.L. c. 30B](#), as enforced by the Office of the Inspector General. Contracts bid in accordance with applicable state statute and for which the Authority has adequate funding no longer require advance Department review and approval. DHCD may, however, request to see certain contracts in the event of AUP findings on contracting or other concerns around procurement.

Any service contract that involves repairs to the building or its systems must be procured as construction in accordance with [M.G.L. c. 149](#). Those with an estimated value over \$50,000 must be procured through sealed bids and must be submitted for Department review.

**“Schedule of Contract Costs.”** LHAs should list any anticipated contract cost individually on this schedule. Items include, but are not limited to:

- a) Maintenance of automotive and other movable equipment (such as washing, greasing, polishing and repair services, c. 30B);
- b) Janitorial services;
- c) Lawn maintenance;
- d) Power washing;
- e) Elevator service, if the service is limited to grease and oil changes and “no repairs” it may be procured as a service under c. 30B (10K-35K seek written quotes. More than \$35K advertise in newspaper – this includes any options to renew). If the LHA wants to include repairs than must bid as c. 149. In any event, whether bid pursuant to c. 30B for just services or c. 149 to include repairs, prevailing wage rates are applicable;
- f) Fire Alarm, c. 149 per the attorney general;
- g) Extermination of rodents and household pests, c. 30B;

- h) Rubbish and garbage collection, exempt from c. 30B;
- i) Snow removal, exempt from c. 30B;
- j) Oil burner maintenance, c. 30B – service only, no repairs. If the LHA wants to include repair, it must bid as c. 149. Both cases require applicable prevailing wage rates;
- k) Condo fees; and
- l) Trades workers who may be called for electrical or plumbing repairs which are outside the scope of authority staff, procure per c. 149, never c. 30B. If work is less than \$10K sound business practices can be used or the LHA may select the contractor from the state-contract list up to \$10K cumulatively. Anything over \$10K LHAs must follow c. 149 requirements.

### **“Contract Register”**

The LHA Contract Register should include both goods and services as well as modernization contracts.

#### 4510: Insurance

Includes the total amount of premiums charged for the period for all forms of insurance. Fire and extended coverage, boiler & machinery, and crime are handled by DHCD on a statewide basis. Other necessary insurance policies include: Workers' Compensation, vehicle liability and owner, etc. Because failure to anticipate personnel separations can lead to financial difficulties for LHAs, particularly since the Massachusetts Unemployment Insurance Law requires reimbursable method employers to reimburse DUA for benefits paid to former employees in circumstances under which contributory employers normally are not charged, DHCD recommends that all reimbursable method LHAs convert to quarterly contributing employers. You may change from one financing method to another by providing notice to DUA through UI Online. Once selected, that method is in effect for at least two calendar years. LHAs are required to provide notice by December 31 of the year preceding the changeover year. Guidance to make this change can be found at pages 38 and 39 of the [Employers Guide to Unemployment Insurance](#).

Authorities should review insurance policies annually to take advantage of potentially lower rates or beneficial coverage terms that can be added. LHAs are not provided with liability insurance but can avail themselves of legal representation through the Retained Risk Liability Program and liability protection under the Massachusetts Tort Claims Act. Authorities are still required to show a more detailed breakdown of these costs on the schedule of insurance.

#### 4520: Payments in Lieu of Taxes

This account should be charged and Account 2137 credited with all payments in lieu of taxes accruing to a municipality or other local taxing body. See Section 15(G) DHCD Accounting Manual for State-Aided Housing Programs.

Payments in Lieu of Taxes (PILOT) should be determined and charged separately for each program as follows:

- Chapter 667 - None
- Chapter MRVP - None
- Chapter 200 - Maximum \$3.00 PUM
- Chapter 705 - Not to exceed the amount of 1/2 Full Value Tax Rate + \$100 times the number of bedrooms.
- Chapter 689/167 - Same formula as Chapter 705.

The housing authority should determine that all public services provided for in the cooperation agreement with the municipality are being received at no additional expense. If there are any such authority expenditures, the PILOT should be reduced to reflect these payments.

The above PILOT payments are the maximum allowed. No authority may pay any amount greater than those shown above. LHAs who have cooperation agreements with cities/towns that allow them to pay less or retain PILOT payments to cover other agreed to expenses may do so.

#### 4540: Employee Benefits

This account should be charged with local housing authority contributions to employee benefit plans such as pension, retirement, and health and welfare plans. It should also be charged with administrative expenses paid to the State or other public agencies in connection with a retirement plan, if such payment is required by State Law, and with Trustee's fees paid in connection with a private retirement plan, if such payment is required under the retirement plan contract. Workers' Compensation Insurance is not charged to this account, but to Account 4510.

For the conventional housing and rental assistance budgets, this section includes payments made to employee pension and retirement funds by the authority as a supplement to contributions by its employees. Deductions from employees' salaries for pension or retirement funds shall not be included in this account but shall be considered as a part of gross salaries. Housing authority employees are eligible for inclusion in either the state or local benefit plans. **Please note that retirement costs cannot be paid from any state capital sources**

Authorities must continue to absorb all costs associated with early retirement within their approved ANUEL. As stated previously, early retirement typically results in increased operating expenses due to increased pension costs, if not in the fiscal year it was implemented, then in subsequent fiscal years. DHCD will not make additional operating funds available to pay increased costs resulting from a housing authority's prior approval of an early retirement program.

Employee benefits are based upon a given percentage of the total payroll; therefore, the total amount approved in this account will be based on the approved budgeted salaries representing the state's fair share.

Authorities offering health insurance are restricted by law to the State Group Insurance Plan and the percentage outlined within it. Dental and vision plans may be offered. The Department must approve any such plan adopted. Please show detailed information on the schedule of insurance. A number of authorities have added this benefit in recent years. Plans offered should be similar to those offered to state employees.

The incentive of \$1,000 in cash to employees who choose to be insured through a spouse's insurance plan rather than use the LHA's insurance is being continued this fiscal year, provided that the net result yields an overall savings to the LHA. If the LHA offers this incentive, it must be provided to employees that have already opted to be insured through a spouse's plan and to those that opt to do it now. The authority will maintain the same Total Non-Utility Spending Level. The incentive payment would continue to be recorded in this line item; however, the savings from this action may be reallocated to another line item. This allows LHAs to examine their operating budget and determine where these funds should be budgeted to best serve the LHA. The LHA must certify on an annual basis that all eligible employees are insured. The employee is required to pay back a prorated amount of the cash incentive if the need should arise for the employee to return to the authority's insurance plan within the same fiscal year.

4541: Employee Benefits - GASB 45

Other post-employment benefits (OPEB) are part of an exchange of salaries and benefits for employee services rendered. Of the total benefits offered by employers to attract and retain qualified employees, some benefits, including salaries and active-employee healthcare are taken while the employees are in active service, whereas other benefits including post-employment healthcare and other OPEB are taken after the employees' services have ended. Nevertheless, both types of benefits constitute compensation for employee services.

4542: Pension Expense – GASB 68

The Commonwealth of Massachusetts continues to be required to use the GAAP (Generally Accepted Accounting Principles) accounting format for financial reporting. GAAP Accounting provides for two forms of reporting, either governmental or enterprise. DHCD has adopted the enterprise form of reporting.

GASB's (Governmental Accounting Standards Board) Codification, Section 1300.104, states that the enterprise fund type may be used:

- *To account for operations (a) that are financed and operated in a manner similar to private business enterprises – where the intent of the governing body is that the costs (expenses), including depreciation of providing goods or services to the general public on a continuing basis be financed or recovered through user charges; or (b) where the governing body has decided that periodic income determination or revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control accountability or other purposes.*

Further reasons for using the enterprise version are as follows:

- It is the most accurate form for statement presentation.
- It is the HUD-preferred version, and thereby, will make LHA statements uniform across the Commonwealth.
- It is the format preferred by lending and other financial institutions.

DHCD believes that the enterprise model provides for the use of full accrual accounting. Accordingly, DHCD requires all LHAs adopt the **enterprise** requirements of GAAP. (See DHCD's Accounting Manual for State-Aided Housing Programs, Section 19 for further detail.) Budget forms are available and must be completed in the web based HAFIS application.

GASB 68

The primary objective of GASB 68 Statement is to improve accounting and financial reporting for pensions. It also improves information provided by state and local governmental employers about financial support for pensions that is provided by other entities. This Statement results from a comprehensive review of the effectiveness of existing standards of accounting and financial reporting for pensions with regard to providing decision-useful information, supporting assessments of accountability and inter-period equity, and creating additional transparency.

GASB 68 utilizes changes made by GASB 65 – Items Previously Classified as Assets and Liabilities, which introduces Deferred Outflows and Deferred Inflows of Resources. Under GASB 65, the accounting formula is now expressed as assets plus deferred outflows of resources equals liabilities plus deferred inflows of



resources plus net position. When accounting for accrued pension in accordance with GASB 68, it may be necessary to report deferred inflows and outflows of resources.

#### Operating statement

- Account # 4542: Pension Expense – GASB 68

#### Balance sheet:

- Account # 1291: Deferred Outflows of Resources (GASB 68 related)
- Account # 2140: Accrued Pension Liability (GASB 68 related)
- Account # 2293: Deferred Inflows of Resources (GASB 68 related)
- Account # 2806: Net Assets - Unrestricted (excluding GASB 45 & GASB 68 Liabilities)
- Account # 2806.1 Net Assets - Unrestricted for GASB 45 Liability
- Account # 2806.2 Net Assets – Unrestricted for GASB 68 Liability

#### 4570: Collection Loss

The balance in this account represents the estimated expense to cover projected losses for tenant rents. Note: Do not include losses from fraud/retroactive balances here. Report them in Account 4571 – Collection Loss – Fraud/Retroactive.

Per GAAP accounting, LHAs shall adopt an allowance method for uncollected tenant rents. Each year, LHAs should move a certain percentage of their uncollected tenant rents into Account 1123 (Allowance for Doubtful Accounts). By looking at prior years' rent charged vs. rent collected, LHAs can arrive at accurate estimates for what percentage of rent is uncollected on average per year. This estimated percentage should be set aside in Allowance for Doubtful Accounts. LHAs may also consider the age of outstanding receivables in determining this percentage. Each time LHAs set aside amounts in Allowance for Doubtful Accounts, it also increases the Collection Loss Account 4570.

DHCD issued an important Public Housing Notice ([PHN 2017-13](#)) with guidance relating to Tenants Accounts Receivable (TAR), including several significant changes. Please review [PHN 2017-13](#) in detail. The [PHN 2017-13](#) goes into detail on:

- Clarification about what balances should appear within TAR;
- How LHAs prepare for the AUP & PMR; reporting requirements for the quarterly TAR application to be released later this year;
- Changes in accounting practices for fraud/retroactive repayment agreements and details about quarterly reporting requirements in the TAR application for these agreements;
- Clarification on accounting for normal repayment agreements and details about quarterly reporting requirements per the TAR application for these agreements;
- Change in accounting practice for Allowance for Doubtful Accounts;
- New rules for writing off uncollected rent

#### 4571: Collection Loss – Fraud/Retroactive

The balance in this account represents the estimated expense to cover projected losses for tenant rents due to unreported income, i.e., fraud/retroactive balances.

#### 4580: Interest Expense

The debit balance in this account represents the interest expense paid and accrued on loans and notes payable. This debt can be from operating borrowings or capital borrowings. This account includes interest

payments on debt service for Section 8 New Construction or Substantial Rehabilitation developments.

4590: Other General Expense

This account represents the cost of all items of general expenses for which no specific account is prescribed in the general group of accounts. This account includes the principal debt service payment for Section 8 New Construction or Substantial Rehabilitation developments.

4610: Extraordinary Maintenance – Non-Capitalized

This account should be debited with all *costs* (labor, materials and supplies, expendable equipment (such as many tools or routine replacement parts), and contract work) of repairs, replacements (but not replacements of non-expendable equipment), and rehabilitation of such a substantial nature that the work is clearly not a part of the routine maintenance and operating program. The items charged to this account should not increase the useful life or value of the asset being repaired. These items are not capitalized and are not added as an increase to fixed assets at the time of completion. Nor are these items depreciated.

An example of this might be mass replacement of battery-operated smoke/fire alarms.

4611: Equipment Purchases – Non – Capitalized

This account should be debited with the costs of equipment that does not meet the LHA's criteria for capitalization. Because these items are being expended when paid, they should not be categorized as a fixed asset and therefore will not be depreciated.

These items include stoves, refrigerators, small tools, most computers and software, etc.

The budget is a planning tool and as our portfolio ages it is essential that LHAs evaluate their properties annually and plan for extraordinary maintenance. To that end DHCD very strongly recommends that for all 400-1 operating budgets, depending on the age of the portfolio and condition, LHAs spend between \$100 and \$500 a year per unit in Extraordinary Maintenance (4610), Equipment Purchases (4611), Replacement of Equipment (7520), and Betterments & Additions (7540) to ensure that the aging public housing stock is preserved. Budgets that are not submitted within this range will be carefully reviewed.

4715: Housing Assistance Payments

This account should be debited with all housing assistance payments paid to landlords for the MRVP program on a monthly basis.

4801: Depreciation Expense

This account should be debited with annual fixed asset depreciation expense as determined by the LHA's capitalization policy (see DHCD Accounting Manual for State-Aided Housing Programs, Section 16).

7520: Replacement of Equipment - Capitalized

This account should be debited with the acquisition cost (only the net cash amount) of non-expendable equipment purchased as a replacement of equipment of substantially the same kind. These items, such as vehicles or furniture, meet the LHA's criteria for capitalization and will also be added to fixed assets and therefore depreciated over the useful life of the asset.



7540: Betterments & Additions - Capitalized

This account should be debited with the acquisition cost (only the net cash amount) of non-expendable equipment and major non-routine repairs that are classified as a betterment or addition. These items meet the LHA's criteria for capitalization and will also be added to fixed assets and therefore depreciated over the useful life of the asset.

Examples are major roof replacement or structural repairs such as siding or major paving work.

In accordance with GAAP accounting, inventory purchases (Replacement of Equipment and Betterments & Additions) are distinguished between capitalized and non-capitalized items. Any inventory or equipment purchase greater than \$5,000 is required by DHCD to be capitalized, inventoried and depreciated. Any inventory or equipment purchase costing \$1,000 to \$4,999 should be inventoried by LHA staff for control purposes only but is not subject to capitalization or depreciation, it is, however, required to be expensed when the items are paid for. An LHA's inventory listing should include both capitalized and non-capitalized items of \$1,000 and more, as well as all refrigerators and stoves of any value. All items that appear on the inventory listing should be tagged with a unique identification number, and all refrigerators and stoves (regardless of value) should be tagged. LHAs may adopt a capitalization policy that capitalizes inventory purchases at a lesser amount than the \$5,000 requirement (i.e., \$1,000 - \$4,999); however, no capitalization policy can have an amount higher than \$5,000. Any inventory or equipment purchases costing \$0 to \$999 are to be expensed when paid for. Please reference DHCD's Accounting Manual for State-Aided Housing Programs, Section 15 (D) for further detail.

Operating Reserve and Operating Reserve Analysis Form

In an effort to provide an appropriate operating reserve ("OR") comparison from prior years to the current year, DHCD has provided the Operating Reserve Analysis Form to adjust your GAAP operating reserve balance to the prior DHCD accounting method.

DHCD has rules for minimum OR thresholds and require DHCD approval to spend below this threshold **unless the expenses are to resolve health and safety issues**. For further guidance, please review PHN [2018-04](#).

All LHAs, whether deficit or retained, that are budgeting above the ANUEL, paid for from OR, should budget these expenses in the correct line item.

All LHAs are responsible for any expenditures above the ANUEL paid for from OR. DHCD will not provide additional assistance, now or in the future.

Net Assets (Balance Sheet Account 2806)

Any expenditure from OR that will result in a projected OR of less than 35% of maximum reserve level requires prior written approval from DHCD, unless the expense is to resolve health and safety issues. LHAs should submit the [operating reserve request form](#) for approval.

Other Expenses and Capital Expenditures Sections

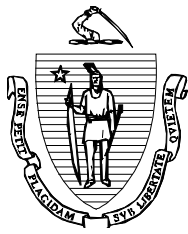
The Other Expenses and Capital Expenditures section of the budget, like the rest of it, is a blueprint. All predictable and/or planned expenditures for the upcoming 12 months need to be included in the schedule of expenses. DHCD gives LHAs with sufficient reserves the latitude to incur these costs without prior approval to assist them in making needed expenditures in a timely manner for unanticipated or emergency situations that arise during the fiscal year. LHAs must adhere to the bid laws during procurement. LHAs

are encouraged to show as many expenses on their budget as they can reasonably predict. Only expenditures known to DHCD will be taken into consideration when the Department is determining the LHA's level of OR available to be dedicated to an LHA's contribution toward modernization.

LHAs may execute contracts for capital work in amounts less than \$50,000 as a result of expenditures made pursuant to the above without Department review and approval, provided that the Authority follows the applicable bidding requirements in accordance with applicable statute(s) and regulation(s). The Department has temporarily waived the provisions of the CFA that requires housing management review and approval for the contracts so mentioned.

Certain force account projects will need approval from Bureau of Housing Development & Construction.

All modernization work approved by the Department and funded by LHA reserves will continue to be allowed to use up to 10% of the amount for administrative costs. For AIMM qualified housing authorities, this amount is 13% (See [Admin Fee Guidelines](#)). These costs may be budgeted at the discretion of the LHA, subject to DHCD's approval.



# Commonwealth of Massachusetts

## DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

Charles D. Baker, Governor ♦ Karyn E. Polito, Lieutenant Governor ♦ Chrystal Komegay, Undersecretary

### PUBLIC HOUSING NOTICE 2017-25

To: All Local Housing Authorities  
From: Amy Stitely, Associate Director, Division of Public Housing  
Subject: Revised DHCD Guidelines for Executive Director Contracts  
Date: October 31, 2017

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Statutory Authority: G.L. c.121B, §7A as added by Section 7 of Chapter 235 of the Acts of 2014.

Regulatory Authority: 760 CMR 4.04

**Effective Date: These Guidelines are effective October 31, 2017, and supersede the previous guidelines issued December 27, 2016 at PHN 2016-40.**

Transition After Effective Date: Contracts in existence on the effective date of these Guidelines will be valid until they expire but may not be renewed or extended. Within thirty (30) days of the effective date of these Guidelines, each Local Housing Authority (LHA) shall send a written communication to its assigned Housing Management Specialist (HMS) at the Department of Housing and Community Development (DHCD) specifying whether it has an existing oral or written contract in effect, and, if so, providing the expiration date of that contract, if any.

Other Pertinent Guidelines: DHCD Guidelines for Hiring an Executive Director, DHCD Guidelines for At-Will Employment of Executive Director, DHCD Executive Director Salary and Qualifications Schedule, as well as DHCD Local Housing Authority Budget Guidelines as currently in effect and revised from time to time.

#### **I. PURPOSE**

The issuance of these guidelines is in accordance with M.G.L. c. 121B as amended by Chapter 235 of the Acts of 2014. Specifically, Section 7A states the following;

The department shall promulgate guidelines for contracts to be executed by the housing authority and an executive director. The department may review all contracts between the housing authorities and executive directors and all terms for payments or monetary remuneration relevant to state payments; provided, however, that the department shall review all contracts and all 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.

Every contract of employment executed by a housing authority and an executive director is subject to review and written approval by DHCD, to ensure that the guidelines and standards for executive director employment contracts have been met.

The title “Executive Director” as used in these Guidelines means any person occupying the position of chief executive officer at a housing authority regardless of title. A person who is temporarily acting as a housing authority chief executive officer, either as a consultant or as an interim executive director, while the housing authority conducts a search for a new executive director, must also execute a contract with the housing authority unless that person is a current LHA member or employee. Such a contract between an interim executive director or consultant and a housing authority must be approved by DHCD, but is not covered by these Guidelines.

These Guidelines are intended to serve as a tool for both DHCD and local housing authorities to facilitate ease of review by DHCD staff when fulfilling its obligation to review employment contracts. These Guidelines set forth the minimum requirements for the contract of employment, including the mandatory contract cover sheet, required basic terms, other material terms (identified as “Standard Provisions” in the contract template), restrictions on any such terms, as well as prohibited terms.

The DHCD Mandatory Contract Cover Sheet (Attachment A) must be completed and submitted by the LHA with the Contract for Employment of Executive Director for review by DHCD. All Mandatory Cover Sheets must identify the LHA and the Executive Director and set out the Executive Director qualifications. LHAs must also identify on the Mandatory Cover Sheet any and all contract provisions that differ from the DHCD Contract for Employment of Executive Director template.

Attachment B is the DHCD Contract for Employment of Executive Director template. DHCD highly recommends use of this contract template in order to facilitate its prompt review and approval, and will provide expedited review for housing authorities utilizing the contract template.

LHAs that employ an executive director as an at-will employee (without a specified term of years and without requiring any cause for termination) should use the current DHCD Memorandum of Agreement for At-Will Employment of Executive Director template. That template and Guidelines pertaining to at-will employment of executive directors were issued as DHCD PHN 2017-18. LHAs that employ an at-will executive director but desire contract provisions that are different from the Memorandum of Agreement for At-Will Employment of Executive Director template must follow these Guidelines.

## **II. NO PREEMPTION OF STATE OR FEDERAL LAW**

Local housing authorities are subject to federal and state statutes and regulations which often vary between LHAs based on considerations such as the size of the LHA or the source of government funding. Nothing contained in these Guidelines relieves a local housing authority of its legal obligations and duties arising under any other source whether expressly noted herein or not. LHA Board members, Executive Directors, and other management staff shall remain responsible for upholding the legal obligations of a local housing authority.

### **III. PARTIES TO CONTRACT and DHCD APPROVAL**

The Contract for Employment is between the Housing Authority Board and the Executive Director. DHCD is not a party to the contract. DHCD has authority to approve the Executive Director's salary (760 CMR 4.04), and review all terms to ensure they are in compliance with these Guidelines (G.L. c. 121B, §7A). To be valid and enforceable, the contract must be executed by both the housing authority and its executive director, and must include the following language appearing after the signature lines of the Parties,

*“This Agreement is subject to the prior review and approval of the Massachusetts Department of Housing and Community Development (“DHCD”). Unless and until this Agreement is approved by DHCD in writing, this Agreement is without force and effect and may be deemed to be null and void by DHCD, in its sole discretion. The Executive Director understands that, if he/she commences work before this Agreement is approved by DHCD he/she shall be deemed an employee at will of the Authority unless and until such approval.”*

### **IV. MANDATORY CONTRACT COVER SHEET (Attachment A - To Be Completed and Submitted By the LHA With the Contract for Employment of Executive Director For Review by DHCD)**

For contracts prepared using the DHCD template with no changes other than insertion of factual information, the LHA must complete only Sections I and IV of the cover sheet. If the LHA does not use the DHCD contract template, or if the LHA uses the DHCD contract template with amended terms, the LHA must complete all sections of the cover sheet.

To facilitate DHCD review of executive director employment contracts other than the DHCD template, the LHA must complete all sections of the cover sheet including a summary of qualifications and all basic and material contract terms and identify by article, paragraph and/or sub-paragraph where the material terms appear in the contract being submitted for review.

#### **SECTION I. Parties and Executive Director Qualifications**

This section must be completed by all LHAs.

- Housing Authority (name and address)
- Executive Director (name, address, number of years as Executive Director or Assistant Executive Director or other senior staff at any LHA)
- Original date of hire of Executive Director at this LHA
- Certifications
- Educational Level
- Experience in the Field

#### **SECTION II. Basic Terms**

LHAs using the DHCD-approved contract template do not need to complete this section. Please note, however, that the subject matter covered by these Basic Terms must be included in all contracts.

- Length of Contract Term and contract termination date coinciding with LHA fiscal year end.

- Public Housing/Rental Assistance Programs Operated
  - List the number of units for each program at the LHA (state-aided public housing, state-aided rental vouchers—MRVP and/or AHVP, federally subsidized public housing, federal Section 8 vouchers). For vouchers, please include leased units only.
- Other program activities, if any, including, for example, management services agreements, Community Development Block Grant or other private or public grants.
- Full/Part Time
- Required hours/week
- Salary (not including bonus)
- Percentage of Authority's state-aided public housing units and units that are leased with state-aided rental vouchers (MRVP and/or AHVP)
- Approved State Share
- Bonus, if any, identifying amount, funding source, and a statement that the bonus is for activity related to a program funded under that source (i.e., HUD activity, private management activity, etc.). State funds are not an allowable source for bonuses. )
- Other Taxable Compensation
- Benefits (check all that apply)

### **SECTION III. Other Material Terms**

All material terms are mandatory and must be included in all contracts. LHAs utilizing the DHCD-approved contract template do not need to identify template provisions, but do need to identify any provisions set forth in the Special Contract Provisions (Rider 1) that affect or differ from these material terms. Please see the list of mandatory material terms in Section V, below.

### **SECTION IV. Certification**

The LHA must certify that the information contained in the contract cover sheet, is true and correct. Signature of the LHA Chair or other authorized Board member, printed name, title and date are all required.

## **V. LIST OF MANDATORY CONTRACT PROVISIONS**

A contract executed by a housing authority and an executive director shall include, at a minimum, provisions setting forth the following terms and conditions of employment, in compliance with the requirements described in Section VI of these Guidelines. The provisions shall be included in the contract in the order set forth below, to facilitate DHCD review:

- 1. Identification of the Contract and Parties.**
- 2. Term and End Date of Contract.**
- 3. Duties of the Executive Director (Job Description).**
- 4. Type of Public Housing/Rental Assistance (P/RA) Programs operated.**
- 5. Other program activities, if any.**
- 6. Full-Time/Part-Time: Nature of Commitment.**
- 7. Required Hours.**
- 8. Salary/Compensation.**
- 9. State percentage of the Authority's public housing units and leased vouchers.**

- 10. Approved State Share of Salary.**
- 11. Other Taxable Compensation, if any (include non-monetary compensation such as laptops, cell phones, etc. as well as non-salary monetary compensation such as bonus).**
- 12. Benefits.**
- 13. Reimbursement of Expenses.**
- 14. Termination of Agreement.**
- 15. Notices.**
- 16. Modification.**
- 17. Dispute Resolution.**
- 18. Post-Term Activities.**
- 19. Assignment.**
- 20. Governing Law (Massachusetts).**
- 21. Signature Page and Acknowledgement that Contract is Subject to DHCD Review and Written Approval.**
- 22. Certification Page**

If the housing authority does not use the recommended DHCD contract template, a completed cover sheet summarizing these provisions, as stated in Section IV above, must be submitted to DHCD on the Mandatory Contract Cover Sheet form prescribed by DHCD to facilitate contract review. Nothing in these Guidelines shall be deemed to limit a housing authority's ability to include additional terms and conditions in an executive director contract, provided that such additional terms and conditions do not conflict with the requirements of these Guidelines. Without limiting the foregoing, a housing authority may adopt provisions that are more restrictive or impose a greater obligation on an executive director than required by these Guidelines with respect to salary, benefits or the minimum obligations of an executive director.

To qualify for expedited DHCD review, any additional provisions must be included in a rider to the contract template. However, housing authorities may also include such additional provisions in the body of an executive director employment contract, so long as they appear after the required contract provisions and are noted on the Mandatory Contract Cover Sheet.

While not mandatory, DHCD highly recommends that provisions governing the following terms be included in any executive director employment contract:

**Severability.**  
**Waiver.**  
**Counterparts.**  
**Federal Requirements.**

## **VI. MANDATORY CONTRACT PROVISIONS**

The mandatory contract provisions identified in Section V above must comply with the following requirements.



**1. Identification of the Contract and Parties.**

Each contract must set forth the name and address of the Executive Director and the Housing Authority and must identify the contract as a contract of employment.

**2. Term and End Date.**

Each contract must specify its term in years and/or months, as well as the termination date of the contract. The end of the contract term must coincide with the end of the LHA's fiscal year. The employment of the Executive Director shall continue for the specified term, unless terminated earlier pursuant to the contract. No contract should be for a period of less than one (1) year plus such additional fraction of a year as shall be required to cause the end of the contract term to coincide with the end of the LHA fiscal year nor for a period of more than five (5) years, based on the conditions below:

New Hire - any individual initially serving as Executive Director for that LHA may sign a one (1) year contract plus such additional fraction of a year as shall be required to cause the end of the contract term to coincide with the end of the LHA fiscal year. In addition, the contract may contain a provision for a one (1) year renewal. The option to renew may be exercised only upon mutual agreement of the parties.

End of One Year - Contract term for those persons having completed one (1) year of service in the position of Executive Director for the LHA may be for one to three (1-3) years whether it be as a new contract or a renewal of the existing contract. In combination, the two periods cannot exceed three (3) years total, and the contract termination date shall continue to coincide with the LHA's fiscal year.

After Two Years - Contract term for those persons having completed two (2) years' service in the position of Executive Director for the LHA may be for one to five (1-5) years whether through a new contract or renewal of the existing contract. In combination, the two periods cannot exceed five (5) years total, and the contract termination date shall continue to coincide with the LHA's fiscal year.

Where the candidate selected has served as the Executive Director, the Assistant Executive Director or in another senior level administrative position in any satisfactorily performing local housing authority of comparable size and program composition, the time in that position may be taken into account when determining the length of contract.

Exception: DHCD may consider a request from a housing authority to approve a multi-year contract in excess of the terms stated above where the housing authority has been identified as troubled or a chronically poor performer pursuant to DHCD guidance, including guidance issued by DHCD with respect to performance monitoring under M.G.L. c. 121B, §26B, and where a longer tenure for the executive director may be integral to the successful improvement of the LHA's current operations. In these instances, it will be required that the housing authority develop and adhere to a DHCD-approved time table for corrective action.

**3. Duties (Job Description).**

Contract must state the minimum duties and responsibilities of the Executive Director, either in the body of the contract or incorporated as an attachment entitled "Job Description." If not using the



DHCD contract template, the contract provision must also include the following language: “In addition to any duties specifically enumerated in this Contract or any Exhibit hereto, as amended from time to time, the Executive Director shall perform such duties as are commensurate with the position of executive director, including without limitation, such duties as may be assigned to the Executive Director from time to time by the Board during the term of the agreement. In performing his or her duties the Executive Director shall comply with all applicable federal, state and local laws, DHCD regulations and guidelines, and directives and policies of the Board.”

**4. Type of Public Housing/Rental Assistance (PH/RA) Programs operated.**

The Contract must specifically identify the housing programs managed by the housing authority, including state-aided programs such as the state-aided public housing program, federally subsidized public housing and leased units for the Massachusetts Rental Voucher programs (MRVP), Alternative Housing Voucher programs (AHVP), and Section 8 rental assistance.

**5. Other program activities, if any.**

The contract must include a description of any activities to be undertaken and/or programs/properties managed by the Executive Director on behalf of the housing authority other than the public housing or rental assistance programs identified in Section 4 above. This may include third party management services contracts for other housing authorities or for private developers, non-profit entity work, grant administration, etc.

**6. A. Full-Time/Part-Time: Nature of Commitment.**

The contract must state whether the Executive Director is a full-time employee or part-time employee.

Please note that in accordance with the DHCD Executive Director Salary and Qualifications Schedule currently in effect, or any such Schedule subsequently issued by DHCD, no full-time Executive Director, e.g., any individual employed as an executive director by a housing authority having more than 199 units, including rental assistance units, shall be employed in any capacity, by more than one housing authority.

Prior to entering into a contract for a part-time executive director, a housing authority must consult with DHCD on the terms of compensation and benefits. Note that the compensation and benefits paid by a single housing authority to an individual employed on a part-time basis as the executive director for two or more housing authorities shall not exceed that housing authority’s pro rata share of an equivalent full-time executive director’s compensation and benefits.

The contract provision must include a statement that the Executive Director understands that the duties and responsibilities of Executive Director are a significant commitment (full-time or part-time) and acknowledges that he/she is expected to work the required number of hours per week specified in the Basic Terms, which shall be performed at the office of the LHA during its established business hours.

In addition, this contract provision must include a statement that the Executive Director agrees that he/she shall not engage in any business or other activity which would interfere with his/her duties as executive director or create a conflict of interest in violation of the Massachusetts Conflict of Interest law. This paragraph shall not prevent an Executive Director from undertaking speaking engagements or other professional activities, provided that such activities do not interfere with or

conflict with his/her duties as executive director. An Executive Director shall obtain, in advance, the approval of the Board before engaging in such activities.

**7. Required Hours.**

The contract must state the required hours to be worked per week by the Executive Director. The required hours stated must be consistent with the DHCD Executive Director Salary and Qualifications Schedule, currently in effect, or any such Schedule subsequently issued by DHCD, setting forth the hours required to be worked by an executive director, based on the number and size of units in all programs that are operated by the Housing Authority.

**8. Salary/Compensation.**

The contract must state the total annual salary to be paid to the Executive Director. LHAs should refer to the DHCD Executive Director Salary and Qualifications Schedule and the DHCD Local Housing Authority Budget Guidelines currently in effect for salary matters. For a salary that includes amounts that are funded by a management services contract with another housing authority or by another contract that is temporary or otherwise may terminate, the executive director contract must specify the amount of the salary that is funded by such contract and state that the salary will be reduced by the amount funded by such contract when those funds are no longer due and payable under such contract.

**9. State percentage of the LHA's public housing units.**

The contract must specify the percentage of the housing authority's total unit count that are state-aided (including state-aided public housing units and units that are leased with state-aided vouchers - MRVP and/or AHVP). For new Executive Directors, please refer to the Executive Director's Salary Calculation Worksheet (Line #15, "Total Units") that is attached to the DHCD Executive Director Salary and Qualifications Schedule currently in effect. For existing Executive Directors, please review total unit count in Housing Authority Financial Information System (HAFIS), ("Report of Total LHA Units") tab, for the LHA's total unit count.

**10. Approved State Share of Salary.**

The contract must set out the approved state share of the Executive Director's salary. (Percentage of state-aided public housing units and units that are leased with state-aided vouchers, MRVP and/or AHVP, multiplied by the salary.) Please refer to the DHCD Local Housing Authority Budget Guidelines currently in effect for specific guidance regarding pro-rations and the allowable state share of the executive director's salary. DHCD will monitor pro-rations on an ongoing basis through the budget, Agreed Upon Procedures (AUP) and Performance Management Review (PMR) process.

DHCD will not permit LHAs the allocation of the executive director salary to the state or to federal programs in an amount that is greater than the pro-rated share of each, based upon the unit count. Unit count pro-rations will be derived from the number of state-aided and federally subsidized units and rental vouchers. Any portions of the salary that are covered by external contract, such as but not limited to LHA management agreements and private management contracts, will not be

considered in unit count pro-ratio calculation. However, those sources of compensation must be clearly identified, as described in the next section.

#### **11. Other Taxable Compensation.**

The contract must enumerate all forms of “other compensation” the Executive Director shall receive. All other compensation must be itemized and clearly stated for audit purposes. The specific items of compensation may be stated on a separate Rider and incorporated by reference in the contract. Housing Authorities granting other compensation are strongly advised to consult with a tax professional (a tax attorney or certified public accountant) as to what items of compensation are required by law to be reported as income to the Massachusetts Department of Revenue and the federal Internal Revenue Service.

Any bonus to be paid to the Executive Director should be listed in this section. The term “bonus” refers to additional taxable compensation that a covered individual receives during the LHA’s fiscal year that is generally a one-time payment for exemplary performance or additional performance beyond the duties of the job description for a specific activity or program implementation. Bonuses may not be paid from state funds and must comply with any and all rules from the funding source from which they are paid. Multi-year contracts that include payment of a bonus must specify the amount of the bonus, the source of funds from which the bonus will be paid, and the year or years in which it is anticipated to be paid. The contract should also specify any conditions on the payment such as the continuation of the funding source or the accomplishment of certain goals.

#### **12. Benefits.**

Benefits received by the Executive Director must be clearly stated in the contract and be in accordance with either an LHA Personnel Policy previously approved by DHCD or by an LHA Personnel Policy attached to the contract for DHCD approval<sup>1</sup>. Any provisions regarding benefits that are inconsistent with or in addition to the standard benefits stated in the LHA’s Personnel Policy must be specified clearly in the contract or in a separate rider attached to the contract and incorporated by reference.

#### **13. Reimbursement of Expenses.**

The contract must indicate whether, and to what extent, the housing authority shall reimburse its Executive Director for expenses incurred by the Executive Director in the normal performance of his/her duties and responsibilities. Any such reimbursement must be for reasonable expenses and must be in compliance with applicable housing authority policies and procedures and federal and state statutes, regulations, and guidance, including DHCD Budget Guidelines as in effect and revised from time to time.

#### **14. Termination of Agreement.**

The contract must include provisions at least as protective of the Housing Authority as the following in regards to termination (provided, that a Housing Authority may adopt more stringent

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<sup>1</sup> Note that DHCD will limit its review and approval of an LHA Personnel Policy to provisions applicable to benefits. LHAs are advised to consult with legal counsel when drafting or amending personnel policies.

termination provisions, including a provision providing for termination at-will):

- A. Compensation and Benefits. In the event the Contract is terminated for any reason, all compensation and benefits provided to Executive Director by the LHA pursuant to the Contract or otherwise shall cease as of the effective date of termination (the “Termination Date”), except as follows:
- i. Salary. Executive Director shall receive payment for any Salary earned but unpaid through the Termination Date.
  - ii. Vacation. Executive Director shall be paid for any vacation time that, as of the Termination Date, was accrued but not used, provided that no more than two (2) years of accrued vacation may be carried over from year to year.
  - iii. Sick Time. Upon death or retirement pursuant to G.L. c. 32, the Executive Director shall be paid 20% of sick time that, as of the Termination Date, was accrued but was not used; in all other circumstances, the Executive Director shall not be compensated for accrued but unused sick time.
- B. Termination. The Contract shall be terminated earlier than the end of the contract term under the following circumstances:
- i. Termination by LHA for Cause. The LHA may and, under certain circumstances as described below, shall terminate the Contract at any time for Cause which shall be defined as any lawful reason in good faith relied upon by the Board, including, but not limited to, any of the following:
    - a) Executive Director breaches any material duty or obligation under the Contract;
    - b) Executive Director refuses or is unwilling to perform any of the duties set forth in the Contract and/or the applicable job description after a written request from the Board to do so;
    - c) Executive Director is convicted of any criminal act, including without limitation fraud, embezzlement, theft, or any other crime against the LHA or the Commonwealth of Massachusetts, including, but not limited to, the offer, payment, solicitation or acceptance of any unlawful bribe or kickback with respect to the LHA’s business;
    - d) Executive Director engages in intentional or grossly negligent conduct which adversely or materially affects the LHA, including but not limited to its reputation;
    - e) Executive Director has engaged in conduct, or caused the LHA to engage in conduct, which violates any federal or state statute, regulation, or administrative guidance, including without limitation a violation of the Massachusetts Conflicts of Interest law (G.L. c. 268A)

or regulations of the federal government or the Commonwealth of Massachusetts governing local housing authorities;

- f) The LHA has a reasonable basis to determine that Executive Director has committed any other criminal act or act of moral turpitude; or
- g) Executive Director is repeatedly absent from work (excluding vacations, illnesses, disability leaves, or other leaves of absence approved by the Board).

In the event that Cause is based on the conviction of the Executive Director of any criminal act pursuant to Section 14(B)(i)(c) above, the Contract shall automatically terminate as of the date of such conviction, without the requirement of any action by the LHA.

In all other circumstances, prior to termination, the Board shall adopt a resolution by affirmative vote at a meeting of the Board called for such purpose (after reasonable notice to Executive Director and an opportunity for Executive Director to be heard before the Board at or prior to the meeting called for such purpose), finding by vote of the majority of the members present that in the good faith opinion of the Board, Executive Director's conduct constitutes "Cause" and specifying the particulars thereof. *Provided*, that nothing contained herein shall prevent the Board from immediately suspending Executive Director without pay prior to formal Notice of Termination or pending an opportunity to be heard, if the Board believes that the Executive Director's conduct warrants immediate action for the good of the LHA.

The Board shall terminate the Contract if it finds "Cause" under one or more of subsections 14(B)(i)(d), (e) or (f) above. In all other cases, the Board shall have discretion to terminate the Contract or take other action based on a determination, in its sole discretion, as to the severity of the conduct constituting "Cause."

Any disputes regarding termination or other disciplinary action by the Board shall be subject to the dispute resolution procedures set forth in Section 17 below.

- ii. Termination by Executive Director. Executive Director may terminate the Contract at any time by providing ninety (90) days advance written notice to the LHA, provided that the LHA may, in its sole discretion, waive all or part of the notice period and accelerate the Termination Date.
- iii. Death. In the event of the death of Executive Director during the term of the Contract, the Contract shall automatically terminate as of the date of his/her death.
- iv. Inability to Perform Essential Functions. Subject to the requirements of the Family and Medical Leave Act, the Americans With Disabilities Act, and any other provision of applicable law, the Housing Authority may terminate the Contract if it determines that the Executive Director is unable to mentally or physically perform the essential functions of his/her job as Executive Director, with or without reasonable accommodation, for an extended period of time (not

less than ninety (90) days in any given twelve (12) month period.) The Board of the Authority shall make such determination in its sole discretion, provided that in making the decision as to whether the Executive Director can perform the essential functions of the job, and whether or not an accommodation is reasonable, it shall review all available and relevant information, including medical information.

- v. Termination by DHCD. The Contract may be terminated at any time by the DHCD in its sole discretion in accordance with G.L. c. 121B, §26B(d) if DHCD finds clear and convincing evidence of a demonstrable threat to tenant safety attributable to the conduct of the Executive Director or financial misconduct or criminal activity by the Executive Director.

C. Notice of Termination. Any termination of the Contract shall be communicated by written Notice of Termination. For purposes of the Contract, a “Notice of Termination” shall mean a notice which shall indicate the specific termination provision in the Contract relied upon as well as the Termination Date.

### 15. Notices.

There must be a notice provision that provides the name, address and e-mail address for both the Executive Director and the Housing Authority. See example:

To Executive Director: [name] [address] [e-mail address]	To Authority: [name] [address] [e-mail address]
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The contract must state the required or permitted forms of notice, when notice is deemed effective after being given, and require the parties to notify each other of any change of address. DHCD recommends the adoption of language similar to the following: Any notices required or permitted under the Contract be sent by both electronic mail and one of (a) certified mail, return receipt requested, postage prepaid, or (b) reputable overnight delivery service, or (c) delivery in person, to the address stated on in the Basic Terms of this Agreement. Notice shall be deemed effective upon delivery in person, or one business day after being deposited with an overnight courier service, or three (3) business days after being deposited with the United States Post Office, certified mail, return receipt requested. It shall be the obligation of each party to this Agreement to provide notice to the other party in writing of any changes to the above notice addresses.

### 16. Modification.

The contract must state that the agreement constitutes the entire understanding and agreement between the parties with regard to the subject matter thereof, and supersedes all prior understandings and agreements, and must further state that the agreement may not be amended, supplemented, revised or otherwise modified except by a writing signed by the parties and approved by DHCD.



**17. Dispute Resolution.**

The contract must state that any dispute as to its interpretation or application shall be resolved in accordance with the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association, or DHCD-approved equivalent, which shall be the sole and exclusive remedy available, and as to which judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**18. Post-Term Activities.**

The contract must state that in the event that the Executive Director continues to serve in that capacity after the term of the agreement, he or she shall be an employee at-will, and the termination for cause provisions of the contract shall not apply. In no event shall any of the other terms and conditions of employment (including without limitation the salary, benefits, job description, scope of services, duties and nature of commitment) be modified from what is contained in the contract without being incorporated into an amendment to the contract or a new employment contract and approved in writing by DHCD.

**19. Assignment.**

The contract must state that the agreement may not be assigned, in whole or in part, by any party without the prior written consent of the other party.

**20. Governing Law.**

The contract must state that the agreement shall be construed under, and governed by, the laws of the Commonwealth of Massachusetts, excluding its choice of law rules, and that the state or federal courts of Massachusetts shall be the forum for any lawsuit arising from or incident.

**21. Signature Page with Acknowledgement That Contract Subject to DHCD Review and Written Approval.**

All contracts must have a signature page indicating that the document is executed as an instrument under seal. Execution on behalf of the LHA must be by its Executive Director, its Chair and its Treasurer. Each of the pages preceding the signatures and the signature page must include the following statement:

*This Agreement is subject to the prior review and approval of the Massachusetts Department of Housing and Community Development ("DHCD"). Unless and until this Agreement is approved by DHCD in writing as evidenced by the Certification of Review and Approval, this Agreement is without force and effect and may be deemed to be null and void by DHCD, in its sole discretion. The Executive Director understands that, if he/she commences work before this Agreement is approved by DHCD he/she shall be deemed an employee at will of the Authority unless and until such approval.*

**22. Certification Page**

All contracts must contain a certification page in the form set out below. The page preceding the certification must include the following statement: [Certification on Next Page]

# **CERTIFICATION OF REVIEW AND APPROVAL**

The Massachusetts Department of Housing and Community Development (“DHCD”), hereby certifies that upon review of the terms and conditions of the foregoing Contract of Employment, between \_\_\_\_\_ and the \_\_\_\_\_ Housing Authority, the Contract:

\_\_\_\_\_ meets all the requirements set out in DHCD’s Guidelines for Executive Director Contracts; and is hereby approved.

\_\_\_\_\_ substantially meets the requirements set out in DHCD’s Guidelines for Executive Director Contracts and is hereby approved except for the following provisions:

\_\_\_\_\_ fails to meet the requirements set out in DHCD’s Guidelines for Executive Director Contracts is not approved, and is being returned unsigned.

**Department of Housing and Community Development**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## **VII. RECOMMENDED PROVISIONS**

DHCD recommends that each contract include provisions addressing the following issues:

### **1. Severability.**

DHCD recommends that the contract include a severability provision, to the effect that: (a) if any portion or provision of the agreement shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of the agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of the agreement shall be valid and enforceable to the fullest extent permitted by law, and (b) if any of the provisions of the agreement is held to be excessively broad, it shall be reformed and construed by limiting and reducing it so as to be enforceable to the maximum extent permitted by law.

### **2. Waiver.**

DHCD further recommends that the contract include a provision to the effect that no waiver of any provision thereof shall be effective unless made in writing and signed by the waiving party, and that the failure of either party to require the performance of any term or obligation of the agreement, or the waiver by either party of any breach of the agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.



**3. Counterparts.**

The contract must state that the agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and in pleading or proving any provision of the agreement it shall not be necessary to produce more than one such counterpart. No counterpart shall be effective until each party has executed at least one counterpart. For the convenience of the parties, facsimile and pdf signatures shall be accepted as originals.

**4. Federal Requirements.**

Where the Executive Director's compensation is paid in part from federal funds, the contract should include any provisions required by the federal government.

**VIII. CONTRACT PROVISIONS THAT WILL NOT BE APPROVED BY DHCD**

DHCD will not approve contract provisions that:

1. Allow automatic renewals or extensions of the contract,
2. Grant increased compensation on the basis of increased years of service (so-called "longevity payments") to the Executive Director, or
3. Provide for indemnification of the Executive Director.

**IX. PROCEDURE FOR DHCD APPROVAL OF CONTRACTS.**

Executive Director Contracts for Employment should be submitted to the DHCD Housing Management Specialist (HMS) who is assigned to the LHA. To facilitate DHCD review of Executive Director Employment Contracts, LHAs must provide a summary of all qualifications, basic terms and material terms of the contract on the Mandatory Contract Cover Sheet, along with the Contract. The Contract must meet all the requirements set out in these Guidelines and submitted to DHCD in the following manner.

- Contract should be sent to DHCD a minimum of sixty (60) days prior to the proposed effective date of the contract.
- Every contract submission must include the Mandatory Contract Cover Sheet, prescribed by DHCD, summarizing the basic terms and other material terms, along with an extract of the minutes of the meeting at which the vote was taken to approve the Contract, salary and length of term.
- For newly hired Executive Directors, LHA must also submit evidence of having followed the DHCD's Executive Director Hiring Guidelines in effect at the time.
- If the contract is on the DHCD contract template form, the LHA may attach a rider, so long as provisions of the rider are not inconsistent with these Guidelines.
- If the contract is not on the DHCD contract template form, it must comply with all of the basic terms and material terms required by these Guidelines.
- Contract must include a copy of job description.
- If on DHCD contract template form, without any material changes to the template form or by means of one or more rider(s), DHCD will review and respond within (thirty) 30 days following its receipt of the LHA's submission as long as all required supporting documents have been received,

all information required by the template is provided, and barring any unusual circumstances. DHCD's response will inform the LHA whether the contract is approved, rejected, or approved with revisions and/or conditions.

- If not on DHCD contract template form, DHCD will endeavor to review and respond within sixty (60) days following its receipt of the LHA's submission as long as all required supporting documents have been received and barring any unusual circumstances. DHCD's response will inform the LHA whether the contract is approved, rejected, or approved with revisions and/or conditions.

**MANDATORY CONTRACT COVER SHEET**

Mandatory Cover Sheet to be Completed and Submitted by LHA With the Contract of Employment for Executive Director for Review by DHCD.

*(Note: For contracts prepared using the DHCD template with no changes other than insertion of factual information, complete only Sections I and IV below. If not using the DHCD template, or if using it with amended terms, complete all sections below.)*

To facilitate DHCD review of Executive Director Employment Contracts, the LHA must provide a summary of qualifications and material contract terms below and identify by article, paragraph and/or sub-paragraph where the material terms appear in the contract being submitted for review.

**I. Parties and Executive Director Qualifications**

Housing Authority	Name:	Address for purposes of Notices:
Executive Director	Name:	Address for purposes of Notices:
# Years as Executive Director or Assistant Executive Director or other senior staff at any LHA	Years:	Position held:
Original date of hire of ED at this LHA		
Certifications		
Educational Level		
Experience in Field	Years:	Type:

**II. Basic Terms (LHAs using the DHCD-approved contract template do not need to complete this section. The subject matter covered by these Basic Terms must be included in all contracts. )**

Basic Term		Brief Summary/	Section/Paragraph #s of Contract
Length of Contract Term and FY End date			
Public Housing/Rental Assistance Programs Operated	Number of units for each program at the LHA	Program	
		State-aided public housing	
		State-aided rental vouchers (MRVP and/or AHVP), leased units only.	
		Federally subsidized public housing	
		Federal Section 8 vouchers, leased units only	
Full/Part Time			
Required hours/week			
Salary (not including bonus)	\$ _____		

Basic Term		Brief Summary/	Section/Paragraph #s of Contract
Percentage state-aided units at LHA (Authority's state-aided public housing units and units that are leased with MRVP and/or AHVP)	___%		
Approved State Share of Salary	\$ _____	Equals the percentage of the Authority's state-aided public housing units and units that are leased with state-aided rental vouchers (MRVP and/or AHVP) multiplied by the Salary	
Portion of Salary from "Other Program Activities," if any (e.g. LHA management agreements or other private management contracts)	\$ _____	Activity 1:	
	\$ _____	Activity 2:	
	\$ _____	Activity 3:	
	\$ _____	Activity 4:	
	\$ _____	Activity 5:	
	\$ _____	Activity 6:	
Other Taxable Compensation	\$ _____	List non-monetary compensation such as laptops, cell phones, etc.:	
Bonus (if any)	\$ _____	Year(s) payable:  Source(s):  Purpose/Program(s):	
Benefits (check all that apply)		In accordance with Authority personnel policy previously approved by DHCD	
Benefits (check all that apply)		In accordance with attached Authority personnel policy	—
		As follows (if not in accordance with Authority personnel policy):  _____ hours of vacation leave for each year of continuous employment  _____ hours of sick leave for each year of continuous employment	

### III. Other Material Terms.

*(Note: All material terms are mandatory and must be included in each contract. LHAs utilizing the DHCD-approved contract template do not need to identify template provisions, but do need to identify any provisions set forth in the Special Contract Provisions (Rider 1) that affect or differ from these material terms.)*

<b>Material Term</b>	<b>Is Language Identical to DHCD-Approved Template? (Y/N)</b>	<b>Brief Explanation of Changes from DHCD-Approved Provisions</b>	<b>Page and Section # in Contract or Special Contract Provisions</b>
Job Description (must be attached to contract)			
Detailed summary of any additional benefits not in II above			
Expense Reimbursement			
Termination by Executive Director			
Termination by LHA			
Termination by DHCD			
Other discipline or termination provisions, if any			
Executive Director's Inability to Perform Essential Functions			
Notice Provision			
No modifications without written agreement and DHCD approval			
Dispute Resolution			
Post-term activities			
No assignment			
Massachusetts law governs			
Acknowledgment that contract is subject to DHCD's written approval			

#### **IV. Certification.**

The undersigned certifies that the above information is true and correct.

\_\_\_\_\_ HOUSING AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_ (Chairman or other authorized Board Member)

Date: \_\_\_\_\_

**CONTRACT OF EMPLOYMENT  
EXECUTIVE DIRECTOR  
[NAME] HOUSING AUTHORITY**

This AGREEMENT, whose effective date shall be the date approved in writing by the Massachusetts Department of Housing and Community Development (“DHCD”) as provided below (the “Effective Date”), is by and between \_\_\_\_\_ (Executive Director), an individual, and the \_\_\_\_\_ Housing Authority (“Authority”), a housing authority organized pursuant to Chapter 121B of the General Laws.

**A. Basic Terms**

1. Term: \_\_\_\_\_ ( ) year(s) and \_\_\_\_\_ ( ) months from the Effective Date ending on \_\_\_\_\_, which is the last day of the Authority’s fiscal year (see § B.2).
2. Public Housing/Rental Assistance Programs operated: (check one)  
☐ state only ☐ federal only ☐ state and federal
3. Other program activities, if any: \_\_\_\_\_
4. Full/Part Time: This is a (check one) ☐ full time ☐ part time contract.
5. Required Hours: \_\_\_\_\_ hours/week
6. Salary: \$ \_\_\_\_\_ .00 per annum, of which \$ \_\_\_\_\_ .00 is funded through a management services or other contract subject to termination, and the salary shall be reduced by the amount of the portion so funded upon termination of that contract.
7. Percentage of Authority’s state-aided public housing units and units that are leased with state-aided rental vouchers (MRVP and/or AHVP): \_\_\_\_\_ %
8. Approved State Share of Salary: \$ \_\_\_\_\_ (Percentage of state-aided public housing units and units that are leased with state-aided rental vouchers (MRVP and/or AHVP) multiplied by the Salary.)
9. Other Taxable Compensation, if any (include non-monetary compensation such as laptops, cell phones, etc. as well as non-salary monetary compensation such as bonus):  
 \_\_\_\_\_  
 \_\_\_\_\_

**10. Benefits:**

- ☐ In accordance with Authority personnel policy previously approved by DHCD
- ☐ In accordance with attached Authority Personnel Policy.
- ☐ As follows (if not in accordance with Authority Personnel Policy):  
 \_\_\_\_\_ hours of vacation leave for each year of continuous employment (see § B.7)  
 \_\_\_\_\_ hours of sick leave for each year of continuous employment (see § B.7)  
 See Rider 1 for any additional provisions regarding benefits other than as stated in Authority Personnel Policy or the standard provisions in Part B below.

**11. Notices shall be addressed:**

To Executive Director: [name] [address] [e-mail address]	To Authority: [name] [address] [e-mail address]
---	--

B. Standard Provisions: The following standard provisions shall apply to this Agreement except to the extent modified by Rider 1 (Special Contract Provisions):

1. Office. Authority hereby agrees to employ Executive Director, and Executive Director hereby accepts such employment and agrees to serve Authority as the Executive Director of the Authority during the Term of this Agreement (as defined in Section 2).
2. Term and Effective Date. The employment of Executive Director pursuant to the terms of this Agreement shall commence and be made effective as of the Effective Date and shall continue for the time period and until the end date specified in the Basic Terms unless sooner terminated in accordance with Section 9 of this Agreement (“Termination of Agreement”). The Executive Director acknowledges that if he continues work after the Term has expired, he/she shall be deemed an employee at will of the Authority unless and until this Agreement is extended or replaced with a new employment agreement.
3. Duties. Throughout the Term of this Agreement, and for any period after the Term during which the Authority may agree to employ the Executive Director as an at-will employee, Executive Director shall diligently, faithfully and competently perform the duties and responsibilities of Executive Director, reporting to the Authority’s members (“Board”), pursuant to and in accordance with the terms of this Agreement. Executive Director shall perform such specific duties as are commensurate with such position (including but not limited to those set forth in the job description for the Authority Executive Director position, attached as Exhibit A, as amended from time to time) and as may be assigned to Executive Director from time to time by the Board during the Term of this Agreement. In performing these duties the Executive Director shall comply with all applicable federal, state and local laws, DHCD regulations and guidelines, and directives and policies of the Board.
4. Nature of Commitment. Executive Director understands that the duties and responsibilities of Executive Director are a significant commitment (full-time or part-time, as specified in the Basic Terms), and acknowledges that he/she is expected to work the required number of hours per week specified in the Basic Terms, which shall be performed at the office of the Authority during its established business hours (unless the job duty or business function requires the Executive Director to travel to a location other than the LHA’s main office.) Executive Director agrees that he/she shall not engage in any business or other activity which would interfere with or conflict with his/her duties as Executive Director, in accordance with the Massachusetts Conflict of Interest law. This paragraph shall not prevent Executive Director from undertaking speaking engagements or other professional activities, provided that such activities do not interfere with or conflict with his/her duties as Executive Director. Executive Director shall obtain, in advance, the approval of the Board before engaging in such activities.
5. Compensation. During the Term of this Agreement, Executive Director shall receive a gross salary (the “Salary”) at the rate specified in the Basic Terms, payable in

accordance with Authority's regular practices for payment of its employees, as in effect from time to time. The Approved State Share of the Salary set out in the Basic Terms above is the maximum allowable salary that may be paid from state funds under the current DHCD Executive Director Salary Schedule, Budget Guidelines and related administrative guidance issued by DHCD. All taxes and other deductions required by law, or authorized by Executive Director, shall be deducted from the Salary. Executive Director's Salary shall be subject to increase as determined by the Board, in accordance with the Budget Guidelines and/or the current DHCD Executive Director Salary Schedule, subject to review and approval by DHCD.

6. Other Compensation. In addition to the Salary set out above, during the term of this Agreement the Executive Director shall receive the Other Taxable Compensation described in the Basic Terms.
7. Benefits.
  - a. DHCD-Approved Personnel Policies: Subject to the Basic Terms above, during the Term of this Agreement, Executive Director shall be eligible to participate in all fringe benefit plans as described in any Authority Personnel Policy that has been approved by DHCD, as in effect from time to time during the Term. Any such participation shall be subject to the terms and conditions of the applicable plan documents, generally applicable Authority policies, and the discretion of the Board, all as provided for in or contemplated by such plans.
  - b. Benefits Not in Conformance with Personnel Policy: Where the Authority has specified in the Basic Terms that benefits are being provided other than in accordance with the Authority's Personnel Policy, this Agreement shall govern. In such cases, the Executive Director shall be entitled to the benefits specified in the Basic Terms and in Rider 1 instead of, or in addition to, those that are set out in the Personnel Policy, subject to the following conditions:
    - i. Vacation Leave: Vacation leave for each year of continuous employment shall be prorated and accrued monthly. The Executive Director will not be permitted to take any leave earned in accordance with the aforementioned allowance until he/she shall have initially completed six consecutive months of work. The Executive Director shall not carry over from year to year more than two years' accrued vacation leave and, in the event of separation or termination of employment for any cause, any unused leave shall be compensated to the Executive Director at his/her Salary at that time.
    - ii. Sick Leave: Sick leave for each year of continuous employment shall be prorated and accrued monthly. All accrued and unused sick leave will be carried over from year to year. In the event of separation or termination of employment for cause other than retirement or death there shall be no compensation of sick leave accrual. Upon retirement pursuant to G.L. c. 32 or death, compensation shall not exceed 20% of



accrued sick leave.

- c. Benefits in Conformance with Personnel Policy; Modification of Personnel Policies: Authority may alter, modify, add to or delete its employee benefit plans at any time as it, in its sole discretion, subject to DHCD approval in accordance with DHCD regulations or guidance, determines to be appropriate, without recourse by Executive Director. Executive Director shall receive full credit for his/her employment with Authority prior to the Effective Date of this Agreement for purposes of determining his/her eligibility for Authority benefit plans. In no event shall Executive Director be entitled to any benefits beyond those described in the Authority's Personnel Policy, unless the Authority has otherwise specified in the Basic Terms or in Rider 1.
8. Reimbursement of Expenses. Authority shall reimburse Executive Director for all reasonable expenses incurred by Executive Director in the normal performance of his/her duties and responsibilities. Any such reimbursement is subject to compliance with applicable Authority policies and policies and procedures, and federal and state laws and regulations, including DHCD Budget Guidelines in effect.
  9. Termination of Agreement.
    - a. Compensation and Benefits. In the event this Agreement is terminated for any reason, all compensation and benefits provided to Executive Director by Authority pursuant to this Agreement or otherwise shall cease as of the effective date of termination (the "Termination Date"), except as follows:
      - i. Salary. Executive Director shall receive payment for any Salary earned but unpaid through the Termination Date.
      - ii. Vacation. Executive Director shall be paid for any vacation time that, as of the Termination Date, was accrued but not used.
      - iii. Sick Time. If the Authority's Personnel Policy contains a provision for sick leave that can be accumulated and carried over from year to year, then upon death or retirement pursuant to G.L. c. 32, the Executive Director shall be paid up to 20% of sick time that, as of the Termination Date, was accrued but was not used, but in any event no more than would be permitted under the Authority's Personnel Policy; in all other circumstances, the Executive Director shall not be compensated for accrued but unused sick time.
    - b. Termination. This Agreement shall be terminated earlier than the date set forth in the Basic Terms under the following circumstances:
      - i. Termination by Authority For Cause. Authority may and, under certain circumstances as described below, shall terminate this Agreement at any time for Cause which shall be defined as any lawful

reason in good faith relied upon by the Board, including, but not limited to any of the following:

- a) Executive Director breaches any material duty or obligation under this Agreement;
- b) Executive Director refuses or is unwilling or fails to perform any of the duties set forth in this Agreement or the applicable job description after a written instruction from the Board to do so;
- c) Executive Director is convicted of any felony or misdemeanor, including without limitation fraud, embezzlement, theft, or any other crime against the Authority, a tenant, or the Commonwealth of Massachusetts; including, but not limited to, the offer, payment solicitation or acceptance of any unlawful bribe or kickback with respect to Authority's business;
- d) Executive Director engages in intentional or grossly negligent conduct which adversely or materially affects Authority, including but not limited to its reputation;
- e) Executive Director has engaged in conduct, or caused the Authority to engage in conduct, which violates any Federal or state statute, regulation, or administrative guidance, including without limitation a violation of the Massachusetts Conflicts of Interest law (G.L. c. 268A) or regulations of the Federal government or the Commonwealth of Massachusetts governing local housing authorities;
- f) Authority has reasonable basis to determine that Executive Director has committed any other criminal act or act of moral turpitude; or
- g) Executive Director is repeatedly absent from work (excluding vacations, illnesses, disability leaves, or other leaves of absence approved by the Board).

In the event that Cause is based on the conviction of the Executive Director of any felony or misdemeanor pursuant to Section 9(b)(i)(c) above, this Agreement shall automatically terminate as of the date of such conviction, without the requirement of any action by the Authority.

In all other circumstances, prior to termination, the Board shall adopt a resolution by affirmative vote at a meeting of the Board called for such purpose (after reasonable notice to Executive Director and an

opportunity for Executive Director to be heard before the Board at or prior to the meeting called for such purpose), finding by vote of the majority of the members present, that in the good faith opinion of the Board, Executive Director's conduct constitutes "Cause" and specifying the particulars thereof. *Provided*, that nothing contained herein shall prevent the Board from immediately suspending Executive Director without pay prior to formal Notice of Termination or pending an opportunity to be heard, if the Board believes that the Executive Director's conduct warrants immediate action for the good of the Authority.

The Board shall terminate this Agreement if it finds "Cause" under one or more of subsections 9(b)(i)(d), (e) or (f) above. In all other cases, the Board shall have discretion to terminate this Agreement or take other action based on a determination, in its sole discretion, as to the severity of the conduct constituting "Cause."

Any disputes regarding termination or other disciplinary action by the Board shall be subject to the dispute resolution procedures set forth in Section 12 below.

- ii. Termination by Executive Director. Executive Director may terminate this Agreement at any time by providing ninety (90) days advance written notice to Authority, provided that Authority may, in its sole discretion, waive all or part of the notice period and accelerate the Termination Date without compensation to the Executive Director.
- iii. Death. In the event of the death of Executive Director during the Term, this Agreement shall automatically terminate as of the date of his/her death.
- iv. Inability to Perform Essential Functions. Subject to the requirements of the Family and Medical Leave Act, the Americans With Disabilities Act, and any other provision of applicable law, Authority may terminate this Agreement if it determines that the Executive Director is unable to mentally or physically perform the essential functions of his/her job as Executive Director, with or without reasonable accommodation, for an extended period of time (not less than ninety (90) days in any given twelve (12) month period.) The Board of the Authority shall make such determination in its sole discretion, provided that in making the decision as to whether the Executive Director can perform the essential functions of the job, and whether or not an accommodation is reasonable, it shall review all available and relevant information, including medical information.
- v. Termination by DHCD. This Agreement may be terminated at any time by the DHCD in its sole discretion in accordance with G.L. c. 121B, §26B(d) if DHCD finds clear and convincing evidence of a

demonstrable threat to tenant safety attributable to the conduct of the Executive Director or financial misconduct or criminal activity by the Executive Director.

- c. Notice of Termination. Any termination of this Agreement shall be communicated by written Notice of Termination. For purposes of this Agreement, a “Notice of Termination” shall mean a notice which shall indicate the specific termination provision in this Agreement relied upon as well as the Termination Date.
  - d. Open Meeting Law. All action by the Board related to this Section 9 shall be in compliance with the Open Meeting and Public Records law of the Commonwealth of Massachusetts.
10. Notices. Any notices required or permitted under this Agreement shall be sent by both electronic mail and one of (a) certified mail, return receipt requested, postage prepaid, or (b) reputable overnight delivery service, or (c) delivery in person, to the address stated in the Basic Terms of this Agreement. Notice shall be deemed effective upon delivery in person, or one business day after being deposited with an overnight courier service, or three (3) business days after being deposited with the United States Post Office, certified mail, return receipt requested. It shall be the obligation of each party to this Agreement to provide notice to the other party in writing of any changes to the above notice addresses.
  11. Modification and Termination. This Agreement constitutes the entire understanding and agreement between the parties hereto with regard to the subject matter hereof, and supersedes all prior understandings and agreements. This Agreement may not be amended, supplemented, revised or otherwise modified except by a writing signed by the parties hereto and approved by DHCD.
  12. Dispute Resolution. Any dispute as to the interpretation or application of this Agreement shall be resolved in accordance with the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association, or DHCD approved equivalent, which shall be the sole and exclusive remedy available. The parties agree that judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
  13. Assignment. This Agreement may not be assigned, in whole or in part, by any party without the prior written consent of the other party.
  14. Severability. If any portion or provision of this Agreement shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any of the provisions of this Agreement is held to be excessively broad, it shall be reformed and construed by limiting and reducing it so as to be enforceable to the maximum extent permitted by law.
  15. Governing Law. This Agreement shall be construed under, and governed by, the laws of the Commonwealth of Massachusetts, excluding its choice of law rules, and the state or

federal courts of Massachusetts shall be the forum for any lawsuit arising from or incident to this Agreement.

16. Waiver. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of either party to require the performance of any term or obligation of this Agreement, or the waiver by either party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.
17. Post-Term Activities. In the event that the Executive Director continues to serve in that capacity after the Term of this Agreement, he or she shall be an employee at-will, and the termination for cause provisions of this Agreement shall not apply. In no event shall any of the other terms and conditions of employment (including without limitation the salary, benefits, job description, scope of services, duties and nature of commitment) be modified from what is contained in this Agreement without being incorporated into an amendment to this Agreement or a new employment contract and approved in writing by DHCD.
18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and in pleading or proving any provision of this Agreement it shall not be necessary to produce more than one such counterpart. No counterpart shall be effective until each party has executed at least one counterpart. For the convenience of the parties, facsimile and pdf signatures shall be accepted as originals.

[Signatures on Next Page]

[Signature page to Contract of Employment for Executive Director]

IN WITNESS WHEREOF, Authority, acting by and through its duly authorized chairman and treasurer and hereto affixing its seal, and Executive Director, have duly executed this Agreement as a binding contract between the parties, subject to DHCD approval as set out below.

*This Agreement is subject to the prior review and approval of the Massachusetts Department of Housing and Community Development ("DHCD"). Unless and until this Agreement is approved by DHCD in writing as evidenced by the Certification of Review and Approval, this Agreement is without force and effect and may be deemed to be null and void by DHCD, in its sole discretion. The Executive Director understands that, if he/she commences work before this Agreement is approved by DHCD he/she shall be deemed an employee at will of the Authority unless and until such approval.*

Seal	_____ <b>Housing Authority</b>
Witness: _____	By: _____ Its Chairman
Witness: _____	By: _____ Its Treasurer
Witness: _____	<b>Executive Director</b>  _____

## EXHIBIT A

## Job Description

## \_\_\_\_ Housing Authority (“Authority”) Executive Director

The Executive Director is responsible for the professional leadership and management of Authority and shall perform the following duties and exercise the following powers, rights and authority:

1. General. The Executive Director shall have the general supervision over the administration of the Authority's business and affairs, subject to the direction of the Board, and in compliance with the rules and requirements of the Massachusetts Department of Housing and Community Development (DHCD) and, as applicable, the United States Department of Housing and Urban Development (HUD). The Executive Director shall be the Authority's chief administrative and financial officer and shall have the day-to-day responsibility of managing the Authority, implementing the policy directives of the members of the Authority (Board), and assuming overall leadership role in guiding programmatic, fiscal, personnel, and public relations activities.
2. Hours of Work. Full time Executive Directors shall work during normal business hours (Monday - Friday 8 a.m. to 6 p.m.) and Part time Executive Directors must work 75% of the hours that they work during normal business hours. Time spent at night or weekend meetings which are directly related to Authority business, may be substituted for weekday hours at the discretion of the Board. Daily time sheets and attendance records must be maintained at the LHA office for review and approval by the Board and review by DHCD, the State Auditor, and/or HUD.
3. Programs. The Executive Director oversees the delivery and quality of programs and services including but not limited to:
  - a. Housing Units Owned by the Authority:
    - 1) Management, maintenance and redevelopment of, and capital improvements to, any and all housing developments of the Authority;
    - 2) Purchase of equipment, materials and labor as required to satisfactorily meet the standards of good and proper maintenance;
    - 3) Wait list outreach, marketing and maintenance;
    - 4) Selection of tenants, the drawing and signing of leases, the collection of rents and the use of legal actions as required by state and/or federal regulations and guidelines as applicable depending on whether the housing units are state-aided or federally-aided; preparation of the Authority's Management Plan detailing Authority's policies, guidelines, rules and regulations pertaining to day-to day operations;

- 5) Compliance with applicable fair housing and civil rights requirements; and
  - 6) Operation of any and all developments in a manner providing for a high degree of livability and appearance at the lowest possible cost consistent with satisfactory administration and maintenance.
- b. Rental Assistance. If the Authority operates state or federal rental assistance program(s):
- 1) Wait list outreach, marketing and maintenance;
  - 2) Outreach to and contracting with landlords including inspection operations;
  - 3) Selection of tenants the drawing and signing of leases, the payment of rental assistance and the use of legal actions as required by state and/or federal regulations and guidelines as applicable depending on whether the housing units are state-aided or federally-aided, and;
  - 4) Compliance with applicable fair housing and civil rights requirements.
4. Fiscal Management. The Executive Director is responsible for the care and custody of all funds of the Authority and for the prudent management of the resources of the Authority. The Executive Director oversees all bookkeeping, accounting and financial activities including but not limited to:
- a. Deposit all funds of the Authority in the name of the Authority in such bank or banks as the Board shall select;
  - b. Maintenance of accurate books of account showing receipts and expenditures;
  - c. Preparation of an annual budget within budget guidelines for review and approval by the Board and DHCD as well as operating statements and financial reports and submissions;
  - d. Maintenance of an accurate inventory of agency property and protect all such property;
  - e. Procurement and purchase activities in accordance with procedures approved by the Board and in accordance with all applicable state, federal and local laws, and;
  - f. Make notification to DHCD of any potential legal claims or lawsuits brought against the Authority for any incidents occurring on state-aided property.
5. Personnel. Executive Director is authorized to transact all personnel actions subject to the Personnel Policy, and to report such actions as necessary to the Board. The Executive Director is responsible for:
- a. Recruitment, hiring, staffing and supervision of department heads and any personnel not under the supervision of department heads;
  - b. Ensuring that performance evaluations of all staff are completed;
  - c. Determining the need for travel and training of all employees, and approval or denial of staff travel and training requests, consistent with the Authority's annual budget;
  - d. Promotion, demotion and disciplinary actions; and
  - e. Review and update of the Personnel Policy and all job descriptions, as needed, and;
  - f. Compliance with all state and federal employment laws.



6. Board Administration and Support. The Executive Director supports operations and administration of the Board by advising and informing Board members, interfacing between Board and staff, and cooperating with the Board's process for the evaluation of the Executive Director's performance. Such responsibilities include but are not limited to:
  - a. Reporting at each regular meeting or more often as requested by the Board an account of his/her transactions and the financial condition of the Authority;
  - b. Preparation of regular reports for the Board on the status of projects and programs;
  - c. Reports on the results of present policy and recommendations for changes in policies to the Board;
  - d. Recording of the minutes and the records of the Authority's meetings in a satisfactory and legal form as the ex-officio secretary of the Board pursuant to G.L. c. 121B, §7, and;
  - e. Development of an Annual Plan as required by G.L. c. 121B, §28A and submission of the Plan to DHCD in accordance with its guidelines.
7. Other Duties and Responsibilities, As Assigned. The Executive Director shall perform such duties as are commensurate with the position of executive director, including without limitation, such duties as may be assigned to the executive director from time to time by the Board during the Term of the agreement. In performing his or her duties the Executive Director shall comply with all applicable federal, state and local laws, DHCD regulations and guidelines, and directives and policies of the Board.

RIDER 1  
SPECIAL CONTRACT PROVISIONS

*[Housing Authorities should insert here any special provisions that add to or modify the  
standard contract provisions]*

**CERTIFICATION OF REVIEW AND APPROVAL**

**The Massachusetts Department of Housing and Community Development (“DHCD”), hereby certifies that upon review of the terms and conditions of the foregoing Contract of Employment, between \_\_\_\_\_ and the \_\_\_\_\_ Housing Authority, the Contract:**

**\_\_\_\_\_ meets all the requirements set out in DHCD’s Guidelines for Executive Director Contracts and is hereby approved.**

**\_\_\_\_\_ substantially meets the requirements set out in DHCD’s Guidelines for Executive Director Contracts and is hereby approved except for the following provisions: \_\_\_\_\_**

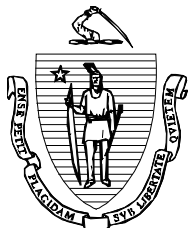
**\_\_\_\_\_ fails to meet the requirements set out in DHCD’s Guidelines for Executive Director Contracts, is not approved, and is being returned unsigned.**

**Department of Housing and Community Development**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_



Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn E. Polito, Lieutenant Governor ♦ Chrystal Komegay, Undersecretary

**PUBLIC HOUSING NOTICE 2016-40**

To: All Local Housing Authorities  
From: Sarah Glassman, Associate Director, Division of Public Housing & Rental Assistance  
Subject: DHCD Guidelines for Executive Director Contracts  
Date: December 27, 2016

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Statutory Authority: G.L. c.121B, §7A as added by Section 7 of Chapter 235 of the Acts of 2014.

Regulatory Authority: 760 CMR 4.05

Effective Date: December 27, 2016

Transition After Effective Date: Contracts in existence on the effective date of this regulation will be valid until they expire but may not be renewed or extended. Within thirty (30) days of the effective date of these Guidelines shown above, each Local Housing Authority (LHA) shall send a written communication to its assigned Housing Management Specialist (HMS) at the Department of Housing and Community Development (DHCD) specifying whether it has an existing written contract in effect and, if so, providing the expiration date of that contract.

Other Pertinent Guidelines: DHCD Guidelines for Hiring an Executive Director, the DHCD Executive Director Salary and Qualifications Schedule, in effect, as well as DHCD Local Housing Authority Budget Guidelines, in effect.

**I. PURPOSE**

The issuance of these guidelines is in accordance with M.G.L. c. 121B as amended by Chapter 235 of the Acts of 2014. Specifically, Section 7A states the following;

The department shall promulgate guidelines for contracts to be executed by the housing authority and an executive director. The department may review all contracts between the housing authorities and executive directors and all terms for payments or monetary remuneration relevant to state payments; provided, however, that the department shall review all contracts and all 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.

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Every contract of employment executed by the housing authority and the executive director is subject to review and written approval by DHCD, to ensure that the guidelines and standards for executive director employment contracts have been met.

These Guidelines are intended to serve as a tool for both DHCD and local housing authorities to facilitate ease of review by DHCD staff when fulfilling its authority to review employment contracts. These Guidelines set forth the minimum requirements for the contract of employment, including the mandatory contract cover sheet, required basic terms, other material terms (identified as “Standard Provisions” in the contract template), restrictions on any such terms, as well as prohibited terms.

The DHCD Mandatory Contract Cover Sheet (Attachment A) must be completed and submitted by the local housing authority (LHA) with the Contract of Employment for the Executive Director for review by DHCD. All contracts of employment for executive directors must state the basic terms, including the respective duties, responsibilities, and obligations between the executive director and the authority.

Attachment B is the DHCD Contract for Employment for Executive Director Template. DHCD highly recommends use of this contract template in order to facilitate its prompt review and approval, and will provide expedited review for housing authorities utilizing the contract template

## **II. RELATIONSHIP TO PREVIOUS DHCD GUIDELINES:**

Upon the effective date of these Guidelines, all of the previous DHCD guidelines, rules and public housing notices listed below shall be rescinded and superseded by these Guidelines:

- Memorandum dated March 12, 1999, “Length of Term of the Executive Director Contract of Employment”
- Guidelines for Hiring an Executive Director, which includes the Executive Director Hiring Packet; based on M.G.L. c. 121B, § 7, 760 CMR 4.05, and a letter dated June 16, 1971 from the Attorney General of Massachusetts, most recently revised in 2008.

## **III. NO PREEMPTION OF STATE OR FEDERAL LAW OR REGULATION**

Local housing authorities are subject to federal and state statutes and regulatory obligations often varying between local authorities based on considerations such as the size of the local authority or the source of government funding. Nothing contained in these Guidelines relieves a local authority of its legal obligations and duties arising under any other source whether expressly noted herein or not. Boards, Commissioners, Executive Directors, and any other member of the management team shall remain responsible for upholding the legal obligations of a local housing authority.

## **IV. PARTIES TO CONTRACT and DHCD APPROVAL**

The Contract of Employment is between the Housing Authority Board of Directors and the Executive Director. DHCD is not a party to the contract. DHCD has authority to approve the Executive Director’s salary (760 CMR 4.05), and review all terms to assure they are in compliance with these guidelines (GL c.

121B, §7A). To be valid and enforceable, the contract must be executed by both the housing authority and its executive director, and must include the following language appearing after the signature lines of the Parties, ***“This Agreement is subject to the prior review and approval of the Massachusetts Department of Housing and Community Development (“DHCD”). Unless and until this Agreement is approved by DHCD in writing, this Agreement is without force and effect and may be deemed to be null and void by DHCD, in its sole discretion. The Executive Director understands that, if he/she commences work before this Agreement is approved by DHCD he/she shall be deemed an employee at will of the Authority unless and until such approval.”***

**V. MANDATORY CONTRACT COVER SHEET (To Be Completed and Submitted By the Local Housing Authority With the Contract of Employment for the Executive Director For Review by the Department of Housing and Community Development)**

For contracts prepared using the DHCD template with no changes other than insertion of factual information, the LHA must complete only Sections I and IV of the cover sheet. If the LHA does not use the DHCD contract template, or if the LHA uses the DHCD contract template with amended terms, the LHA must complete all sections of the cover sheet.

To facilitate DHCD review of executive director employment contracts other than the DHCD template, the LHA must complete all sections of the cover sheet including a summary of qualifications and all basic and material contract terms and identify by article, paragraph and/or sub-paragraph where the material terms appear in the contract being submitted for review.

**SECTION I. Parties and Executive Director Qualifications**

This section must be completed by all LHAs.

- Housing Authority (name and address)
- Executive Director (name, address, number of years as Executive Director or Assistant Executive Director or other senior staff at any LHA)
- Original date of hire of Executive Director at this LHA
- Certifications
- Educational Level
- Experience in the Field

**SECTION II. Basic Terms**

LHAs using the DHCD-approved contract template do not need to complete this section. Please note, however, that the subject matter covered by these Basic Terms must be included in all contracts.

- Length of Contract Term
- Public Housing/Rental Assistance Programs Operated

- List the number of units for each program at the LHA (state-aided public housing, state-aided rental vouchers—MRVP and/or AHVP, federally subsidized public housing, federal Section 8 vouchers). For vouchers, please include leased units only.
- Other program activities, if any
- Full/Part Time
- Required hours/week
- Salary (not including bonus)
- Percentage of Authority's state-aided public housing units and units that are leased with state-aided rental vouchers (MRVP and/or AHVP)
- Approved State Share
- Bonus, if any (identifying amount payable from State operating subsidy and amount payable from other sources)
- Other Taxable Compensation
- Benefits (check all that apply)

### **SECTION III. Other Material Terms**

All material terms are mandatory and must be included in all contracts. LHAs utilizing the DHCD-approved contract template do not need to identify template provisions, but do need to identify any provisions set forth in the Special Contract Provisions (Rider 1) that affect or differ from these material terms. Please see the list of mandatory material terms in Section VI, below.

### **SECTION IV. Certification**

The LHA must certify that the information contained in the contract cover sheet, is true and correct. Signature, printed name, title and date are all required.

## **VI. LIST OF MANDATORY CONTRACT PROVISIONS**

A contract executed by the housing authority and the executive director shall include, at a minimum, provisions setting forth the following terms and conditions of employment, in compliance with the requirements described in Section VII of these Guidelines. The provisions shall be included in the contract in the order set forth below, to facilitate DHCD review:

- 1. Identification of the Contract and Parties.**
- 2. Term and Effective Date of Contract.**
- 3. Duties of the Executive Director (Job Description).**
- 4. Type of Public Housing/Rental Assistance (P/RA) Programs operated.**
- 5. Other program activities, if any.**
- 6. Full-Time/Part-Time: Nature of Commitment.**
- 7. Required Hours.**

- 8. Salary/Compensation.**
- 9. State percentage of the Authority's public housing units and leased vouchers.**
- 10. Approved State Share of Salary.**
- 11. Other Compensation, if any (include non-monetary compensation such as laptops, cell phones, etc. as well as non-salary monetary compensation such as bonus).**
- 12. Benefits.**
- 13. Reimbursement of Expenses.**
- 14. Termination of Agreement.**
- 15. Notices.**
- 16. Modification.**
- 17. Dispute Resolution.**
- 18. Post-Term Activities.**
- 19. Assignment.**
- 20. Governing Law (Massachusetts).**
- 21. Signature Page and Acknowledgement that Contract is Subject to DHCD Review and Written Approval.**
- 22. Certification Page**

If the housing authority does not use the recommended DHCD contract template, a cover sheet summarizing these provisions, as stated in Section V above, must be submitted to DHCD in the form prescribed by DHCD, the Mandatory Contract Cover Sheet, to facilitate contract review. Nothing in these Guidelines shall be deemed to limit a housing authority's ability to include additional terms and conditions in an executive director contract, provided that such additional terms and conditions do not conflict with the requirements of these Guidelines. Without limiting the foregoing, a housing authority may adopt provisions that are more restrictive or impose a greater obligation on an executive director than required by these Guidelines with respect to salary, benefits or the minimum obligations of an executive director.

To qualify for expedited DHCD review, any additional provisions must be included in a rider to the contract template. However, housing authorities may also include such additional provisions in the body of an executive director employment contract, so long as they appear after the required contract provisions.

While not mandatory, DHCD highly recommends that provisions governing the following terms be included in any executive director employment contract:

**Severability.**  
**Waiver.**  
**Counterparts.**  
**Federal Requirements.**



## **VII. MANDATORY CONTRACT PROVISIONS**

The mandatory contract provisions identified in Section VI above must comply with the following requirements.

### **1. Identification of the Contract and Parties.**

Each contract must set forth the name and address of the Executive Director and the Housing Authority and must identify the contract as a contract of employment for a specified term.

### **2. Term and Effective Date.**

Each contract must specify its term in months or years, as well as the effective date of the contract. The end of the contract term should coincide with the end of the LHA fiscal year. The employment of the Executive Director shall continue for the specified term, unless terminated pursuant to the contract. No contract should be for a period of less than one (1) year plus such additional fraction of a year as shall be required to cause the end of the contract term to coincide with the end of the LHA fiscal year nor for a period of more than five (5) years, based on the stipulations below:

New Hire - any individual initially serving as Executive Director for that Authority may sign a one (1) year contract plus such additional fraction of a year as shall be required to cause the end of the contract term to coincide with the end of the LHA fiscal year. In addition, the contract may contain a provision for a one (1) year renewal. The option to renew may be exercised only upon joint agreement of the parties.

End of One Year - Contract term for those persons having completed one (1) year of service in the position of Executive Director for the Authority may be for one to three (1-3) years whether it be as a new contract or a renewal of the existing contract. In combination, the two periods cannot exceed three years total, and the contract termination date shall continue to coincide with the LHA's fiscal year.

After Two Years - Contract term for those persons having completed two (2) years' service in the position of Executive Director for the Authority may be for one to five (1-5) years whether through a new contract or renewal of the existing contract. In combination, the two periods cannot exceed five years total, and the contract termination date shall continue to coincide with the LHA's fiscal year.

Where the candidate selected has served as the Executive Director, the Assistant Executive Director or in another senior level administrative position in any satisfactorily performing local housing authority of comparable size and program composition, the time in that position may be taken into account when determining the length of contract.

Exception: DHCD may consider a request from a housing authority to approve a multi-year contract in excess of the terms stated above where the housing authority has been identified as troubled or a chronically poor performer pursuant to DHCD guidance, including guidance issued

by DHCD with respect to performance monitoring under M.G.L. c. 121B, §26B and a longer tenure for the executive director may be integral to the successful improvement of the LHA's current operations. In these instances, it will be required that the housing authority develop and adhere to a DHCD approved time table for corrective action.

**3. Duties (Job Description).**

Contract must state the minimum duties and responsibilities of the executive director, either in the body of the contract or as an attachment, entitled Job Description. If not using the DHCD contract template, the contract provision must also include the following language: "In addition to any duties specifically enumerated in this Contract or any Exhibit hereto, as amended from time to time, the Executive Director shall perform such duties as are commensurate with the position of executive director, including without limitation, such duties as may be assigned to the executive director from time to time by the Board during the Term of the agreement. In performing his or her duties the Executive Director shall comply with all applicable federal, state and local laws, DHCD regulations and guidelines, and directives and policies of the Board."

**4. Type of Public Housing/Rental Assistance (PH/RA) Programs operated.**

The Contract must specifically identify the housing programs managed by the housing authority, including state-aided programs such as the state-aided public housing program, federally subsidized public housing and leased units for the Massachusetts Rental Voucher programs (MRVP), Alternative Housing Voucher programs (AHVP), and Section 8 rental assistance.

**5. Other program activities, if any.**

The contract must include a description of any activities to be undertaken and/or programs/properties managed by the executive director on behalf of the housing authority other than the PH/RA programs identified in Section 4 above. This may include third party management contracts for private developers, non-profit entity work, etc.

**6. A. Full-Time/Part-Time: Nature of Commitment.**

The contract must state whether the executive director is a full-time employee or part-time employee.

Please note that in accordance with the DHCD Executive Director Salary and Qualifications Schedule, currently in effect, or any such Schedule subsequently issued by DHCD, no full-time executive director, e.g., any individual employed as an executive director by a housing authority having more than 199 units, including rental assistance units, shall be employed in any capacity, by more than one housing authority.

Prior to entering into a contract for a part-time executive director, a housing authority must consult with DHCD on the terms of compensation and benefits. In addressing these issues it is the intent of DHCD that the compensation and benefits paid by a single housing authority to an individual employed on a part-time basis as the executive director for two or more housing authorities shall

not exceed that housing authority's pro rata share of an equivalent full-time executive director's compensation and benefits.

The contract provision must include a statement that the executive director understands that the duties and responsibilities of Executive Director are a significant commitment (full-time or part-time) and acknowledges that s/he is expected to work the required number of hours per week specified in the Basic Terms, which shall be performed at the office of the Authority during its established business hours.

In addition, this contract provision must include a statement that the executive director agrees that he/she shall not engage in any business or other activity which would interfere with his/her duties as executive director or create a conflict of interest in violation of the Massachusetts Conflict of Interest law. This paragraph shall not prevent executive director from undertaking speaking engagements or other professional activities, provided that such activities do not interfere with or conflict with his/her duties as executive director. Executive Director shall obtain, in advance, the approval of the Board before engaging in such activities.

**7. Required Hours.**

The contract must state the required hours to be worked per week by the executive director. The required hours stated must be consistent with the DHCD Executive Director Salary and Qualifications Schedule, currently in effect, or any such Schedule subsequently issued by DHCD, setting forth the hours required to be worked by an executive director, based on the number and size of units in all programs that are operated by the Housing Authority.

**8. Salary/Compensation.**

The contract must state the total annual salary to be paid to the executive director. LHAs should refer to the DHCD Executive Director Salary and Qualifications Schedule and the DHCD Local Housing Authority Budget Guidelines, currently in effect for salary matters.

**9. State percentage of the Authority's public housing units.**

The contract must specify the percentage of the housing authority's state-aided public housing units and units that are leased with state-aided vouchers (MRVP and/or AHVP). For new Executive Directors, please refer to the Executive Director's Salary Calculation Worksheet (Line #15, "Total Units") that is attached to the DHCD Executive Director Salary and Qualifications Schedule currently in effect. For Existing Executive Directors, please review total unit count in Housing Authority Financial Information System (HAFIS), ("Report of Total LHA Units") tab, for the LHA's total unit count.

**10. Approved State Share of Salary.**

The contract must state the approved state share of the executive director's salary. (Percentage of state-aided public housing units and units that are leased with state-aided vouchers (MRVP and/or

AHVP) multiplied by the salary.) Please refer to the DHCD Local Housing Authority Budget Guidelines, currently in effect for specific guidance regarding pro-rations and the allowable state share of the executive director's salary.

#### **11. Other Compensation.**

The contract must enumerate all forms of "other compensation" the Executive Director shall receive. All other compensation must be itemized and clearly stated for audit purposes. The specific items of compensation may be stated on a separate Rider and incorporated by reference in the contract. Housing Authorities granting other compensation are strongly advised to consult with a tax professional (a tax attorney or certified public accountant) as to what items of compensation are required by law to be reported as income to the Massachusetts Department of Revenue and the federal Internal Revenue Service.

#### **12. Benefits.**

Benefits received by the executive director must be clearly stated in the contract and be in accordance with either an Authority personnel policy previously approved by DHCD or an Authority personnel policy attached to the contract for DHCD approval<sup>1</sup>. Any provisions regarding benefits that are inconsistent with or in addition to the standard benefits stated in the Authority personnel policy must be specified clearly in the contract or in a separate rider attached to the contract and incorporated by reference.

#### **13. Reimbursement of Expenses.**

The contract must indicate whether, and to what extent, the housing authority shall reimburse its executive director for expenses incurred by the executive director in the normal performance of his/her duties and responsibilities. Any such reimbursement shall be subject to reasonable expenses and is subject to compliance with applicable housing authority policies and procedures, and federal and state laws and regulations, including DHCD budget guidelines as in effect from time to time.

#### **14. Termination of Agreement.**

The contract must include provisions at least as protective of the Housing Authority as the following in regards to termination (provided, that a Housing Authority may adopt more stringent termination provisions):

- A. Compensation and Benefits. In the event the Contract is terminated for any reason, all compensation and benefits provided to Executive Director by the Authority pursuant to the Contract or otherwise shall cease as of the effective date of termination (the "Termination Date"), except as follows:
  - i. Salary. Executive Director shall receive payment for any Salary earned but unpaid through the Termination Date.

<sup>1</sup> DHCD will limit its review and approval of the personnel policy to the benefits section.

- ii. Vacation. In the event that the Contract is terminated by Executive Director, by death, retirement or by the Executive Director's entrance into the defense forces, or by Authority pursuant to Section 15(f) below (inability to perform basic functions), Executive Director shall be paid for any vacation time that, as of the Termination Date, was accrued but not used, provided that no more than two (2) years of accrued vacation may be carried over from year to year. In the event that the Contract is terminated by the Authority for cause pursuant to Section 14(B)(i) below, Executive Director shall not be paid for any such accrued but unused vacation time.
- iii. Sick Time. Upon retirement pursuant to G.L. c. 32, the Executive Director shall be paid 20% of sick time that, as of the Termination Date, was accrued but was not used; in all other circumstances, the Executive Director shall not be compensated for accrued but unused sick time.

B. Termination. The Contract shall be terminated earlier than the end of the contract term under the following circumstances:

- i. Termination by Authority for Cause. Authority may and, under certain circumstances as described below, shall terminate the Contract at any time for Cause which shall be defined as any lawful reason in good faith relied upon by the Board, including, but not limited to, any of the following:
  - a) Executive Director breaches any material duty or obligation under the Contract;
  - b) Executive Director refuses or is unwilling to perform any of the duties set forth in the Contract and/or the applicable job description after a written request from the Board to do so;
  - c) Executive Director is convicted of any criminal act, including without limitation fraud, embezzlement, theft, or any other crime against the Authority or the Commonwealth of Massachusetts, including, but not limited to, the offer, payment, solicitation or acceptance of any unlawful bribe or kickback with respect to Authority's business;
  - d) Executive Director engages in intentional or grossly negligent conduct which adversely or materially affects Authority, including but not limited to its reputation;
  - e) Executive Director has engaged in conduct, or caused the Authority to engage in conduct, which violates any Federal or state statute, regulation, or administrative guidance, including without limitation a violation of the Massachusetts Conflicts of Interest law (G.L. c. 268A)

or regulations of the Federal government or the Commonwealth of Massachusetts governing local housing authorities;

- f) Authority has reasonable basis to determine that Executive Director has committed any other criminal act or act of moral turpitude; or
- g) Executive Director is repeatedly absent from work (excluding vacations, illnesses, disability leaves, or other leaves of absence approved by the Board).

In the event that Cause is based on the conviction of the Executive Director of any criminal act pursuant to Section 14(B)(i)(c) above, this Contract shall automatically terminate as of the date of such conviction, without the requirement of any action by the Authority.

In all other circumstances, prior to termination, the Board shall adopt a resolution by affirmative vote at a meeting of the Board called for such purpose (after reasonable notice to Executive Director and an opportunity for Executive Director to be heard before the Board at or prior to the meeting called for such purpose), finding by vote of the majority of the members present that in the good faith opinion of the Board, Executive Director's conduct constitutes "Cause" and specifying the particulars thereof. *Provided*, that nothing contained herein shall prevent the Board from immediately suspending Executive Director without pay prior to formal Notice of Termination or pending an opportunity to be heard, if the Board believes that the Executive Director's conduct warrants immediate action for the good of the Authority.

The Board shall terminate the Contract if it finds "Cause" under one or more of subsections 14(B)(i)(d), (e) or (f) above. In all other cases, the Board shall have discretion to terminate the Contract or take other action based on a determination, in its sole discretion, as to the severity of the conduct constituting "Cause."

Any disputes regarding termination or other disciplinary action by the Board shall be subject to the dispute resolution procedures set forth in Section 17 below.

- ii. Termination by Executive Director. Executive Director may terminate the Contract at any time by providing ninety (90) days advance written notice to Authority, provided that Authority may, in its sole discretion, waive all or part of the notice period and accelerate the Termination Date.
- iii. Death. In the event of the death of Executive Director during the term of the Contract, the Contract shall automatically terminate as of the date of his/her death.
- iv. Inability to Perform Essential Functions. Subject to the requirements of the Family and Medical Leave Act, the Americans With Disabilities Act, and any

other provision of applicable law, the Housing Authority may terminate the Contract if it determines that the Executive Director is unable to mentally or physically perform the essential functions of his/her job as Executive Director, with or without reasonable accommodation, for an extended period of time (not less than ninety (90) days in any given twelve (12) month period.) The Board of the Authority shall make such determination in its sole discretion, provided that in making the decision as to whether the Executive Director can perform the essential functions of the job, and whether or not an accommodation is reasonable, it shall review all available and relevant information, including medical information.

- v. Termination by DHCD. The Contract may be terminated at any time by the DHCD in its sole discretion in accordance with G.L. c. 121B, §26B(d) if DHCD finds clear and convincing evidence of a demonstrable threat to tenant safety attributable to the conduct of the Executive Director or financial misconduct or criminal activity by the Executive Director.

- C. Notice of Termination. Any termination of the Contract shall be communicated by written Notice of Termination. For purposes of the Contract, a “Notice of Termination” shall mean a notice which shall indicate the specific termination provision in the Contract relied upon as well as the Termination Date.

## 15. Notices.

There must be a notice provision that provides the name, address and e-mail address for both the executive director and the housing authority. See example:

To Executive Director:	To Authority:
[name]	[name]
[address]	[address]
[e-mail address]	[e-mail address]

The contract must state the required or permitted forms of notice, when notice is deemed effective after being given, and require the parties to notify each other of any change of address. DHCD recommends the adoption of language similar to the following: Any notices required or permitted under the Contract be sent by both electronic mail and one of (a) certified mail, return receipt requested, postage prepaid, or (b) reputable overnight delivery service, or (c) delivery in person, to the address stated on in the Basic Terms of this Agreement. Notice shall be deemed effective upon delivery in person, or one business day after being deposited with an overnight courier service, or three (3) business days after being deposited with the United States Post Office, certified mail, return receipt requested. It shall be the obligation of each party to this Agreement to provide notice to the other party in writing of any changes to the above notice addresses.



**16. Modification.**

The contract must state that the agreement constitutes the entire understanding and agreement between the parties with regard to the subject matter hereof, and supersedes all prior understandings and agreements, and must further state that the agreement may not be amended, supplemented, revised or otherwise modified except by a writing signed by the parties and approved by DHCD.

**17. Dispute Resolution.**

The contract must state that any dispute as to its interpretation or application shall be resolved in accordance with the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association, or DHCD approved equivalent, which shall be the sole and exclusive remedy available, and as to which judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**18. Post-Term Activities.**

The contract must state in the event that the Executive Director continues to serve in that capacity after the term of the agreement, he or she shall be an employee at will, and the termination for cause provisions of the contract shall not apply. In no event shall any of the other terms and conditions of employment (including without limitation the job description, scope of services, duties and nature of commitment) be modified from what is contained in the contract without being incorporated into an amendment to the contract or a new employment contract, in either case as approved in writing by DHCD.

**19. Assignment.**

The contract must state that the agreement may not be assigned, in whole or in part, by any party without the prior written consent of the other party.

**20. Governing Law.**

The contract must state that the agreement shall be construed under, and governed by, the laws of the Commonwealth of Massachusetts, excluding its choice of law rules, and that the state or federal courts of Massachusetts shall be the forum for any lawsuit arising from or incident.

**21. Signature Page with Acknowledgement That Contract Subject to DHCD Review and Written Approval.**

All contracts must have a signature page indicating that the document is executed as an instrument under seal. Execution on behalf of the Authority must be by its Executive Director, its chair and its treasurer. Each of the pages preceding the signatures and the signature page must include the following statement:

*This Agreement is subject to the prior review and approval of the Massachusetts Department of Housing and Community Development ("DHCD"). Unless and until this Agreement is approved by DHCD in writing as*



*evidenced by the Certification of Review and Approval, this Agreement is without force and effect and may be deemed to be null and void by DHCD, in its sole discretion. The Executive Director understands that, if he/she commences work before this Agreement is approved by DHCD he/she shall be deemed an employee at will of the Authority unless and until such approval.*

## 22. **CERTIFICATION PAGE**

All contracts must contain a certification page in the form set out below. The page preceding the certification must include the following statement: [Certification on Next Page]

### **CERTIFICATION OF REVIEW AND APPROVAL**

The Massachusetts Department of Housing and Community Development (“DHCD”), hereby certifies that upon review of the terms and conditions of the foregoing Contract of Employment, between \_\_\_\_\_ and the \_\_\_\_\_ Housing Authority, the Contract:

\_\_\_\_\_ meets all the requirements set out in DHCD’s Guidelines for Executive Director Contracts; and is hereby approved.

\_\_\_\_\_ substantially meets the requirements set out in DHCD’s Guidelines for Executive Director Contracts and is hereby approved except for the following provisions:

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\_\_\_\_\_ fails to meet the requirements set out in DHCD’s Guidelines for Executive Director Contracts and is not approved.

**Department of Housing and Community  
Development**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## **VIII. RECOMMENDED PROVISIONS**

DHCD recommends that each contract include provisions addressing the following issues:

### **1. Severability.**

DHCD recommends that the contract include a severability provision, to the effect that (a) if any portion or provision of the agreement shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of the agreement, or the application of such portion or provision in circumstances other

than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of the agreement shall be valid and enforceable to the fullest extent permitted by law, and (b) if any of the provisions of the agreement is held to be excessively broad, it shall be reformed and construed by limiting and reducing it so as to be enforceable to the maximum extent permitted by law.

**2. Waiver.**

DHCD further recommends that the contract include a provision to the effect that no waiver of any provision thereof shall be effective unless made in writing and signed by the waiving party, and that the failure of either party to require the performance of any term or obligation of the agreement, or the waiver by either party of any breach of the agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

**3. Counterparts.**

The contract must state that the agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and in pleading or proving any provision of the agreement it shall not be necessary to produce more than one such counterpart. No counterpart shall be effective until each party has executed at least one counterpart. For the convenience of the parties, facsimile and pdf signatures shall be accepted as originals.

**4. Federal Requirements.**

Where the Executive Director's compensation is paid in part from federal funds, the contract should include any provisions required by the federal government.

**IX. CONTRACT PROVISIONS THAT WILL NOT BE APPROVED BY DHCD**

DHCD will not approve contract provisions providing for compensation increases made on the basis of increased years of service (so-called "longevity payments") to the Executive Director nor will it approve clauses in which the housing authority agrees to indemnify the Executive Director.

**X. PROCEDURE FOR DHCD APPROVAL OF CONTRACTS.**

Executive Director Contracts of Employment should be submitted to the DHCD Housing Management Specialist (HMS) who is assigned to the LHA. To facilitate DHCD review of Executive Director Employment Contracts, LHAs must provide a summary of all qualifications, basic terms and material terms of the contract on the Mandatory Contract Cover Sheet, along with the Contract of employment. The Contract must meet all the requirements set out in these Guidelines and submitted to DHCD in the following manner.

- Contract should be sent to DHCD a minimum of sixty (60) days prior to the proposed effective date of the contract.
- Every contract must include the Mandatory Contract Cover Sheet, prescribed by DHCD, summarizing the basic terms and other material terms.
- LHA must also submit evidence of having followed hiring guidelines, as prescribed by DHCD's Executive Director Hiring Guidelines currently in effect.
- If the contract is on the DHCD contract template form, the LHA may attach a rider, so long as provisions of the rider are not inconsistent with template provisions and these guidelines.
- If the contract is not on the DHCD contract template form, it must comply with all of the basic terms and material terms required by these Guidelines.
- Contract must include a copy of job description.
- If on DHCD contract template form, without any material changes to the template form or by means of one or more rider(s), DHCD will review and respond within (thirty) 30 days following its receipt of the LHA's submission as long as all required supporting documents have been received, all information required by the template is provided, and barring any unusual circumstances. DHCD's response will inform the LHA whether the contract is approved, rejected, or approved with revisions and/or conditions.
- If not on DHCD contract template form. DHCD will endeavor to review and respond within sixty (60) days following its receipt of the LHA's submission as long as all required supporting documents have been received and barring any unusual circumstances. DHCD's response will inform the LHA whether the contract is approved, rejected, or approved with revisions and/or conditions.

**EXHIBIT A*****(ATTACH JOB DESCRIPTION TEMPLATE OR CUSTOMIZED JOB DESCRIPTION)*****JOB DESCRIPTION**

\_\_\_\_\_ Housing Authority (“Authority”) Executive Director

The Executive Director is responsible for the professional leadership and management of Authority and shall perform the following duties and exercise the following powers, rights and authority:

1. General. The Executive Director shall have the general supervision over the administration of the Authority's business and affairs, subject to the direction of the Board, and in compliance with the rules and requirements of the Massachusetts Department of Housing and Community Development (DHCD) and, as applicable, the United States Department of Housing and Urban Development (HUD), and in accordance with all applicable state, federal and local laws. The Executive Director shall be the Authority's chief administrative and financial officer and shall have the day-to-day responsibility of managing the Authority, implementing the policy directives of the members of the Authority (Board), and assuming overall leadership role in guiding programmatic, fiscal, personnel, and public relations activities.
2. Hours of Work. Full time Executive Directors shall work during normal business hours (Monday - Friday 8 a.m. to 6 p.m.) and Part time Executive Directors must work 75% of the hours that they work during normal business hours. Time spent at night or weekend meetings which are directly related to Authority business, may be substituted for weekday hours at the discretion of the Board.
3. Programs. The Executive Director oversees the delivery and quality of programs and services including but not limited to:
  - a. Housing Units Owned by the Authority:
    - 1) Management, maintenance and redevelopment of, and capital improvements to, any and all housing developments of the Authority;
    - 2) Purchase of equipment, materials and labor as required to satisfactorily meet the standards of good and proper maintenance;
    - 3) Wait list outreach, marketing and maintenance;
    - 4) Selection of tenants, the drawing and signing of leases, the collection of rents and the use of legal actions as required by state and/or federal regulations and guidelines as applicable depending on whether the housing units are state-aided or federally-aided; preparation of the

Authority's Management Plan detailing Authority's policies, guidelines, rules and regulations pertaining to day-to day operations;

- 5) Compliance with applicable fair housing and civil rights requirements; and
- 6) Operation of any and all developments in a manner providing for a high degree of livability and appearance at the lowest possible cost consistent with satisfactory administration and maintenance.

b. Rental Assistance. If the Authority operates state or federal rental assistance program(s):

- 1) Wait list outreach, marketing and maintenance;
- 2) Outreach to and contracting with landlords including inspection operations;
- 3) Selection of tenants the drawing and signing of leases, the payment of rental assistance and the use of legal actions as required by state and/or federal regulations and guidelines as applicable depending on whether the housing units are state-aided or federally-aided, and;
- 4) Compliance with applicable fair housing and civil rights requirements.

4. Fiscal Management. The Executive Director is responsible for the care and custody of all funds of the Authority and for the prudent management of the resources of the Authority. The Executive Director oversees all bookkeeping, accounting and financial activities including but not limited to:

- a. Deposit all funds of the Authority in the name of the Authority in such bank or banks as the Board shall select;
- b. Maintenance of accurate books of account showing receipts and expenditures;
- c. Preparation of an annual budget within budget guidelines for review and approval by the Board and DHCD as well as operating statements and financial reports and submissions;
- d. Maintenance of an accurate inventory of agency property and protect all such property;
- e. Procurement and purchase activities in accordance with procedures approved by the Board and in accordance with all applicable state, federal and local laws, and;
- f. Make notification to DHCD of any potential legal claims or lawsuits brought against the Authority for any incidents occurring on state-aided property.

5. Personnel. Executive Director is authorized to transact all personnel actions subject to the Personnel Policy, and to report such actions as necessary to the Board. The Executive Director is responsible for:

- a. Recruitment, hiring, staffing and supervision of department heads and any personnel not under the supervision of department heads;
- b. Ensuring that performance evaluations of all staff are completed;

- c. Determining the need for travel and training of all employees, and approval or denial of staff travel and training requests, consistent with the Authority's annual budget;
  - d. Promotion, demotion and disciplinary actions; and
  - e. Review and update of the Personnel Policy and all job descriptions, as needed, and;
  - f. Compliance with all state and federal employment laws.
6. Board Administration and Support. The Executive Director supports operations and administration of the Board by advising and informing Board members and interfacing between Board and staff. Such responsibilities include but are not limited to:
- a. Reporting at each regular meeting or more often as requested by the Board an account of his/her transactions and the financial condition of the Authority;
  - b. Preparation of regular reports for the Board on the status of projects and programs;
  - c. Reports on the results of present policy and recommendations for changes in policies to the Board;
  - d. Recording of the minutes and the records of the Authority's meetings in a satisfactory and legal form as the ex-officio secretary of the Board pursuant to G.L. c. 121B, §7, and;
  - e. Development of an Annual Plan as required by G.L. c. 121B, §28A and submission of the Plan to DHCD in accordance with its guidelines.
7. Other Duties and Responsibilities, As Assigned. The Executive Director shall perform such duties as are commensurate with the position of executive director, including without limitation, such duties as may be assigned to the executive director from time to time by the Board during the Term of the agreement. In performing his or her duties the Executive Director shall comply with all applicable federal, state and local laws, DHCD regulations and guidelines, and directives and policies of the Board.

**MANDATORY CONTRACT COVER SHEET**

Mandatory Cover Sheet to be Completed and Submitted by LHA With the Contract of Employment for the Executive Director For Review by DHCD.

*(Note: For contracts prepared using the DHCD template with no changes other than insertion of factual information, complete only Sections I and IV below. If not using the DHCD template, or if using it with amended terms, complete all sections below.)*

To facilitate DHCD review of Executive Director Employment Contracts, the LHA must provide a summary of qualifications and material contract terms below and identify by article, paragraph and/or sub-paragraph where the material terms appear in the contract being submitted for review.

**I. Parties and Executive Director Qualifications**

Housing Authority	Name:	Address for purposes of Notices:
Executive Director	Name:	Address for purposes of Notices:
# Years as Executive Director or Assistant Executive Director or other senior staff at any LHA	Years:	Position held:
Original date of hire of ED at this LHA		
Certifications		
Educational Level		
Experience in Field	Years:	Type:

**II. Basic Terms (LHAs using the DHCD-approved contract template do not need to complete this section. The subject matter covered by these Basic Terms must be included in all contracts. )**

Basic Term			Brief Summary	Section/Paragraph #s of Contract
Length of Contract Term				
Public Housing/Rental Assistance Programs Operated	Number of units for each program at the LHA	Number of BRUs for each program at the LHA	Program	
			State-aided public housing	
			State-aided rental vouchers (MRVP and/or AHVP), leased units only.	
			Federally subsidized public housing	
			Federal Section 8 vouchers, leased units only	
Other program activities, if any				
Full/Part Time				
Required hours/week				
Salary (not including bonus)				
Percentage of Authority's state-aided public housing units and units that are leased with state-aided rental vouchers (MRVP and/or AHVP)				
Approved State Share of Salary			\$_____ ( Percentage of the Authority's state-aided public housing units and units that are leased with state-aided rental vouchers (MRVP and/or AHVP) multiplied by the Salary)	
Bonus (if any)			\$_____ payable from State operating subsidy	
			\$_____ payable from the following other sources:	
Other Taxable Compensation			List non-monetary compensation such as laptops, cell phones, etc.:	
Benefits:	Check all that apply			
			In accordance with Authority personnel policy previously approved by DHCD	
			In accordance with attached Authority personnel policy	
			As follows (if not in accordance with Authority personnel policy):	
			_____ hours of vacation leave for each year of continuous employment	
			_____ hours of sick leave for each year of continuous employment	



### III. Other Material Terms.

*(Note: All material terms are mandatory and must be included in each contract. LHAs utilizing the DHCD-approved contract template do not need to identify template provisions, but do need to identify any provisions set forth in the Special Contract Provisions (Rider 1) that affect or differ from these material terms.)*

Material Term	Page and Section # in Contract or Special Contract Provisions	Is Language Identical to DHCD-Approved Template?	Brief Explanation of Changes from DHCD-Approved Provisions
Job Description (must be attached to contract)			
Detailed summary of any additional benefits not in II above			
Expense Reimbursement			
Termination by Executive Director			
Termination by LHA			
Termination by DHCD			
Other discipline or termination provisions, if any			
Executive Director's Inability to Perform Essential Functions			
Notice Provision			
No modifications without written agreement and DHCD approval			
Dispute Resolution			
Post-term activities			
No assignment			
Massachusetts law governs			
Acknowledgment that contract is subject to DHCD's written approval			

**IV. Certification.**

The undersigned certifies that the above information is true and correct.

\_\_\_\_\_ HOUSING AUTHORITY

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_

**CONTRACT OF EMPLOYMENT  
EXECUTIVE DIRECTOR  
[NAME] HOUSING AUTHORITY**

This AGREEMENT, whose effective date shall be the date approved in writing by the Massachusetts Department of Housing and Community Development (“DHCD”) as provided below (the “Effective Date”), is by and between \_\_\_\_\_ (Executive Director), an individual, and the \_\_\_\_\_ Housing Authority (“Authority”), a housing authority organized pursuant to Chapter 121B of the General Laws.

**A. Basic Terms**

1. Term: \_\_\_\_\_ ( ) year(s) from the Effective Date (see § B.2).
2. Public Housing/Rental Assistance Programs operated: (check one)  
☐ state only ☐ federal only ☐ state and federal
3. Other program activities, if any: \_\_\_\_\_
4. Full/Part Time: This is a (check one) ☐ full time ☐ part time contract.
5. Required Hours: \_\_\_\_\_ hours/week
6. Salary: \$ \_\_\_\_\_ .00 per annum
7. Percentage of Authority’s state-aided public housing units and units that are leased with state-aided rental vouchers (MRVP and/or AHVP): \_\_\_\_\_ %
8. Approved State Share of Salary: \$ \_\_\_\_\_ (Percentage of state-aided public housing units and units that are leased with state-aided rental vouchers (MRVP and/or AHVP) multiplied by the Salary.)
9. Other Taxable Compensation, if any (include non-monetary compensation such as laptops, cell phones, etc. as well as non-salary monetary compensation such as bonus):  
 \_\_\_\_\_  
 \_\_\_\_\_

**10. Benefits:**

- ☐ In accordance with Authority personnel policy previously approved by DHCD
- ☐ In accordance with attached Authority personnel policy.
- ☐ As follows (if not in accordance with Authority personnel policy):  
 \_\_\_\_\_ hours of vacation leave for each year of continuous employment (see § B.7)  
 \_\_\_\_\_ hours of sick leave for each year of continuous employment (see § B.7)  
 See Rider 1 for any additional provisions regarding benefits other than as stated in Authority personnel policy or the standard provisions in Part B below.

**11. Notices shall be addressed:**

To Executive Director: [name] [address] [e-mail address]	To Authority: [name] [address] [e-mail address]
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B. Standard Provisions: The following standard provisions shall apply to this Agreement except to the extent modified by Rider 1 (Special Contract Provisions):

1. Office. Authority hereby agrees to employ Executive Director, and Executive Director hereby accepts such employment and agrees to serve Authority as the Executive Director of the Authority during the Term of this Agreement (as defined in Section 2).
2. Term and Effective Date. The employment of Executive Director pursuant to the terms of this Agreement shall commence and be made effective as of the Effective Date and shall continue for the time period from the Effective Date specified in the Basic Terms unless sooner terminated in accordance with Section 9 of this Agreement (“Termination of Agreement”). The Executive Director acknowledges that if he continues work after the Term has expired, he/she shall be deemed an employee at will of the Authority unless and until this Agreement is extended or replaced with a new employment agreement.
3. Duties. Throughout the Term of this Agreement, and for any period after the Term during which the Authority may agree to employ the Executive Director as an at-will employee, Executive Director shall diligently, faithfully and competently perform the duties and responsibilities of Executive Director, reporting to the Authority’s members (“Board”), pursuant to and in accordance with the terms of this Agreement. Executive Director shall perform such specific duties as are commensurate with such position (including but not limited to those set forth in the job description for the Authority Executive Director position, attached as Exhibit A, as amended from time to time) and as may be assigned to Executive Director from time to time by the Board during the Term of this Agreement. In performing these duties the Executive Director shall comply with all applicable federal, state and local laws, DHCD regulations and guidelines, and directives and policies of the Board.
4. Nature of Commitment. Executive Director understands that the duties and responsibilities of Executive Director are a significant commitment (full-time or part-time, as specified in the Basic Terms), and acknowledges that s/he is expected to work the required number of hours per week specified in the Basic Terms, which shall be performed at the office of the Authority during its established business hours (unless the job duty or business function requires the Executive Director to travel to a location other than the main office.) Executive Director agrees that he/she shall not engage in any business or other activity which would interfere with or conflict with his/her duties as Executive Director, in accordance with the Massachusetts Conflict of Interest law. This paragraph shall not prevent Executive Director from undertaking speaking engagements or other professional activities, provided that such activities do not interfere with or conflict with his/her duties as Executive Director. Executive Director shall obtain, in advance, the approval of the Board before engaging in such activities.
5. Compensation. During the Term of this Agreement, Executive Director shall receive a gross salary (the “Salary”) at the rate specified in the Basic Terms, payable in accordance with Authority’s regular practices for payment of its employees, as in effect from time to time. The approved state share of the Salary is the maximum

allowable salary under the current DHCD executive director salary schedule, budget guidelines and related administrative guidance issued by DHCD. All taxes and other deductions required by law, or authorized by Executive Director, shall be deducted from such payments. Executive Director's Salary shall be subject to increase as determined by the Board, in accordance with the budget guidelines and/or the current DHCD executive director salary schedule, subject to review and approval by DHCD.

6. Other Compensation. In addition to the Salary set out above, during the term of this Agreement the Executive Director shall receive the Other Taxable Compensation described in the Basic Terms.
7. Benefits.
  - a. DHCD-Approved Personnel Policies: During the Term of this Agreement, Executive Director shall be eligible to participate in all fringe benefit plans as described in any Authority Personnel Policy that has been approved by DHCD, as in effect from time to time during the Term. Any such participation shall be subject to the terms and conditions of the applicable plan documents, generally applicable Authority policies, and the discretion of the Board, all as provided for in or contemplated by such plans.
  - b. Benefits Not in Conformance with Personnel Policy: Where the Authority has specified in the Basic Terms that benefits are being provided other than in accordance with the Authority's personnel policy, this Agreement shall govern. In such cases, the Executive Director shall be entitled to the benefits specified in the Basic Terms and in Rider 1 instead of, or in addition to, those that are set out in the Personnel Policy, subject to the following conditions:
    - i. Vacation Leave: Vacation leave for each year of continuous employment shall be prorated and accrued monthly. The Executive Director will not be permitted to take any leave earned in accordance with the aforementioned allowance until he/she shall have initially completed six consecutive months of work. The Executive Director shall not carry over from year to year more than two years' accrued vacation leave and, in the event of separation or termination of employment for any cause, any unused leave shall be compensated to the Executive Director at his/her Salary at that time.
    - ii. Sick Leave: Sick leave for each year of continuous employment prorated and accrued monthly. All accrued and unused sick leave will be carried over from year to year. In the event of separation or termination of employment for cause other than retirement or death there shall be no compensation of sick leave accrual. Upon retirement pursuant to G.L. c. 32 or death, compensation shall not exceed 20% of accrued sick leave.
  - c. Benefits in Conformance with Personnel Policy; Modification of Personnel Policies: Authority may alter, modify, add to or delete its employee benefit

plans at any time as it, in its sole discretion, subject to DHCD approval in accordance with DHCD regulations or guidance, determines to be appropriate, without recourse by Executive Director. Executive Director shall receive full credit for his/her employment with Authority prior to the Effective Date of this Agreement for purposes of determining his/her eligibility for Authority benefit plans. In no event shall Executive Director be entitled to any benefits beyond those described in the Authority's personnel policies, unless the Authority has otherwise specified in the Basic Terms or in Rider 2.

8. Reimbursement of Expenses. Authority shall reimburse Executive Director for all reasonable expenses incurred by Executive Director in the normal performance of his/her duties and responsibilities. Any such reimbursement is subject to compliance with applicable Authority policies and policies and procedures, and federal and state laws and regulations, including DHCD budget guidelines in effect.
9. Termination of Agreement.
  - a. Compensation and Benefits. In the event this Agreement is terminated for any reason, all compensation and benefits provided to Executive Director by Authority pursuant to this Agreement or otherwise shall cease as of the effective date of termination (the "Termination Date"), except as follows:
    - i. Salary. Executive Director shall receive payment for any Salary earned but unpaid through the Termination Date.
    - ii. Vacation. In the event that this Agreement is terminated for any reason other than a termination for cause pursuant to Section 9(c) below, Executive Director shall be paid for any vacation time that, as of the Termination Date, was accrued but not used. In the event that this Agreement is terminated by the Authority for cause pursuant to Section 9(c) below, Executive Director shall not be paid for any such accrued but unused vacation time.
    - iii. Sick Time. If the Authority's Personnel Policy contains a provision for sick leave that can be accumulated and carried over from year to year, then upon retirement pursuant to G.L. c. 32, the Executive Director shall be paid up to 20% of sick time that, as of the Termination Date, was accrued but was not used, but in any event no more than would be permitted under the Authority's Personnel Policy; in all other circumstances, the Executive Director shall not be compensated for accrued but unused sick time.
  - b. Termination. This Agreement shall be terminated earlier than the date set forth in the Basic Terms under the following circumstances:
    - i. Termination By Authority For Cause. Authority may and, under certain circumstances as described below, shall terminate this Agreement at any time for Cause which shall be defined as any lawful

reason in good faith relied upon by the Board, including, but not limited to any of the following:

- a) Executive Director breaches any material duty or obligation under this Agreement;
- b) Executive Director refuses or is unwilling or fails to perform any of the duties set forth in this Agreement or the applicable job description after a written instruction from the Board to do so;
- c) Executive Director is convicted of any felony or misdemeanor, including without limitation fraud, embezzlement, theft, or any other crime against the Authority, a tenant, or the Commonwealth of Massachusetts; including, but not limited to, the offer, payment solicitation or acceptance of any unlawful bribe or kickback with respect to Authority's business;
- d) Executive Director engages in intentional or grossly negligent conduct which adversely or materially affects Authority, including but not limited to its reputation;
- e) Executive Director has engaged in conduct, or caused the Authority to engage in conduct, which violates any Federal or state statute, regulation, or administrative guidance, including without limitation a violation of the Massachusetts Conflicts of Interest law (G.L. c. 268A) or regulations of the Federal government or the Commonwealth of Massachusetts governing local housing authorities;
- f) Authority has reasonable basis to determine that Executive Director has committed any other criminal act or act of moral turpitude; or
- g) Executive Director is repeatedly absent from work (excluding vacations, illnesses, disability leaves, or other leaves of absence approved by the Board).

In the event that Cause is based on the conviction of the Executive Director of any felony or misdemeanor pursuant to Section 9(b)(i)(c) above, this Agreement shall automatically terminate as of the date of such conviction, without the requirement of any action by the Authority.

In all other circumstances, prior to termination, the Board shall adopt a resolution by affirmative vote at a meeting of the Board called for such purpose (after reasonable notice to Executive Director and an

opportunity for Executive Director to be heard before the Board at or prior to the meeting called for such purpose), finding by vote of the majority of the members present, that in the good faith opinion of the Board, Executive Director's conduct constitutes "Cause" and specifying the particulars thereof. *Provided*, that nothing contained herein shall prevent the Board from immediately suspending Executive Director without pay prior to formal Notice of Termination or pending an opportunity to be heard, if the Board believes that the Executive Director's conduct warrants immediate action for the good of the Authority.

The Board shall terminate this Agreement if it finds "Cause" under one or more of subsections 9(b)(i)(d), (e) or (f) above. In all other cases, the Board shall have discretion to terminate this Agreement or take other action based on a determination, in its sole discretion, as to the severity of the conduct constituting "Cause."

Any disputes regarding termination or other disciplinary action by the Board shall be subject to the dispute resolution procedures set forth in Section 12 below.

- ii. Termination By Executive Director. Executive Director may terminate this Agreement at any time by providing ninety (90) days advance written notice to Authority, provided that Authority may, in its sole discretion, waive all or part of the notice period and accelerate the Termination Date without compensation to the Executive Director.
- iii. Death. In the event of the death of Executive Director during the Term, this Agreement shall automatically terminate as of the date of his/her death.
- iv. Inability to Perform Essential Functions. Subject to the requirements of the Family and Medical Leave Act, the Americans With Disabilities Act, and any other provision of applicable law, Authority may terminate this Agreement if it determines that the Executive Director is unable to mentally or physically perform the essential functions of his/her job as Executive Director, with or without reasonable accommodation, for an extended period of time (not less than ninety (90) days in any given twelve (12) month period.) The Board of the Authority shall make such determination in its sole discretion, provided that in making the decision as to whether the Executive Director can perform the essential functions of the job, and whether or not an accommodation is reasonable, it shall review all available and relevant information, including medical information.
- v. Termination by DHCD. This Agreement may be terminated at any time by the DHCD in its sole discretion in accordance with G.L. c. 121B, §26B(d) if DHCD finds clear and convincing evidence of a



demonstrable threat to tenant safety attributable to the conduct of the Executive Director or financial misconduct or criminal activity by the Executive Director.

- c. Notice of Termination. Any termination of this Agreement shall be communicated by written Notice of Termination. For purposes of this Agreement, a “Notice of Termination” shall mean a notice which shall indicate the specific termination provision in this Agreement relied upon as well as the Termination Date.
  - d. Open Meeting Law. All action by the Board related to this Section 9 shall be in compliance with the Open Meeting and Public Records law of the Commonwealth of Massachusetts.
10. Notices. Any notices required or permitted under this Agreement shall be sent by both electronic mail and one of (a) certified mail, return receipt requested, postage prepaid, or (b) reputable overnight delivery service, or (c) delivery in person, to the address stated in the Basic Terms of this Agreement. Notice shall be deemed effective upon delivery in person, or one business day after being deposited with an overnight courier service, or three (3) business days after being deposited with the United States Post Office, certified mail, return receipt requested. It shall be the obligation of each party to this Agreement to provide notice to the other party in writing of any changes to the above notice addresses.
  11. Modification and Termination. This Agreement constitutes the entire understanding and agreement between the parties hereto with regard to the subject matter hereof, and supersedes all prior understandings and agreements. This Agreement may not be amended, supplemented, revised or otherwise modified except by a writing signed by the parties hereto and approved by DHCD.
  12. Dispute Resolution. Any dispute as to the interpretation or application of this Agreement shall be resolved in accordance with the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association, or DHCD approved equivalent, which shall be the sole and exclusive remedy available. The parties agree that judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
  13. Assignment. This Agreement may not be assigned, in whole or in part, by any party without the prior written consent of the other party.
  14. Severability. If any portion or provision of this Agreement shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any of the provisions of this Agreement is held to be excessively broad, it shall be reformed and construed by limiting and reducing it so as to be enforceable to the maximum extent permitted by law.
  15. Governing Law. This Agreement shall be construed under, and governed by, the laws of the Commonwealth of Massachusetts, excluding its choice of law rules, and the state or

federal courts of Massachusetts shall be the forum for any lawsuit arising from or incident to this Agreement.

16. Waiver. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of either party to require the performance of any term or obligation of this Agreement, or the waiver by either party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.
17. Post-Term Activities. In the event that the Executive Director continues to serve in that capacity after the Term of this Agreement, he or she shall be an employee at will, and the termination for cause provisions of this Agreement shall not apply. In no event shall any of the other terms and conditions of employment (including without limitation the job description, scope of services, duties and nature of commitment) be modified from what is contained in this Agreement without being incorporated into an amendment to this Agreement or a new employment contract, in either case as approved in writing by DHCD.
18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and in pleading or proving any provision of this Agreement it shall not be necessary to produce more than one such counterpart. No counterpart shall be effective until each party has executed at least one counterpart. For the convenience of the parties, facsimile and pdf signatures shall be accepted as originals.

[Signatures on Next Page]

[Signature page to Contract of Employment for Executive Director]

IN WITNESS WHEREOF, Authority, acting by and through its duly authorized chairman and treasurer and hereto affixing its seal, and Executive Director, have duly executed this Agreement as a binding contract between the parties, subject to DHCD approval as set out below.

*This Agreement is subject to the prior review and approval of the Massachusetts Department of Housing and Community Development ("DHCD"). Unless and until this Agreement is approved by DHCD in writing as evidenced by the Certification of Review and Approval, this Agreement is without force and effect and may be deemed to be null and void by DHCD, in its sole discretion. The Executive Director understands that, if he/she commences work before this Agreement is approved by DHCD he/she shall be deemed an employee at will of the Authority unless and until such approval.*

Seal	_____ <b>Housing Authority</b>
Witness: _____	By: _____ Its Chairman
Witness: _____	By: _____ Its Treasurer
Witness: _____	<b>Executive Director</b> _____

## EXHIBIT A

## Job Description

## \_\_\_\_\_ Housing Authority (“Authority”) Executive Director

The Executive Director is responsible for the professional leadership and management of Authority and shall perform the following duties and exercise the following powers, rights and authority:

1. General. The Executive Director shall have the general supervision over the administration of the Authority's business and affairs, subject to the direction of the Board, and in compliance with the rules and requirements of the Massachusetts Department of Housing and Community Development (DHCD) and, as applicable, the United States Department of Housing and Urban Development (HUD). The Executive Director shall be the Authority's chief administrative and financial officer and shall have the day-to-day responsibility of managing the Authority, implementing the policy directives of the members of the Authority (Board), and assuming overall leadership role in guiding programmatic, fiscal, personnel, and public relations activities.
2. Hours of Work. Full time Executive Directors shall work during normal business hours (Monday - Friday 8 a.m. to 6 p.m.) and Part time Executive Directors must work 75% of the hours that they work during normal business hours. Time spent at night or weekend meetings which are directly related to Authority business, may be substituted for weekday hours at the discretion of the Board. Daily time sheets and attendance records must be maintained at the LHA office for review and approval by the Board and review by DHCD, the State Auditor, and/or HUD.
3. Programs. The Executive Director oversees the delivery and quality of programs and services including but not limited to:
  - a. Housing Units Owned by the Authority:
    - 1) Management, maintenance and redevelopment of, and capital improvements to, any and all housing developments of the Authority;
    - 2) Purchase of equipment, materials and labor as required to satisfactorily meet the standards of good and proper maintenance;
    - 3) Wait list outreach, marketing and maintenance;
    - 4) Selection of tenants, the drawing and signing of leases, the collection of rents and the use of legal actions as required by state and/or federal regulations and guidelines as applicable depending on whether the housing units are state-aided or federally-aided; preparation of the Authority's Management Plan detailing Authority's policies, guidelines, rules and regulations pertaining to day-to day operations;

- 5) Compliance with applicable fair housing and civil rights requirements; and
  - 6) Operation of any and all developments in a manner providing for a high degree of livability and appearance at the lowest possible cost consistent with satisfactory administration and maintenance.
- b. Rental Assistance. If the Authority operates state or federal rental assistance program(s):
- 1) Wait list outreach, marketing and maintenance;
  - 2) Outreach to and contracting with landlords including inspection operations;
  - 3) Selection of tenants the drawing and signing of leases, the payment of rental assistance and the use of legal actions as required by state and/or federal regulations and guidelines as applicable depending on whether the housing units are state-aided or federally-aided, and;
  - 4) Compliance with applicable fair housing and civil rights requirements.
4. Fiscal Management. The Executive Director is responsible for the care and custody of all funds of the Authority and for the prudent management of the resources of the Authority. The Executive Director oversees all bookkeeping, accounting and financial activities including but not limited to:
- a. Deposit all funds of the Authority in the name of the Authority in such bank or banks as the Board shall select;
  - b. Maintenance of accurate books of account showing receipts and expenditures;
  - c. Preparation of an annual budget within budget guidelines for review and approval by the Board and DHCD as well as operating statements and financial reports and submissions;
  - d. Maintenance of an accurate inventory of agency property and protect all such property;
  - e. Procurement and purchase activities in accordance with procedures approved by the Board and in accordance with all applicable state, federal and local laws, and;.
  - f. Make notification to DHCD of any potential legal claims or lawsuits brought against the Authority for any incidents occurring on state-aided property.
5. Personnel. Executive Director is authorized to transact all personnel actions subject to the Personnel Policy, and to report such actions as necessary to the Board. The Executive Director is responsible for:
- a. Recruitment, hiring, staffing and supervision of department heads and any personnel not under the supervision of department heads;
  - b. Ensuring that performance evaluations of all staff are completed;
  - c. Determining the need for travel and training of all employees, and approval or denial of staff travel and training requests, consistent with the Authority's annual budget;
  - d. Promotion, demotion and disciplinary actions; and
  - e. Review and update of the Personnel Policy and all job descriptions, as needed, and;
  - f. Compliance with all state and federal employment laws.

6. Board Administration and Support. The Executive Director supports operations and administration of the Board by advising and informing Board members, interfacing between Board and staff, and cooperating with the Board's process for the evaluation of the Executive Director's performance. Such responsibilities include but are not limited to:
  - a. Reporting at each regular meeting or more often as requested by the Board an account of his/her transactions and the financial condition of the Authority;
  - b. Preparation of regular reports for the Board on the status of projects and programs;
  - c. Reports on the results of present policy and recommendations for changes in policies to the Board;
  - d. Recording of the minutes and the records of the Authority's meetings in a satisfactory and legal form as the ex-officio secretary of the Board pursuant to G.L. c. 121B, §7, and;
  - e. Development of an Annual Plan as required by G.L. c. 121B, §28A and submission of the Plan to DHCD in accordance with its guidelines.
7. Other Duties and Responsibilities, As Assigned. The Executive Director shall perform such duties as are commensurate with the position of executive director, including without limitation, such duties as may be assigned to the executive director from time to time by the Board during the Term of the agreement. In performing his or her duties the Executive Director shall comply with all applicable federal, state and local laws, DHCD regulations and guidelines, and directives and policies of the Board.

RIDER 1  
SPECIAL CONTRACT PROVISIONS

*[Housing Authorities should insert here any special provisions that add to or modify the  
standard contract provisions]*

**CERTIFICATION OF REVIEW AND APPROVAL**

**The Massachusetts Department of Housing and Community Development (“DHCD”), hereby certifies that upon review of the terms and conditions of the foregoing Contract of Employment, between \_\_\_\_\_ and the \_\_\_\_\_ Housing Authority, the Contract:**

**\_\_\_\_\_ meets all the requirements set out in DHCD’s Guidelines for Executive Director Contracts and is hereby approved.**

**\_\_\_\_\_ substantially meets the requirements set out in DHCD’s Guidelines for Executive Director Contracts and is hereby approved except for the following provisions:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ -

**\_\_\_\_\_ fails to meet the requirements set out in DHCD’s Guidelines for Executive Director Contracts and is not approved.**

**Department of Housing and Community Development**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_





# Integrity Bulletin

U.S. Department of Housing and Urban Development

Winter 2013

## Hiring by Public Housing Agencies

This bulletin discusses best practices and techniques that boards and executive directors can use in hiring public housing agency (PHA) staff, especially positions of trust (such as bookkeepers, procurement staff, or anyone else who deals with financial records or spending). While there are many aspects to hiring such as having a certain number of years of experience, possessing people skills, attaining specialized knowledge, etc., this bulletin deals with ensuring that a potential hire has integrity and trustworthiness.

The U.S. Department of Housing and Urban Development (HUD) does not review hiring by the PHAs. While PHA hiring is subject to State and local laws, boards and executive directors have great latitude in making these decisions. While the majority of hires have not had integrity issues, there are continuing occurrences in which high level staff members in positions of trust have been fired for committing fraud or mismanagement, and were later hired by another PHA, where the abuses recurred.

### EXAMPLES OF CONCERN

The process of hiring new employees can be expensive and time-consuming, but making a bad hiring decision is even more costly. The Office of Inspector General (OIG) is currently investigating more than two dozen cases in which PHAs have hired individuals who have committed frauds or serious abuses at previous jobs.

- The former financial director of the Gary Housing Authority was forced out of similar positions at PHAs in Chicago, Detroit, and Camden, N.J. after involvement in alleged scandals at each location. The former director was fired after the Authority executive director discovered that over a period of a year, the former director had issued a series of Authority checks to herself that she was not entitled to receive. Some of the checks were in the precise amount of her regular bi-weekly salary check to make it appear that these were salary checks. The former director also removed certain checks from the monthly bank records and instructed Authority employees not to reconcile certain bank statements. It is alleged that more than \$100,000 was embezzled. The former director pled guilty to embezzlement and tax evasion and was sentenced to 18 months in federal prison and ordered to pay the Authority \$111,000 in restitution and the Internal Revenue Service \$39,000 in back taxes.

The U.S. Department of Housing and Urban Development (HUD) Office of Inspector General (OIG) is the Department's law enforcement and auditing arm and is responsible for investigating complaints of fraud, waste and mismanagement in HUD funded programs.

### Reporting Fraud

**Serious allegations of fraud should be reported to your local**

**HUD Office of Inspector General or to the HUD OIG Hotline at:**

<http://www.hudoig.gov/report-fraud>

## EXAMPLES OF CONCERN

- The Mayor of Lawrence, New Jersey was also at the same time the executive director for the East Orange Housing Authority (EOHA). He was fired from his job for violating the Hatch Act because he was running for re-election while employed as the Executive Director. After being fired, he was hired approximately one year later as the Deputy Executive Director for Asbury Park Housing Authority (APHA) and later promoted to Executive Director. At the time he was hired, he was in the process of declaring bankruptcy. After receiving a complaint, OIG investigators determined approximately \$232,000 in HUD and Department of Labor, State of New Jersey funding had been misused and/or embezzled. During the course of the investigation, the Executive Director resigned his position.

### Prevention

Usually PHA's fill key positions by having applicants submit a resume and salary history in a format of their own choosing. Interviews often are unstructured and undocumented, and only a cursory check of references is conducted.

One way a PHA can protect itself from a bad hire is to ensure that it practices due diligence in the hiring process. Due diligence is conducting a systematic pre-screening of a prospective employee. It also protects the agency from "negligent hiring" lawsuits. "Negligent hiring" may be found when the employee had a reputation or record that showed his or her propensity to misuse the kind of authority given by the employer, and this record would have been easily discoverable by the employer, had the employer exercised "due diligence".

Few people will want to "self-report" previous offenses so it is the agency's job to ensure that any negative information is discovered beforehand. There are four keys to ensure you are hiring an individual with integrity and trustworthiness:

- 1. Establish a strong hiring policy**
- 2. Require application forms**
- 3. Conduct reference checks**
- 4. Perform background checks**



## 1. Strong Hiring Policy

The place to start is ensuring that you have formal hiring policy. While a hiring policy can be extensive on a variety of issues, key best practices for integrity issues includes ensuring that the hiring policy includes:

- A provision creating and requiring completion of a PHA application form.
- A provision stating that an applicant's failure to provide complete and accurate information is grounds for denial of the position, or termination if discovered later.
- A provision stating that deliberate failure or refusal to sign certifications is grounds for denial of the position.
- Confidentiality of interview information, and penalties for misuse by PHA staff.
- Provisions creating and requiring consent from the applicant to authorize PHA staff to conduct specific background checks. (Consult local counsel for what background checks may be prohibited by State law). Some background checks must be relevant to the position. (Criminal history and credit checks for positions of trust when the individual handles or is responsible for cash, checks, assets, or financial records or authorizations would meet this requirement).
- A provision stating what information will be released if the PHA is asked for a reference on prior employees. Those agencies that have "no comment policy" are at risk based on court decisions such as *Jerner vs. Allstate Insurance* (Florida Circuit Court 1995). With the growth of negligence cases, agencies that do not give information in turn receive no information and are no longer protected by a "no comment policy". Agencies may want to consult counsel on State laws addressing how much or how little information may be disclosed.
- Use employment contract provisions that protect the PHA. The employment contracts should avoid unreasonable bonuses, buy-out clauses, and separation pay, and include liability clauses for acts of fraud, financial non-compliance, personal tort claims (harassment, hostility), etc. The employment contract should also include provisions requiring financial disclosures for positions of trust as permitted by State law.

Just because the applicant gave you a name as a reference doesn't mean that the reference has the ability to provide you with high-quality information.

## 2. Require Application Forms

To have the information you need to conduct a background investigation you need to specify in an application form what data you want the applicant to provide. Having your own form also enables you to include certifications you will want the applicant to attest to.

- Data:** At a minimum you will want applicants to provide their Social Security number, other names used, address, their education, and degrees earned. This not only ensures that the application contains key data needed to conduct the background check, but also if a misrepresentation is discovered, it is a formal record that can be used as evidence in support of any action to deny the selection or terminate employment.
- Certifications:** Another best practice is to include certifications that the applicants sign. Examples of certifications to include are:
  - I certify that in the last 10 years, I have not committed a felony offense.
  - I certify that in the last 10 years I have not filed for bankruptcy and am not currently more than 180 days delinquent on any financial obligation.
  - I certify that neither my immediate family nor I have any conflicts of interest with housing authority business.
  - I certify that all of my answers on this certification are true and complete

You need to specify in an application from what data you want the applicant to provide.

Once the application is completed, agencies must verify the information listed, paying particular attention to unexplained gaps in employment, lost licenses, frequent job changes, terminations, **admissions of criminal behavior, and potential falsifications of any kind.**

### 3. Conduct Reference Checks

- **Talk to others not listed:** Often reference checks are limited to names provided by the applicant. While it may be more time consuming, it is a good practice to ask those references to provide contact information for other people who would know or have worked with the applicant. Just because the applicant gave you a name as a reference, it doesn't mean that the reference has the ability to provide you with high-quality information that will help you during your hiring process. The more people you speak with, the better insight you will have into the applicants work and personality. Also according to a Harris Interactive Poll, 29 percent of employers reported that they had caught a fake reference on a candidate's application.

Be sure to talk to previous employers. Nothing puts up a red flag with a potential employer more quickly than a reference that is unwilling to talk about a former employee. Employers convey a tremendous amount of negative information by saying, "This is all I can tell you."

- **Dig deep:** Ask more than a few cursory questions. The more questions you ask, the better the information that you accumulate will be. Ask questions about why the applicant left or wants to leave his or her last position ,and inquire about the applicant's work ethic, timeliness, professionalism, and ability to work well with others. Don't be afraid to ask the difficult questions and press for information.

Writing out questions in advance will help you remember all that you want to cover. Taking notes will help you remember who said what, and documents your discussion if you need to relate the conversation to others. . Even a "no comment" response, it should be documented. Good documentation is critical in today's employment environment. Alarms should sound if an applicant places emphasis on past jobs rather than the most recent employment. Investigators should also be wary of an applicant's willingness to accept a drastic pay cut. Without further examination of these red flags, an employer may be opening the door for a negligent hiring claim.



- **Avoid gut feelings:** An error sometimes made is being so "charmed" by the applicant during the interview that you hurry the rest of the hiring process because you are "sold." Human resources experts call this a halo effect. You place confidence in this applicant that has not been earned or verified. It causes you to miss the little red flags or omit verification steps. Some bad hires rely on their "gift of gab" to talk themselves into a new position. Human resource directors often caution against making hiring decisions based on gut feelings or appearance. Verified past behavior is considered the best indicator for future performance.

A Pre-Employment Background Check has become a matter of necessity. Too many applicants make false claims on their job applications and resumes or attempt to cover up prior criminal activity.

#### 4. Perform Background Checks

The final step in protecting yourself against a corrupt hire is to conduct background checks. Statistics from a company that does background checks reports:

- 39 percent of all background checks had at least one serious flag
  - 10 percent of county criminal record checks had serious flags
  - 10 percent of education verifications had serious flags
  - 23 percent of employment verifications had serious flags
- (Source: Matter of Fact - <http://www.amof.info/statistics.htm>)

There are a number of services available to assist you in obtaining this information. The cost is usually minimal, when compared to the cost of potential embezzlement losses. You can find a service to provide the following checks:

- |    |                       |
|----|-----------------------|
| 1. | Criminal history      |
| 2. | Prior employment      |
| 3. | Sex offender registry |
| 4. | Credit report         |
| 5. | Education             |

- **HUD information:** In addition, you may want to add to your employment process checklist information you can request from HUD to help evaluate how well the applicant performed in his or her previous jobs.
- **Departmental Enforcement Center.** Limited denials of participation and suspensions and debarments information can be found at:  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/enforcement](http://portal.hud.gov/hudportal/HUD?src=/program_offices/enforcement)  
 HUD Limited Denials of Participation searches can be made from this HUD website.

Government-wide suspensions and debarments are maintained by General Services Administration in the System for Award Management. The link to this system is also on the HUD Website or online at:

<https://www.sam.gov/portal/public/SAM/>

(Note: Free registration is required to access the system.)

- **Audits:** You may view OIG audit reports for PHAs where the applicant may have been previously employed. The findings in the report may provide information on the applicant's past performance.  
Available on the internet at: <http://www.hudoig.gov/search/node/>
- **OIG investigations:** Closed criminal investigations may be available through Freedom of Information Act (FOIA) requests. You may request publically available information by writing to the attention of:

OIG FOIA Officer  
451 7<sup>th</sup> Street SW – Room 8260  
Washington, D.C. 20410



[www.hudoig.gov](http://www.hudoig.gov)





## ADVISORY 99/1

### An Advisory from the Attorney General's Fair Labor Division on Vacation Policies

Pursuant to [M.G.L. c. 23, s. 1\(b\)](#), the Attorney General issues the following advisory:

#### **Vacation Payments Are Wages**

Employers who choose to provide paid vacation to their employees must treat those payments like any other wages under [M.G.L. c. 149, s. 148](#). See *Massachusetts v. Morash*, 490 U.S. 107 (1989). Like wages, the vacation time promised to an employee is compensation for services which vests as the employee's services are rendered. Upon separation from employment, employees must be compensated by their employers for vacation time earned "under an oral or written agreement." [M.G.L. c. 149, s. 148](#). Withholding vacation payments is the equivalent of withholding wages and, as such, is illegal.

Employers may establish the terms of employment and determine the hourly rate or salary to be paid as well as how many hours the employee is expected to work. Employers may likewise establish the amount of paid vacation the employee will receive and/or a specific time of the year when the employee can take a vacation, depending on the needs or demands of the business. Employers may establish procedures regarding the scheduling of vacations; i.e., whether employees must notify the employers as to their intent to take vacation, when they intend to take it, and how much vacation time they plan to take.

#### **No Forfeiture of Earned Vacation Time**

[General Laws c. 149, s. 148](#), provides that no employer shall "by special contract with an employee or by any other means exempt himself" or herself from the statute or from its penalty provision in [Section 150](#). Since the statute provides for the timely payment of all wages earned, an employer may not enter into an agreement with an employee under which the employee forfeits earned wages, including vacation payments. Examples of these agreements are vacation policies that condition the payment of vacation time on continuous employment or that require that employees provide notices to quit. Employees who have performed work and leave or are fired, whether for cause or not, are entitled to pay for all the time worked up to the termination of their employment, including any earned, unused vacation time payments.

Generally, time earned under any vacation policy need be compensated only with the equivalent time off. The exception is where an employee separates from employment or where an employee agrees to receive monetary compensation in lieu of vacation time.

#### **Accrual of Vacation**

An employer may cap the amount of vacation time that an employee may accrue or earn. For example, an employer may state that after accruing a total of four weeks of vacation leave, the employee will cease to earn any additional vacation time until the employee uses some of the accumulated vacation time. Thus, the employee would not earn additional vacation time until the employee's total vacation time falls below four weeks. While the employee retains all earned vacation leave, the employer is permitted to cap, prospectively, the amount of vacation time or pay which it must provide to the employee.



An acceptable variation of an accrual cap is the vacation policy known as “use it or lose it.” Under this policy, employees must use all of their accumulated vacation time by a certain period of time or lose all or part of it. Some policies allow the employees to “carry over” a certain number of hours of vacation after the expiration of the designated time period. The “use it or lose it” policy effectuates a cap on accrual by limiting the total amount of vacation time that an employee may accrue during the term of their employment. Under such policies, the employer must provide adequate prior notice of the policy to employees and must ensure that employees have a reasonable opportunity to use the accumulated vacation time within the time limits established by the employer. Otherwise, a cap on accrual or a “use it or lose it” policy may result in an illegal forfeiture of earned wages.

### **Pro-rating Vacation Pay**

Employers can protect themselves by adopting clear and unambiguous vacation policies. For example, an employer may provide that employees begin to earn vacation time after a specific probationary period, such as after six months of employment. Another example of an unambiguous policy is one that provides that an employee earns vacation time at a rate of one day at the end of each month.

However, a policy that provides for employees to earn a given amount of vacation “a year,” “per year,” “on their anniversary date,” or “every six months” is not clear because the definitions of the time periods are imprecise and subject to confusion concerning their start and end dates. Where an employer’s policy is ambiguous, the actual time earned by the employee will be pro-rated according to the time period in which the employee actually works. For example, if an employee is to receive twelve vacation days “in a year,” and the employee voluntarily or involuntarily terminates his or her employment after ten months of employment, the employee would be entitled to ten vacation days or one day per month worked. Discharge prior to one year without pro rata payment constitutes failure to pay wages earned under [Section 148](#).

### **Annual Leave**

Some employers combine sick leave, personal leave, vacation leave, and/or other types of leave into one general category called “annual leave.” This combined leave is also called paid time off, earned time, or paid days off. Employers who provide annual leave instead of vacation leave should designate the amount of hours or days of the leave which are considered vacation time. Employers who have previously designated vacation time in this manner, whether orally or in writing, shall produce proof of such designation to rebut a complaint of unpaid wages pursuant to [M.G.L. c. 149, s. 148](#).

### **All Amendments to Vacation Policies Apply Prospectively**

As is the case with any condition of employment affecting wages, employers may amend the terms of their vacation policies at any time. Any such amendment, however, must be prospective in nature.

We urge employers to give employees copies of their written vacation policy in advance and to have each employee acknowledge in writing his or her understanding of the policy.



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## Dictionary

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guidelines



# guide·line

/ˈɡɪd,laɪn/

*noun*

plural noun: **guidelines**

a general rule, principle, or piece of advice.

"the organization has issued guidelines for people working with prisoners"

**Similar:**

recommendation

instruction

direction

suggestion

advice

regulation



Translate guidelines to

Choose language

Use over time for: guidelines

Mentions


1800 1850 1900 1950 2019

Feedback

Show less ^

# guideline

## noun

guide·line ˈɡīd- līn 

: a line by which one is [guided](#): such as

a

: a cord or rope to aid a passer over a difficult point or to permit retracing a course

b

: an indication or outline of policy or conduct

## Example Sentences

Recent Examples on the Web Brown told the Globe Monday morning that the NBPA believes those conditions are too stringent, especially when there is no *guideline* that addresses social media posts in the collective bargaining agreement. — Gary Washburn, *BostonGlobe.com*, 7 Nov. 2022 These calculations are an overall *guideline*: Keep an eye on the doneness of your turkey by checking its internal temperature about three quarters of the way through the cook time, then every 10 minutes or so after that. — Julie Harans, *Bon Appétit*, 5 Oct. 2022 This is the Supreme Court *guideline*, and the major element there is viewing the work as a whole. — Sarah Mausek, *The Christian Science Monitor*, 22 Aug. 2022 [See More](#)

These example sentences are selected automatically from various online news sources to reflect current usage of the word 'guideline.' Views expressed in the examples do not represent the opinion of Merriam-Webster or its editors. [Send us feedback](#).

## Word History

First Known Use

1785, in the meaning defined [above](#)

Time Traveler

The first known use of *guideline* was in 1785

[See more words from the same year](#)