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The Honorable James B. Eldridge, Chair
Committee on Housing
State House, Room 413A
Boston, MA 02133

The Honorable Kevin G. Honan, Chair
Committee on Housing
State House, Room 38
Boston, MA 02133

Dear Chairman Eldridge and Chairman Honan:

I write to you regarding the housing authority oversight legislation currently before your committee. My Office has recent experience in dealing with the lack of oversight at housing authorities. Based on that experience, I have a number of recommendations for your consideration regarding safeguards to include in any housing authority legislation.

Fiduciary relationship

Each board member of a housing authority should have a fiduciary duty to the authority and that duty should be clearly defined. Choices from the corporate context include the "utmost good faith and loyalty" and "good faith and inherent fairness". Imposing such a duty provides a standard against which each board member's conduct can be evaluated.

Requirements for board membership

Housing authority board members should have relevant experience and meet specific qualifications. At a minimum, one board member should be a Certified Public Accountant and one should be a current or former tenant of a property owned or operated by a housing authority. Other qualifications to consider include expertise in multi-unit housing and legal experience in housing issues. There needs to be a balance between the status quo of no required expertise and the imposition of requirements that have the potential to limit the pool of people who qualify.

Training

Each board member of a housing authority should be required to complete training provided or approved by the Department of Housing and Community Development ("DHCD"). The training should include, at a minimum, a review of the open meeting law, public records law, conflict of interest law, public procurement laws, the budgetary process, fraud prevention and awareness, and fiduciary and management responsibilities. Additionally, each executive director and every

procurement officer should have more in-depth training on those subjects. My Office offers training through the Massachusetts Certified Public Purchasing Official program, which covers many of these topics. Board members and staff should be required to complete their respective training within a specified number of days of initial appointment and at regular intervals thereafter. For staff, this should be included as part of their contracts. A certificate of completion of the training should be submitted to DHCD. Failure to complete the training in the requisite time should result in the individual's disqualification from serving.

Appointing authority

Currently, every housing authority is made up of five board members, four of whom are either appointed by the top municipal executive or elected by the municipality; the fifth member is appointed by DHCD. Consideration should be given to lowering the number of members appointed by the top municipal executive in favor of either elected members or an additional appointing authority. This would allow for a greater diversity of interests on the board.

Segregation of duties

Financial and procurement duties should be segregated so that no one person is responsible for custody of assets, record keeping, authorization for spending, and reconciliation. For example, no one person should have the exclusive responsibility for collecting, recording, depositing rent checks, and reconciling the authority's financial books. When it is impracticable for a different person to handle each duty, compensating internal controls should be implemented. The duties should be split among as many people as possible.

Related organizations

Housing authority board members and employees are subject to the state ethics law in M.G.L. c. 268A. However, there is a process for an exemption from M.G.L. c. 268A that allows a special municipal employee, the definition of which includes housing authority board members, to have a financial interest in contracts. The housing authority enabling statute should state that no housing authority board member or employee should serve as a board member, officer or employee of an entity that engages in business activities with the housing authority.

Annual reporting

Each housing authority should prepare an annual report detailing the authority's activities from the past fiscal year, and an operating plan specifying the authority's plans for the upcoming fiscal year. DHCD should establish the format and standards for these reports. These reports should be submitted to DHCD annually and should be publicly available, including on DHCD's website.

Audit

Each housing authority should have an annual independent audit conducted, in accordance with generally accepted government auditing standards and any additional guidelines established by DHCD. The audit report should be submitted to DHCD within a specified number of days of the housing authority's receipt of the report from the auditor. The independent auditor should be retained for no more than three consecutive audits. The audited financial statements, accompanying notes, and supplemental schedules should also include:

- (a) transactions between the housing authority and any related for-profit or non-profit organization;
- (b) transactions or contracts related to the purchase, sale, rental, or lease of real property (other than individual unit leases);
- (c) the names, duties, and total compensation of the five most highly compensated employees;
- (d) the amounts expended on administration and overhead; and
- (e) any accounts held by the housing authority that may be spent at the discretion of another person or entity.

Failure to comply with reporting requirements

Any housing authority that fails to comply with the annual reporting or auditing requirements should be subject to consequences. For example, if a housing authority is noncompliant, DHCD could select an independent auditor or other professional to conduct the requisite reviews and provide the reports at the noncompliant housing authority's expense. Other sanctions might include removing members or disbanding the authority for severe noncompliance.

Executive Director contracts

DHCD should promulgate standard terms and conditions for executive director contracts to allow for consistency throughout the state. DHCD should also approve the financial terms of executive director contracts.

The suggestions outlined above would address a number of the issues identified in recent cases that have been in the news. Moreover, increasing transparency and accountability would help provide the public with confidence that housing authorities are properly carrying out their duties as stewards of taxpayer dollars.

If you have questions, please feel free to contact me.

Sincerely,



Glenn A. Cunha
Inspector General