



Commonwealth of Massachusetts EXECUTIVE OFFICE OF HOUSING & LIVABLE COMMUNITIES

Maura T. Healey, Governor ◆ Kimberley Driscoll, Lieutenant Governor ◆ Edward M. Augustus Jr., Secretary

PHN 2024-16

To: Local Housing Authority (LHA) Executive Directors
From: Ben Stone, Undersecretary of Public Housing and Rental Assistance
Date: September 18, 2024
Re: Affordable Homes Act (AHA) and State-Aided Public Housing

This notice provides guidance on how EOHLC plans to implement several sections of the recently passed [Affordable Homes Act \(AHA\)](#) - Chapter 150 of the Acts of 2024 - in state-aided public housing. The AHA, signed by Governor Healey on August 6, 2024, is a comprehensive bill of capital authorizations and policy actions that aims to increase housing production and invest in livable communities. While the AHA contains many important policy changes, this notice focuses on changes that directly impact state-aided public housing. These include:

- New flexibility for the Agreed Upon Procedures (AUP) program;
- Updates to the Regional Capital Assistance Team (RCAT) program;
- New data-based replacement value threshold for triggering full Massachusetts Architectural Access Board (MAAB) accessibility compliance;
- Codifying tenant protections in redevelopment projects into law; and
- Ability of LHAs to borrow against capital-related formula funding, subject to approval by EOHLC.

Need to Know

- AUP will occur every other year, if the AUP findings do not exceed “strike” threshold;
- Expansion of services provided and LHAs served by RCATs;
- MAAB will now determine Replacement Values for purposes of assessing accessibility requirement through a replacement cost that is determined and reflected in EOHLC’s Capital Planning System Survey and Database;
- LHAs will have authority to take on debt that is secured by EOHLC formula funding, subject to EOHLC approval and pursuant to regulations and guidelines to be developed by EOHLC.
- Tenant Protections in redevelopments now codified in law.

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Section 1: Overview of Affordable Homes Act (AHA)

The [AHA](#) seeks to address the increasing unaffordability of housing and shortfall of housing production through authorizing historic levels of investment and putting forth bold policy changes. The AHA authorizes \$5.16 billion in borrowing to support housing investments over the next five years, including \$2.2 billion for state aided public housing, \$800 million for the Affordable Housing Trust Fund, and \$275 million for Sustainable and Green Housing Initiatives. Please note that capital authorizations set a ceiling on borrowing, and the Executive Office for Administration & Finance (A&F) sets funding amounts annually in partnership with agencies through the Capital Investment Plan process.

This legislation also includes nearly 50 policy initiatives that address a variety of critical housing policy issues. These include allowing Accessory Dwelling Units (ADUs) by right in every community that is subject to Chapter 40A of the General Laws, raising the dollar amount that a court may require abutters to post as bond when filing suit against a housing development, enabling eviction sealing by petition, creating or expanding critical state tax credit programs, and requiring a statewide housing plan every 5 years.

You can find more information on the general provisions of the AHA [here](#).

Section 2: Agreed Upon Procedures (AUP) Program Updates

Background: AUPs previously required annually.

AHA: AUPs are required at least every two years, or more often at EOHLC's discretion.

This section supersedes the AUP submission deadlines provided in Section 4 of [PHN 2021-12](#), Agreed Upon Procedures (AUP) Program Updates. The AHA included provisions (Section 33 & 34) allowing EOHLC to require AUPs no less frequently than every other year, rather than the annual schedule required by the [Public Housing Reform law](#) of 2014. Section 34 of the AHA mandates that LHAs must still produce an Annual Plan each year.

EOHLC will use this new flexibility to align AUPs with the biennial Performance Management Review (PMR) process to lessen administrative and cost burdens for LHAs, improve responsiveness by external auditors, and enable EOHLC staff to focus on LHAs most in need of oversight and assistance.

Similar to the PMR process, LHAs that do not receive a “strike” pursuant to the chronically poor-performing designation that results in the appointment of a Chief Administrative and Financial Officer Program (CAFO) in their last AUP, as outlined in Section 1 of [PHN 2024-10](#), will not have to undergo an AUP for two years. Currently, EOHLC issues a “strike” towards the chronically-poor-performing designation to LHAs that receive ten (10) or more exceptions (Exceptions Threshold), provided that EOHLC may adjust the Exceptions Threshold through guidance. As a reminder, three strikes (on AUP or PMR) triggers authority to appoint a CAFO.

EOHLC will require LHAs that exceed the Exceptions Threshold OR submit an AUP more than 120 days late (AUPs are due 8 months after the LHA fiscal year end) to undergo an AUP the following year. **LHAs that exceed the Exceptions Threshold but do not receive a “strike” due to change in management will also undergo an AUP the following year to confirm progress.**

In FY2023 there were one-hundred and fifty-three (153) LHAs with no exceptions, which is a tremendous tribute to the work of LHAs to address exceptions and allows EOHLC to implement this

change to better focus state oversight.

This change is effective for 6/30/24 and succeeding fiscal year ends. Approximately half of LHAs not subject to annual AUPs will have an AUP for the 6/30/24-6/30/25 cycle, with the remainder having an AUP in the following cycle. Generally, EOHLC will seek to assign biennial PMR and AUPs to LHAs in alternating years, though this will not be possible for every LHA. **See the attachment for LHA AUP assignments by fiscal year.**

NOTE: Completed AUPs are still due to EOHLC eight (8) months after the LHA fiscal year end (FYE).

Section 3: RCAT Flexibilities

Background: The [RCAT program](#) was created via [the 2014 reform legislation](#) and implemented by EOHLC at three host housing authorities: Worcester, Taunton and Chelmsford. The program is open to LHAs with fewer than 500 state-aided units and provides participants with capital planning and small project implementation assistance. Each of the three RCATs has an advisory board that meets quarterly.

AHA: The AHA authorized new flexibilities (Section 31 & 32) for the RCAT program to allow expansion beyond the capital planning and small project assistance authorized by the [Public Housing Reform legislation](#). These included allowing RCATs to assist LHAs with over 500 state-aided units, for EOHLC to implement new services to be provided by the RCAT program, and for the RCAT to accept payment for services outside of core program items (and as approved by EOHLC). The AHA also simplifies RCAT administration by consolidating the three distinct advisory boards meeting monthly with one single advisory board meeting annually.

Next Steps: EOHLC will develop new program offerings in partnership with the RCATs and plans to release updated RCAT program guidelines to enact this new flexibility by November 2024. RCAT may continue to develop additional services after that date.

Section 4: Massachusetts Architectural Access Board (MAAB) Replacement Values

Background: MAAB regulations require full accessibility improvements, including creating a certain percentage of accessible units as well as accessible pathways, for properties that spend over 30% of the replacement value of their property over a three-year period. **Since 1996**, 521 CMR 5.00 set replacement values for LHA properties at \$73.32 per square foot, which meant even relatively modest scopes could trigger full accessibility requirements. The added cost of accessibility work could sometimes make entire projects infeasible due to budget constraints.

AHA: The AHA (Section 120) requires MAAB to determine Replacement Value of LHA buildings by setting a replacement cost that is determined by and reflected in EOHLC's Capital Planning System (CPS) database. Per the CPS database, current replacement values are between \$400-500 per square foot based on building type.

Next Steps: EOHLC will provide the MAAB with these updated values on an annual basis and has already provided them to the MAAB for FY25. LHAs and design consultants should be aware of the new thresholds that will trigger full MAAB compliance, but no action is needed on their part

otherwise.

Section 5: Borrowing Against Formula Funding

Background: LHAs have historically been unable to take on debt that is secured by EOHLC funding.

AHA: The AHA allows (Section 30) LHAs to take on debt secured by EOHLC formula funding and subject to EOHLC approval and instructs EOHLC to promulgate regulations to that effect. Note that LHAs may not pay interest with capital funds provided by EOHLC; formula funding may only cover principal repayment.

Next Steps: EOHLC will promulgate regulations governing this new ability. In Fall of 2024, EOHLC will convene a working group including LHAs and financial professionals to inform such regulations.

Section 6: Tenant Protections in Redevelopment

Section 35 of the AHA stipulates that tenant protections and rights associated with participation in state-aided public housing programs continue to apply when a state-aided public housing project is redeveloped under MGL ch. 121B § 34, except as may be required to secure financing or to meet associated programmatic eligibility requirements, like those associated with federal public housing funding or Low Income Housing Tax Credits. This section also requires that affected tenants are provided notice and opportunity to comment on any such changes. This section codifies many of EOHLC's current practices but adds the right for affected tenants and applicants to seek legal remedy to enforce the requirements of this section. This section will be reflected in Notices for Funding Availability (NOFAs) and legal documentation for future redevelopment deals.