**2013 Analysis of Impediments to Fair Housing Choice
Executive Summary**

The Commonwealth of Massachusetts has an obligation to assume an active, affirmative posture to promote fair housing choice. Fair housing choice impacts individual lives and collectively shapes neighborhoods, communities, and the state as a whole; therefore, it is inextricably linked to the Commonwealth’s duty, and ability, to provide for the general welfare of its residents.

Fair housing choice is rooted in the right to live where one wants to live without being hindered by discrimination (e.g., federal Fair Housing Act and the state anti-discrimination law, Massachusetts General Laws Chapter151B), and relates to other fundamental legal protections, such as the right to enjoy privileges and immunities across state or municipal boundaries (U.S. Constitution), and the right to equality in seeking and obtaining safety and happiness (Massachusetts Constitution [1]). The inherent significance of these civil rights principles in relation to the well-being of individuals and families, as well as the Commonwealth, has been underscored by research over the past ten to fifteen years that demonstrates, conclusively, that “neighborhood conditions play a substantial role in the life outcomes of inhabitants.”[2] Housing location generally dictates the degree to which a household has access to “critical opportunities needed to excel in our society, such as high-performing schools, sustainable employment, stable housing, safe neighborhoods, and health care.”[3]

Historic and ongoing racial and ethnic segregation patterns in Massachusetts, coupled with historic disinvestment in areas of racial/ethnic concentration, have produced a geographic pattern in which areas of racial and ethnic concentration converge with areas of concentrated poverty such that “segregation and racially-isolated pockets of concentrated poverty are very apparent in Massachusetts.”[4] Granting that generalizations overlook legitimate exceptions, generally, these racially/ethnically concentrated areas of poverty or areas of opportunity, referred to herein as, or interchangeably with, “impacted areas,” face challenges in providing quality education, access to jobs and good public health outcomes. Conversely, “non-impacted areas,” are those areas that offer high quality education, economic opportunity and excellent public health outcomes, which generally are not accessible to households of color as a result of segregation and continuing polices that perpetuate its legacy.

With respect to the connection between access to housing resources in non-impacted areas, based upon analysis by the Kirwan Institute and other research, we know that State assisted rental housing is disproportionately located in impacted areas as evidenced by findings such as the following: 70% of privately-owned/publicly-subsidized units, and 72% of federal Section 8 units administered by regional non-profit agencies, are located in these impacted areas;[5] and 61% of family public housing units, which serve predominantly households of color with children, are in such areas.[6]

Given the ongoing patterns of racially/ethnically concentrated areas of poverty in the Commonwealth, the limited affordable housing resources in non-impacted areas, and the consequent barriers that households of color have to accessing these communities, an essential element of the state’s efforts to meet it affirmative fair housing obligation must be to manage our housing programs to create and/or enhance resources, particularly affordable, quality housing, in non-impacted areas.

The counterpart to a strategy of improving housing choice is the continued support for strategic efforts to improve opportunity in communities that have suffered disinvestment. Moreover, the existing stock of affordable housing in these communities is a valuable asset serving thousands of households. Regardless of the location of such housing, we have an obligation to preserve it and avoid the displacement and further disinvestment that would otherwise result. Agency decisions must balance (1) the affirmative obligation to support investment, particularly in affordable rental family housing, in non-impacted areas in order to open up access to the life-long benefits of such areas to all residents, with (2) strategic housing and community development re-investment in impacted areas in order to support efforts to foster and enhance opportunity in such neighborhoods.

DHCD’s programs will seek to identify and fund housing and community development projects that achieve the goal of connecting households, particularly households of color, with educational, employment and public health opportunities. This will be accomplished by ensuring that criteria for eligibility and the award of funds serve to attract housing and community development projects in non-impacted areas and/or are part of an explicit, documented re-investment plan to revitalize impacted areas. DHCD will also work with the Massachusetts Office of Access and Opportunity to join other state agencies and partners to effectuate meaningful outcomes, articulating the following framework for action: (1) address the harm of separation from opportunity on fair housing protected classes and other affected groups; (2) respond through interventions such as multi-sector targeted investments and policies, as well as household mobility supports; and (3) use data to continually re-inform policies and to build support and measure progress relative to opportunity and affirmative furtherance of fair housing.

In evaluating progress, it will be important to reserve consideration for personal, specific choices that also determine where individuals will or want to live based on their life circumstances and preferences. The extent to which housing providers discriminate against home seekers will also shape outcomes. In sum, fair housing choice as measured by opportunity indicators in a geographical context, although critical to fair housing policy and discourse, is not necessarily a proxy for the exercise of fair housing rights.

In addition to analyzing opportunity in relation to racial/ethnic disparities and segregation patterns, this Analysis of Impediments to Fair Housing Choice examines fair housing matters relating to restrictive local zoning, development of affordable rental housing for families with children, coordination of government policies and use of public investments, immigration and language access, fair housing awareness, enforcement, and resources for testing, mortgage lending and the foreclosure crisis, obstacles to mobility, accessibility limitations, and resources for supportive housing. Some notable findings concerning impediments to fair housing as well as key action steps to address such impediments are outlined below. Note that the outlined action steps in this executive summary are primarily steps to be undertaken or more fully implemented. A further treatment of action steps that have already been undertaken over the past five years is incorporated in the discussion section (part III) of this document and in Appendix A.

**Data Analysis Highlights:**

· Although the existence of residential segregation in Massachusetts, particularly in the Boston area, is not a new finding and has persisted for decades, recent analysis of 2010 Census data highlights how far behind certain metropolitan areas in Massachusetts still are compared to the rest of the country. For example, the Brookings Institute reported that the metropolitan area with the highest segregation scores for Hispanics/Latinos in the country was in the Springfield, MA metropolitan area, while the Boston metropolitan area was the fifth such area after the Los Angeles, New York, and Providence metro areas.[7]

· While there has been some improvement since 2000, there remain high levels of residential segregation between black/African Americans and whites and Hispanics/Latinos and whites, especially in the Boston and Springfield metro areas. Asians are considerably less segregated than blacks/African Americans or Hispanics/Latinos, and their segregation levels have also shown modest improvement since 2000. These improvements notwithstanding, Massachusetts metro areas remain among the most segregated of the nation’s 100 largest metros (those with populations of 500,000 or more).

· More than three quarters of the state’s cities and towns have black/African American and Hispanic/Latino populations that are severely below the levels expected based on their income distribution according to HUD methodology. More than 57 percent have Asian populations that are severely below predicted levels.

· In 2010, fewer than 43 percent of Massachusetts’ lowest income non-Hispanic white households lived in low or very low income “opportunity” communities, but 71 percent of Asian, 93 percent of black/African American, and more than 95 percent of Hispanic/Latino households with similar incomes lived in areas so designated. More striking was the fact that 92 percent of middle income black/African American and Hispanic/Latino households and 90 percent of those in the highest income group (earning over $60,000 in 2000) lived in one of the ten low or five very low opportunity communities. The corresponding figures for Whites are 34 and 22 percent and for Asians, 61 and 39 percent.

· The interaction between residential segregation and poverty in Massachusetts also disparately affects racial/ethnic minority groups. Using U.S. Department of Housing and Urban Development (“HUD”) methodology based on a census tract-based definition of racially and ethnically-concentrated areas of poverty (“RCAPs”),[8] both the RCAPs and the high poverty census tracts that are not majority minority are clustered in just a handful of cities. Of the 89 census tracts that meet the poverty threshold, only 20 do not also meet the 50 percent minority threshold.

· Most analysts agree that an adequate housing supply can help stabilize prices and enhance affordability, but Pioneer Institute researchers[9] found that local regulations impeded development of all but single-family homes on large lots, the most expensive type of housing. They identified widespread barriers to multifamily housing, town homes, single family houses on small lots, and accessory apartments in owner-occupied homes.

· About 40,000 new market rate and mixed income rental apartments have been created statewide since 2000. Of the 62 percent of units that were not created in cities with a subsidized housing inventory percentage of 10 per cent or more or through adaptive reuse elsewhere (roughly 25,000 units), 59 percent were permitted under the comprehensive permit provisions of Chapter 40B.

· Findings of a proliferation of age restricted development, and not the production of housing for younger families – unless permitted under the state’s affordable housing statute, M.G.L. Chapter 40B, raise serious civil rights concerns. While the forces that contribute to spatial segregation by race and ethnicity are complex and varied, a number of studies have concluded that low density only zoning that reduces the number of rental units, also limits the number of black/African American and Hispanic/Latino residents. By contrast, new production in general, new rental and multifamily production, and new affordable rental production have been shown to be market conditions that promote inclusion of blacks/African Americans and Hispanic/Latino groups.

· Nearly one-third of the Boston metro area’s accessible units – those registered with MassAccess – were permitted under the comprehensive permit provisions of MGL 40B, the state’s affordable housing law. In communities rated “very high opportunity,” 48 percent were permitted under 40B; in “high opportunity” communities, the 40B share was 42 percent.

· Those receiving SSI are among the Commonwealth’s most vulnerable populations: extremely low-income non-elders residents with significant long-term disabilities. Many reside in homeless shelters, public institutions, nursing homes, at home with aging parents, or in segregated group quarters, due to the lack of affordable housing in the community.

· Large families (5 or more members) are more prevalent among black/African American, Asian and Hispanic/Latino households than among whites, for renters as well as owners. Extended families are also more prominent among minority group households, especially when they are raising children or caring for elders. Subfamilies, too, are more common. In 2010, just 2.7 percent of Massachusetts’ non-Hispanic/Latino white families included three or more generations compared to 6.8 percent of black/African American, 6.9 percent of Asian, and 7.5 percent of Hispanic/Latino families. The average number of persons living in an immigrant household is 2.95 compared to a 2.35 average amongst native households.

· Foreign born residents account for 15 percent of the state’s population. More than 976,000 immigrants now call Massachusetts home, 62 percent of them having arrived since 1990. The challenges posed by limited English proficiency vary widely by community. While Boston has the most linguistically isolated households in every major language group, limited English proficiency affects a greater proportion of households in many other communities.

· Despite the breadth of distribution, voucher utilization remains highly concentrated in high poverty areas, and this concentration is more pronounced among black/ African American and Latino voucher holders than of whites or Asians. More than 14 percent of households with tenant-based housing choice vouchers (“HCVs”) used their voucher to rent a home in a high poverty census tract. Eleven percent rented in racially concentrated high poverty tracts. In comparison, just 6.5 percent of white voucher holders rented in high poverty areas (3.4% in RCAPs, 3.1% in high poverty white areas) compared to 26.8 percent of Hispanic voucher holders (22.7% in RCAPs, 4.1% in majority white high poverty areas).

· By the time the 2010 Census was conducted, the number of black/African American owners had risen by another 12,300 (35%). The number of Hispanic/Latino owners was up by nearly 20,000 (77%) while the number of Asian owners had climbed by over 24,000 (81%). Despite these gains, the legacy of race-associated bias is evident in the racial and ethnic concentration of homeownership, the high incidence of subprime lending and the concentration of foreclosures in the region’s communities of color. Black/African American homeowners, in particular, remain geographically concentrated in a handful of communities, and recent black/African American home buyers have tended to purchase in those same communities. Research on race and concentrated poverty has shown that black/African Americans and Hispanics/Latinos are far more likely to live in high poverty areas than whites with the same incomes.

· Between January 2007 and April 2012, a total of 1,719 complaints were filed with HUD, MCAD, the Cambridge Human Rights Commission, or the Boston Fair Housing Commission, involving allegations of 2,325 acts of discrimination in Massachusetts (and citing 2,286 bases for the alleged discriminatory acts). Complaints were filed in 195 cities and towns, in every region of the state. The Greater Boston region represented 60 percent of the caseload.

· The basis on which most complaints were filed is discrimination based on disability (29.3%), followed by claims of race discrimination (19.4%), discrimination against children (11.0%), public assistance (8.1%), and national origin (7.5%). This pattern was consistent across regions. The combination of complaints alleging discrimination based on children plus those based on family status (3.6%) and lead paint (5.0%), both of which may indicate an unwillingness to rent to families with young children, totaled 19.6 percent of all alleged violations.

**Action Step Highlights:**

· Invest and preserve resources to improve opportunities for a range of households in impacted areas

* Massachusetts neighborhoods that are identified and impacted by concentrated poverty, which also tend to be areas of racially/ethnically concentrated poverty and new immigrants, often suffer disinvestment. While new federal initiatives such as Choice Neighborhoods are being implemented, the state is also focusing on initiatives to spur investment in distressed communities, including through the MassWorks funding priority for Gateway Cities, incentivizing the development of market rate housing, prioritizing affordable preservation and development to the extent it fosters and is consistent with revitalization, improving minority group concentrated areas that have been impacted by foreclosure through neighborhood stabilization funds, and other initiatives discussed below.
* DHCD will examine, with input from its partners, how to best measure and evaluate the extent to which neighborhood revitalization actually occurs as a result of housing investment in concert with a revitalization plan.

· Invest and develop policies to increase access to non-impacted areas

* Given the ongoing patterns of racial/ethnically concentrated areas impacted by poverty in the Commonwealth and the limited affordable housing for families in non-impacted areas, DHCD has made significant alterations to its housing development funding application process to, inter alia, improve the integration of affordable, accessible housing development with access to opportunity locations. DHCD has formulated key funding priority categories that developer applications must satisfy in order to be considered and proceed to full application review: 1) housing for extremely low-income (ELI) individuals, families, and seniors; 2) investment in distressed and at-risk neighborhoods where strategic housing investment has a strong likelihood of catalyzing private investment; 3) preservation of existing affordable housing; and 4) family housing production in neighborhoods and communities that provide access to opportunities. Additional considerations are provided based on geographic balance, location and transportation, subsidy efficiency, and community development impact.
* DHCD has adopted a more detailed schema for defining and awarding discretionary points for developments based on “location in an area of opportunity” that incorporates strength of public school system and access to employment, higher education, and health care. DHCD will continue to consult with its Fair Housing Advisory Panel members and advocates, researchers, and other stakeholders regarding additional indices and measures of opportunity.
* The housing development community is also subject to fair housing evaluation criteria that will include the types of actions it can take and partnerships it can form with non-profits and other agencies to identify and address access barriers relative to opportunity for residents in the proposed housing development location.
* DHCD seeks to partner with other state agencies to determine state resources that could be best leveraged to ensure housing can be sited in areas that host or provide access to opportunities.

· Address barriers to mobility to higher opportunity areas; fair housing awareness and resources for testing

* In addition to promoting affordable and accessible housing development in non-impacted locations, fair housing choice must also include opportunities for families and individuals to seek various types of housing across the state. However, such “mobility,” particularly for low-income households, has its own barriers (e.g., inadequate access to resources, high rent, discrimination, language access issues, etc.). In response to various mobility barriers, DHCD included a pilot mobility initiative in its Section 8 Moving to Work Administrative Plan discussed in section 12 below. DHCD may modify this initiative subject to available resources and input from DHCD’s Fair Housing Advisory Panel and other groups. A “unit-based mobility” strategy of connecting mobile vouchers to effective subsidized housing providers in opportunity/non-impacted areas is a potentially cost-effective response that DHCD will further consider interfacing with its housing development priorities.
* DHCD will continue to utilize its Moving to Work (“MTW”) authority to approve payment standard exceptions without prior HUD approval, which achieves the goals of accommodating many extremely low income persons with disabilities and expanding housing choice options in “low-poverty, high-opportunity” neighborhoods. All housing authorities in non-impacted areas should seek HUD approval to exceed the published fair market rents (“FMRs”) for specified geographic submarkets of a larger FMR area.
* DHCD will work with partners to improve web-based consumer information on community conditions and opportunities to encourage mobility to non-impacted areas by linking or sharing such information with commonly used websites such as MassAccess and agencies that provide housing search assistance. Regional-based coalitions, including through HOME consortia or other inter-municipal partnerships and regional housing groups, could also serve as a significant resource for connecting households in higher poverty and racially concentrated areas within a region to lower poverty and non-impacted areas within that region, as well as provide the households helpful information on fair housing resources.
* Additional HUD funding for testing in higher opportunity, suburban areas would provide critical support for state goals and initiatives to promote housing mobility towards such areas. Fair housing testing of landlords and other housing providers/agents can be critical for successfully combatting discrimination; it can be difficult to ultimately prove that a housing provider or agent’s actions relating to sales or rentals were based at least in part on a discriminatory motive (although it is important to note that such proof is not always required, such as in reasonable accommodation/modification, design and construction, and disparate impact cases), as well as helping to gauge the prevalence of discriminatory practices. For example, the Fair Housing Center of Greater Boston’s testing reveals that discrimination in rental and sales ranges 33%-66% of the time, most frequently based on race and/or national origin. Testing is also vital for increasing awareness in a community of the discriminatory practices that are occurring and for targeting further fair housing education and outreach.

· Increase multifamily housing and address local planning/zoning that may disparately impact fair housing protected classes, including racial/ethnic minority groups, families with children, and persons with disabilities

* Continue to support zoning reform so that communities will enact and implement zoning and other land use regulations that, to the extent practicable, allow multifamily housing development as of right. Furthermore, in determining whether a housing development site is appropriate under the state’s affordable housing zoning law, M.G.L. c. 40B, DHCD and state subsidizing agencies will take into account information provided by a municipality as to whether it has met the purpose of Chapter 40B in meeting regional housing needs. This would include municipal efforts to create zoning districts and/or requirements that provide the opportunity for affordable housing, including affordable housing that is accessible and available to families with children.
* DHCD will institute a policy related to Subsidized Housing Inventory (“SHI”) eligibility, to be finalized in FY 2014, to address the imbalance of age-restricted housing versus housing for families with children.
* DHCD has also developed a new Compact Neighborhoods Program Policy to incentivize municipal cooperation and proactive planning for multifamily housing development. Under the program, municipalities that are certified by DHCD as creating Compact Neighborhoods will receive a preference for discretionary funding by state agency programs, such as the MassWorks infrastructure program. DHCD expects municipalities, in drafting zoning ordinances, to promote the development of housing across a range of incomes and appropriate for diverse populations, including families with children, persons with disabilities, and elders.

· Implement fair housing evaluation criteria for discretionary grants to communities and housing developers

* The policy of fair housing evaluation criteria for DHCD discretionary grants and funding proposed in DHCD’s Fair Housing and Civil Rights Policy is undergoing further review and is restated, along with new considerations, in part V, section 5 below. With respect to Community Practice for Evaluation, the criteria are intended to reward communities that are making efforts to be inclusionary and affirmatively further fair housing objectives, as opposed to exclusionary practices that frustrate and lead to discriminatory and inequitable outcomes. The criteria for evaluating communities have been organized into 4 "tiers” in order of priority. The first tier prioritizes local action, i.e., zoning/land use bylaws, multi-family permitting denials, diversity of housing (building) types, and availability of subsidized family housing (vs. age-restricted housing). However, due to the number of communities that do not seek DHCD discretionary funding, comprehensive and coordinated statewide policy and funding strategies are needed as discussed below.

· Coordinate efforts with other state agencies administering discretionary grants to opportunity area communities

* Governor Patrick has directed the state’s Assistant Secretary for Access and Opportunity to: convene an internal working group, post completion of the Analysis of Impediments, to review the AI and to identify and make policy recommendations to mitigate state public policies that function as impediments to fair housing choice; and (2) convene a second working group, which would consist of state agency representatives, representatives from Action for Regional Equity and other community-based stakeholders to engage a broader effort to promote equity across state policies and programs.
* DHCD will actively participate in these working groups and contribute policy recommendations, such as coordinating public investments with other state agencies in order to: incentivize municipalities to permit the creation of affordable housing, particularly affordable rental housing for families; address barriers to fair housing choice that impact protected classes and reach beyond DHCD (e.g., affordable/public transportation options, education, etc.); and ensure that investments in lower “opportunity areas” will leverage effective neighborhood revitalization and improve access to opportunity for protected classes.
* The working groups should examine the feasibility and benefits of a coordinated scoring system, drawing from DHCD’s Community Practices for Evaluation relative to discretionary grants, to be utilized by the relevant state agencies.

· Revise housing development approval criteria to require diversity of bedroom sizes in family developments to ensure families with children are adequately served

DHCD continues to evaluate how it may improve housing opportunities for families, primarily families with children, that require larger sized (multiple bedroom) units. For example, DHCD’s 2013 and Draft 2014 Qualified Allocation Plan (“QAP”) underscores DHCD’s priority for the production of rental units suitable for families. At least 65% of the units in a proposed production project must have two or more bedrooms, and at least 10% of the units must have three bedrooms, with exceptions only applying if efficiency or one-bedroom units are appropriate for the intended residents.

· Expand Accessibility

* Accessibility gaps or inadequate accessibility in development exists when developers are not required to incorporate accessibility based on applicable accessibility codes, and it persists when such development is directly or indirectly required for local zoning approval. To ensure non-discrimination and programmatic access for persons with disabilities consistent with the ADA and other disability rights laws, DHCD’s policy response aims to address patterns of new development[10] that, because of its size, tenure, or type, or lack of federal funding would otherwise result in limited accessibility.

1) Townhouses

2) Small Projects

3) For-Sale Units

* DHCD will also continue to consider how it may further incorporate concepts of enhanced accessibility and usability, including through Universal Design and Visitability, into funding evaluation criteria as it has done in its Community Based Housing Program and in its QAP, which is applicable to the majority of DHCD subsidized rental developments.
* Developers are in a key position to expand access to both affordable and market rate housing in Massachusetts, particularly to the extent they diversify their development portfolio, i.e., to incorporate non-townhouse multi-family housing and the features of Visitability and Universal Design with a variety of bedroom options, so that persons with mobility, sensory, and/or cognitive impairments, elders, families with children, and all others who can benefit from such features have an equal opportunity to enjoy the housing and the community. Cities and towns are also important gatekeepers of accessibility expansion in Massachusetts. To the extent they do not zone for, or the extent they provide permits with conditions that limit multi-family rental housing that would be accessible, accessibility expansion will continue to be impeded. Consequently, local action that permits or promotes the creation of accessible and Universal Design housing may positively factor into discretionary funding criteria.

· Increase Supportive Housing

* DHCD along with 17 other state agencies has entered into a memorandum of understanding to create 1,000 units of permanent, supportive housing for persons with disabilities and other populations with service needs in collaboration with non-profit organizations in accordance with “An Act Relative to Community Housing and Services.” The various types of supportive housing that are being funded will help reduce the numerous barriers to accessing and retaining permanent housing that persons with disabilities and persons who are institutionalized or at-risk of institutionalization, or persons who are homeless, face. The agencies will assess the results and recommend strategic reinvestments. DHCD will be utilizing an award from HUD and working with its partners to further the state’s effort to increase supportive housing units and help hundreds of residents with disabilities avoid homelessness or unnecessary institutionalization. Additionally, DHCD has been targeting new MRVP mobile vouchers, based on funding from the legislature, to homeless families with disabilities.

See part V below and Appendix B for further discussion of action steps, as well as Appendix C for a listing of indicators that may be used for measuring progress.

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[1]Article CVI (“All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness”).

[2] Kirwan Institute for the Study of Race and Ethnicity, Ohio State University, “The Geography of Opportunity: Building Communities of Opportunity in Massachusetts” (January 2009) (based on 2000 U.S. Census data) http://kirwaninstitute.osu.edu/docs/publications/finalreport\_maoppcomm\_kirwan\_jan2009.pdf .

[3] Id., pg.7.

[4] Id., pg. 12.

[5] McArdle, Nancy, “State-Assisted Housing and Rental Assistance in Massachusetts: Who is Served and Where?,” prepared for Action for Regional Equity (May 2010).

[6] Id.

[7] William H. Frey, "The New Metro Minority Map: Regional Shifts in Hispanics, Asians and Blacks from Census 2010," Brookings Institution Report (August 2011). Note also that patterns of race and ethnic segregation in the Springfield area are discussed in the City of Springfield’s draft AI (City of Springfield, Massachusetts, Analysis of Impediments to Fair Housing Choice, Draft Report for Public Review, May 28, 2013), which cites its regional housing plan’s identification of “zoning as one of our region’s primary impediments to fair housing choice.”

[8] To meet the racial/ethnic concentration threshold a census tract must have a non-White population of 50 percent or more (i.e., non-Hispanic Whites must be in the minority). To meet the poverty threshold the tract must have the lower of 40 percent or more of the population living at or below the poverty line or a poverty rate that is three times the average tract rate, weighted by population, for the metro area/region.

[9] See part V, section 3.

[10] DHCD will also encourage application of this policy to rehabilitation projects, although conditions relative to the site, topology, and building structure and size will be considered.