

# 760 CMR 15

## 760 CMR 15.00:

### **Pilot Program to Enable Households in State-Aided Public Housing to Transition to Unsubsidized Private Housing Options**

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#### **15.01: Effective Date**

(1) 760 CMR 15.00 is effective on February 12, 1999 and will remain in effect until June 30, 1999 and thereafter will remain in effect so long as the program provided herein is authorized.

#### **15.02: Applicability**

(1) 760 CMR 15.00 applies to certain households residing in state aided family housing, also known as c.200 housing and c.705 housing, at certain local housing authorities (LHAs) selected by the Department.

#### **15.03: Definitions**

Definitions set out in 760 CMR 4.00, 5.00, and 6.00 shall apply in 760 CMR 15.00. The following definitions shall also apply:

Dependent - An unemancipated minor member of a participating household.

Escrow account - An interest-bearing account into which a portion of a participant household's monthly rental payments to an LHA are deposited by the LHA to be used at a future time for the purpose of paying expenses involved in the household's transitioning from public housing to unsubsidized private housing. Each escrow account shall be invested in investments which are appropriate for a housing authority to make and hold and which maximize interest earned. The escrow account may be a bank account.

Escrow amount - The amount determined as properly held in escrow for any calendar year pursuant to 760 CMR 15.06(8).

Participating household - A qualified tenant household in a state-aided family housing development at a participating LHA which upon application is selected by the participating LHA to enter the pilot program, and which executes a participation agreement.

Participating household member - A member of a participating household who is not a dependent; who earns income from which amounts are withheld on account of income tax, social security tax, Medicare tax, or a retirement plan which is an alternative to social security; and who participates in the program.

Participating LHA - An LHA which owns and manages state-aided family housing and which the Department upon application chooses to participate in the pilot program created by this regulation.

Participation agreement - A written agreement between a participating LHA and a tenant on behalf of a participating household which will set out the participating household's goals and the terms governing the escrow account. The agreement shall set out the minimum and maximum (up to \$10,000) amounts which the household deems necessary for transition costs. The participation agreement shall incorporate the provisions of this regulation and shall also contain the following provisions:

(1) If the participating household vacates state-aided public housing, or becomes ineligible for state-aided public housing because of income in excess of the permissible maximum, in order to have transition costs paid, the participating household shall transition to unsubsidized private housing within six (6) months.

(2) The tenant shall reliably document all transition costs to the LHA prior to payment of such cost by the LHA or reimbursement of such cost by the LHA to the Tenant.

(3) Any funds in the escrow account not used or obligated by the participating household for transition costs within six (6) months of vacating or of becoming ineligible on account of income will be retained by the LHA.

(4) If some but not all participating household members of a participating household vacate and transition to unsubsidized private housing, the LHA shall pay a proportionate part of the escrow account for the qualifying

transition costs of such participating household members who vacate and shall hold for no longer than the term of the participation agreement the remainder on behalf of participating household members who remain.

Transition costs - reasonable and necessary costs incurred by a participating household associated with making the transition from public housing to unsubsidized private housing, whether rental or home-ownership. Such costs shall include all or part of a down payment on purchase of a dwelling (refundable to the LHA if the purchase is not made); partial payment for purchase of a dwelling; closing costs; first and last month's rent; security deposit; moving costs; and appliances necessary for occupancy. Any transition cost paid by an LHA shall be refundable to the LHA if the transition is not made.

Unsubsidized private housing - A housing unit which is privately owned and for the rental of which the owner receives no monetary payment from the state or federal government and which the LHA determines is reasonably likely to be affordable by the participating household.

#### **15.04: Qualification of Participating Households**

- (1) A household seeking to participate in this pilot program shall submit an application.
- (2) The LHA shall determine a household to be qualified for participation if it satisfies the following criteria:
  - (a) The household is current in payment of rent, charges and fees owed to the LHA;
  - (b) No household member has committed any material violations of the lease for at least two (2) years. Eviction proceedings are not pending, and tenant is not subject to the terms of an agreement for judgment in a prior eviction proceeding; and
  - (c) The household agrees to develop with the LHA a participation agreement which specifies realistic and reasonable goals for a transition to unsubsidized private housing and realistic and reasonable steps to be taken in achieving such goals.

#### **15.05: Program Administration**

In administration of the program each participating LHA shall do the following:

- (1) Notification of Program Availability. The LHA shall at the same time notify all tenants residing in family housing that the program is available. The notice shall describe the program requirements and shall state that program participation for qualified households is voluntary on a first come first served basis and that all households

meeting the participation criteria are encouraged to give written notice to the LHA that they wish to be considered for the program.

(2) **Waiting List.** The LHA shall create and maintain a waiting list of households in the order of the LHA's receipt of the written notices, the earliest being first.

(3) **Verification by Social Security Numbers.** The LHA shall obtain social security numbers of all members of participating households in order to verify household income and deductions with the Massachusetts Department of Revenue and other agencies with information on income or deductions.

(4) **Participation Agreement.** The LHA shall develop and execute a participation agreement with the tenant on behalf of the participating household. The participation agreement may be amended at the request of the participating household from time to time in order to reflect changed circumstances.

(5) **Escrow Accounts and Administration Fees.** The LHA shall establish and fund escrow accounts for participating households in the manner set out herein and shall retain an annual amount of no more than twenty percent (20%) of the interest and dividends earned on escrow accounts for the program's administrative costs.

(6) **Payment of Costs.** The LHA shall pay reliably documented transition costs directly on behalf of a participating household or shall reimburse the household for such costs which the household has paid, not to exceed the amount held in the participating household's escrow account. Such costs shall be paid or reimbursed within six (6) months of a participating household's vacating or becoming income-ineligible for public housing or may be paid or reimbursed thereafter if such costs have been obligated by the household within such time.

(7) **Verification of Escrow Account Balance When Payment Requested.** When a payment for costs is to be made from funds escrowed during the current or prior calendar year and the escrow amount has not yet been determined for such current or prior calendar year, the LHA shall require sufficient documentation from each participating household member so as to be able to reliably determine such escrow amount and shall adjust the amount of the escrow account upward or downward accordingly.

#### **15.06: Funding an Escrow Account**

##### **(1) Monthly Deposits by the LHA**

The monthly amount to be deposited by the LHA in the escrow account for a participating household paying for some or all utilities shall be 2.1% of the following total, and for a participating household paying for no utilities shall be 2.5% of the following total:

(a) An annual amount set out in the Department's currently published Schedule of Estimated Withholding Amounts for Calculating Monthly Deposits to Escrow Accounts for each participating household member on the basis of his or her weekly, biweekly or monthly earned income established at the most recent annual or interim rent redetermination.

(b) An annual amount of no more than two hundred fifty dollars (\$250) declared by each participating household member as anticipated payment for out-of-pocket clothing expenses required but not reimbursed by employers during the calendar year.

(c) An annual amount of no more than two hundred fifty dollars (\$250) declared by each participating household member as anticipated payment for other out-of-pocket work related expenses required but not reimbursed by employers during the calendar year.

## (2) Quarterly Payments by the Department

Within 15 days of the end of each quarter, the LHA shall report to the Department the amount deposited for the prior three months for each participating household. The Department shall, subject to appropriation, pay the LHA a sum equal to one half of this amount, and the LHA shall deposit this sum in the escrow account of the participating household.

## (3) Verification of Withholding and Unreimbursed Expenses for the Prior Calendar Year.

(a) Every year on or before February 15th, each participating household member shall provide to the LHA a copy of all Internal Revenue Service Forms W-2 (or equivalent IRS forms) for each participating household member showing wages or salary and amounts withheld on account of state and federal income taxes, social security taxes, and Medicare for the prior calendar year. If social security taxes are not withheld, each participating member may produce evidence of withholding during the prior calendar year for an alternative retirement plan and for Medicare taxes. Each participating household member may also produce:

(1) Receipts for up to \$250 paid by a participating household member for the purchase of clothing required but not reimbursed by an employer during the calendar year together with a copy of the employer's requirement for such unreimbursed purchases, and

(2) Receipts for up to \$250 paid by a participating household member for other workrelated expenses required but not reimbursed by the employer during the calendar year together with the employer's requirement for such unreimbursed payments.

(b) Verification of Income Earned in the Prior Calendar Year While Enrolled in the Pilot Program In the event a participating household member shall have been enrolled in the pilot program for less than all of the prior calendar year, on or before the following February 15th, the participating household member shall provide to the LHA documentation establishing the amount of wages and salary which he or she earned during the period he or she was enrolled in the program.

(4) Failure to Produce Verification for the Prior Calendar Year

If a participating household member, without good cause, shall fail to produce the documentation specified in 760 CMR 15.06(3) (a) and (b) by February 15th of any year, the household member shall not be included as a participating household member for the purpose of funding the escrow account for the prior calendar year.

(5) Failure to Claim Withholding Exemptions in the Prior Calendar Year

Following receipt of the documentation specified in 760 CMR 15.06(3) , the LHA shall determine whether each participating household member claimed the exemptions to which the household member was entitled for withholding tax purposes. If a household member failed to claim exemptions for withholding tax purposes and if as a consequence his or her income tax was withheld in excess of withholding that would reflect the actual number of income tax exemptions in the household, the amount deposited to fund the household's escrow account shall be adjusted to reflect such exemptions for the purposes of the pilot program.

(6) Allocation of Withholding When Enrollment In the Prior Calendar Year Is For Less Than A Full Year Following receipt of the documentation specified in 760 CMR 15.06(3), the LHA shall determine the percentage of the prior calendar year's wages and salary which each participating household member earned during the period in which he or she was enrolled in the program. This percentage shall determine how much of the annual total of state and federal income taxes, social security taxes or alternative retirement program contributions, and Medicare taxes was withheld for the participating household member during the enrolled period.

(7) Totaling Actual Withheld Amounts and Expenses for the Prior Calendar Year

(a) Following determination of amounts to be adjusted pursuant to 760 CMR 15.06(4), (5), and (6), the LHA shall determine the total so adjusted of state and federal income taxes, social security taxes, and Medicare taxes actually withheld from the salaries and wages of participating household members during periods in which they were enrolled in the pilot program during the prior calendar year.

(b) To this sum shall be added:

(1) where no social security tax was withheld, the amounts of withholding for a retirement plan alternative to social security, but not to exceed 8.2% of such salaries and wages earned during the enrolled period in the prior calendar year;

(2) the amount documented as spent by each participating household member during enrolled periods in the prior calendar year on clothing required but not reimbursed by employers, but not to exceed \$250 for each such household member; and

(3) the amount documented as spent by each participating household member during enrolled periods in the prior calendar year on other work-related expenses required but not reimbursed by employers, but not to exceed \$250 for each such household member.

(8) Determination of the Escrow Amount for the Prior Calendar Year

The LHA shall multiply the total determined in 760 CMR 15.06(7) by 25% if the participating household pays for some or all utilities or shall multiply this total by 30% if the participating household pays for no utilities. The amount so determined shall be the prior calendar year's escrow amount.

(9) Adjustment of the LHA's Deposits for the Prior Calendar Year

Following determination of the prior calendar year's escrow amount, the LHA shall adjust upward or downward the total amount deposited by LHA in the escrow account for the participating household during the prior calendar year according to 760 CMR 15.06(1). If the total amounts so deposited were less than the prior calendar year's escrow amount, the LHA shall deposit the difference into the escrow account from current rents collected. If the total amounts deposited were more than the prior calendar year's escrow amount, the excess shall be removed from the escrow account and added to the LHA's current shelter rent earned account.

(10) Adjustment of the Department's Payments for the Prior Calendar Year

Following determination of the prior calendar year's escrow amount for a participating household, the LHA shall determine whether the Department's payments for the prior calendar year are more or less than one half of the escrow amount. If they are more than half the escrow amount, the excess shall be removed from the escrow account

and paid back to the Department. If the Department's payments are less than half of the escrow amount, the Department shall pay the balance to the LHA for deposit into the escrow account for the participating household.

(11) Interest

The LHA shall deposit in or post to each escrow account the amount of interest and dividends earned by or attributable to that escrow account, less an amount not to exceed 20% of such interest and dividends to be retained by the LHA to offset the cost of administering the program, as follows:

(a) If an escrow account is held or accounted for in a manner that reasonably permits actual interest and dividends earned by that account to be determined, the actual interest and dividends, less allowable administrative costs, shall be deposited or posted to that account.

(b) If an escrow account is not held or accounted for in a manner that reasonably permits actual interest and dividends earned by that account to be determined, the LHA shall attribute and either deposit in or post to each escrow account a pro rata share of the total interest and dividends earned by all escrow accounts, less allowable administrative costs.

(12) No Escrow Account Shall Exceed \$10,000

(a) Partial Deposits and Payments

At no time shall an escrow account exceed \$10,000. If a deposit or payment called for by 760 CMR 15.06 (1) - (11) would cause an escrow account to exceed \$10,000, an LHA shall deposit into that escrow account only the amount that brings the escrow account's balance to \$10,000. For any year end or quarter when the deposit of amounts called for in 760 CMR 15.06(1) - (11) would cause an escrow account to exceed \$10,000, funds will be deposited into an escrow account in the following order: 1) funds deducted from the participating household's rent payment for the purpose of funding the escrow account, 2) interest, and 3) payments from the Department. For such a period, the LHA shall request from the Department and the Department shall pay only the portion of a payment called for under 760 CMR 15.06 (2) or (10) which would bring the escrow account's balance up to \$10,000. If no payment is requested from the Department, and amounts called for in 760 CMR 15.06(1) - (11) would nonetheless cause an escrow account to exceed \$10,000, the LHA shall deposit into the escrow account only the amount needed to bring the account's balance to \$10,000 and shall retain any excess funds.

(b) Discontinuation of Escrow Account Contributions

Once an escrow account has reached \$10,000, an LHA shall discontinue making contributions and deposits into escrow accounts.

### **15.07: Combined Accounts; Accounting**

- (1) For purposes of administrative efficiency, participating LHAs may maintain one or more combined escrow accounts in lieu of a separate account for each participating household.
- (2) Following determination of an escrow amount, the LHA shall account to each participating household as to the amount of the escrow account, the deposits during the calendar year, and the interest earned less administrative cost as herein provided.

### **15.08: Program Termination; Consequences of Program Participation**

- (1) The tenant in a participating household may voluntarily terminate participation in the program at any time by notifying the LHA in writing.
- (2) The participation of a household shall terminate in the event such participating household transitions to unsubsidized private housing and escrow funds are expended or obligated for transition costs no later than six (6) months following a household's vacating or becoming income-ineligible for public housing. Non-expended funds which have not been obligated or used for transition costs within such time shall be retained by the LHA as herein provided.
- (3) An LHA shall terminate a participating household's participation in the program in the event that the participating household vacates its public housing unit without transitioning to unsubsidized private housing within six (6) months.
- (4) Deposits in an escrow account and payments of transition costs shall not be made to or on behalf of a participating household which is the subject of eviction proceedings brought by the LHA unless and until the tenant in the participating household prevails in court in the eviction case. If the LHA prevails in court in the eviction case, the LHA shall terminate the household's participation in the program. If the case results in an agreement for judgment, the agreement shall specify whether participation is to be terminated.
- (5) When a participating household's participation in the program is terminated, all amounts in the escrow account for such participating household shall be retained by the LHA for use in its stateaided public housing program provided that the LHA shall refund the Department's contribution to the Department without interest.

(6) The Department may terminate this program in whole or in part at any time due to lack of funding or expiration of authorizing legislation.

(7) Household members who participate in this program shall not thereafter be entitled to any priority or preference for tenancy in public housing on account of program participation.

#### **15.09: Massachusetts Tax Consequences**

St. 1998 c. 194 §2 in line item 7004-9004 provides in part as follows with respect to Massachusetts taxes:

Rental payments held in escrow shall be treated as deductible rent for purposes of calculating Massachusetts personal income taxes pursuant to subparagraph (9) of paragraph (a) of part B of M.G.L. 62 §3; ... notwithstanding the provisions of any general or special laws to the contrary, the release of escrow payments to a household, including interest earned thereon and the value of the matching contribution, shall not create any tax liability for such a household ...

#### **15.10: Waiver Provision**

A participating LHA may submit to the Department for approval a request to administer the program in a manner other than described by the foregoing provisions. The LHA shall consult with the local tenant organization(s) representing family housing tenants prior to submitting any such request to the Department. The LHA shall specify in writing good cause for each request. The Department in its discretion may approve such a request if it determines that good cause exists for the administration of the program in the manner requested, and that it is reasonable under the circumstances and will be consistent with all applicable provisions in M.G.L. c. 121B and line item 7004-9004 of St. 1998 Chapter 194 §2 or other authorizing legislation.

REGULATORY AUTHORITY: St. 1998 Chapter 194 §2, line item 7004-9004