

**Low Income Housing Tax Credit Program**

**2022-2023 Qualified Allocation Plan**

Commonwealth of Massachusetts

Department of Housing and Community Development

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## **Section I. Executive Summary**

On behalf of the Commonwealth of Massachusetts, the Department of Housing and Community Development (DHCD) is the allocating agency for the federal and state low-income housing tax credits. As the allocating agency for the federal credits, the Department is responsible for preparing the Qualified Allocation Plan (QAP) that governs its tax credit allocation decisions each year.

In preparing each QAP, the Department both assesses the particular challenges and outcomes of the preceding year or two and makes its best efforts to assess the challenges that lie ahead. In preparing the 2022-2023 QAP, the Department spent considerable time assessing the ongoing challenges created by the 2020 global pandemic and its particular impact on affordable housing in the Commonwealth.

The year 2020 was dominated in so many ways by the challenges of the COVID-19 pandemic and its effects on the myriad aspects of American life. In 2021, the effects of the pandemic are still being felt, although in different ways. Despite widely available and highly effective vaccines, the negative effects of COVID on certain aspects of American life are still very real.

The need for more multifamily rental housing in Massachusetts was significant before the pandemic began. The pandemic exacerbated the need, especially for lower-wage earners who were deeply affected by the partial collapse of sectors of the economy and unable to pay rent without direct government assistance. Those most affected included individuals or households earning less than 50% of area median income; individuals or households earning less than 30% of area median income; homeless individuals or households attempting to find rental units; and unaccompanied adults with special challenges.

As massive federal assistance began to flow to states and their housing agencies by spring 2021, low-income renters received help. As 2021 comes to an end, assistance is still available, both to qualified tenants and, in certain cases, landlords who have not been paid by their tenants. Assistance will continue into the foreseeable future. Employment opportunities, including for lower-wage earners, have been steadily increasing. While sectors of the economy are still deeply affected by the pandemic -- including restaurants and the hospitality industry -- many low-wage earners are now finding employment.

However, there are still thousands of low-wage earners who are not fully employed and who continue to struggle to find housing and to manage other expenses. In Massachusetts, with a long-standing need for greater supply of affordable rental housing, thousands of low-wage earners still cannot find affordable apartments. At a higher income level, thousands of middle-class workers who would like to become homeowners cannot find units they can afford. During 2022 and 2023, DHCD will deploy its federal and state housing resources to produce as many new affordable units as possible, while preserving the existing affordable housing stock.

The pandemic was not the only critical issue confronting Americans during the past year. The vast and broadening impacts of global climate change and global warming now are receiving much greater attention throughout the country and throughout the world. As the Department finishes the draft 2022-2023 QAP, world leaders have just concluded the Glasgow climate summit, where they

tried to reach new agreements on how to reduce global warming in the coming years and over the next decades.

The need to respond to the challenges of climate change is an imperative in Massachusetts. During 2021, Governor Charles D. Baker issued two executive orders directly related to climate change and signed into law a Massachusetts climate change roadmap. Executive Orders 594 and 596 are attached to this document as appendices. As DHCD prepares to make substantial investments in affordable housing in 2022 and 2023, through LIHTC and subsidy funds, DHCD will continue its focus on the design and scope of projects whose sponsors seek valuable public funds. The Department's goal is to ensure that all Massachusetts sponsors incorporate significant aspects of green, sustainable, and climate resilient design into their projects. Working with colleagues at the state Department of Energy Resource (DOER) and with other interested parties, DHCD has revised key aspects of its design and scope requirements for proposed LIHTC projects. Under the 2022-2023 QAP, Massachusetts sponsors who submit pre-applications are expected to ensure that their projects are designed to be consistent with the goals expressed in Enterprise Green Communities standards. All design and scope changes are incorporated in several sections within the body of the 2022-2023 QAP.

In the next two years, the Department intends to deploy the power of the federal and state housing credits, as well as subsidy funds, to promote six overarching goals:

- Supporting the production of new affordable rental units in markets throughout the state, with ongoing emphasis on units that will serve populations particularly impacted by the pandemic.
- Supporting the production of new affordable rental units for homeless families and for unaccompanied homeless adults, as the Commonwealth seeks to deconcentrate the population living in homeless shelters and to increase the supply of housing with services.
- Investing in projects whose sponsors are responding to climate change by incorporating into their projects green, sustainable, and climate resilient designs, building materials, and construction methods.
- Promoting greater diversity within the affordable housing industry, to be measured both by deeper and more significant MWBE participation on specific projects and by greater diversity within the entities constituting the development teams.
- Providing stability in the investment environment for development teams who currently are coping with unfavorable construction costs, an unpredictable supply chain, and labor shortages exacerbated by the pandemic. The development teams are the delivery system for the increased production which the state so greatly needs.
- Reinforcing with all participants in the Commonwealth's LIHTC delivery system the critical importance of the original Congressional intent when the program was created in 1986. It is DHCD's belief that LIHTC units are intended to stand the test of time as affordable housing and to serve low- to moderate-income renters for generations to come.

While the six overarching goals are not the Department's only goals, they are central to DHCD's mission. Promoting these goals will affect DHCD's investment of LIHTC and subsidy funds over the next few years.

As noted, DHCD has made several key changes within this QAP. The changes to design and scope requirements are set forth in detail in several sections of this document. The changes to MWBE requirements also are described in several sections of this document and include an MWBE checklist that must be submitted to DHCD by every sponsor seeking LIHTC and/or subsidy funds. Despite making important and necessary changes for 2022-2023, the Department has made every effort to maintain consistency with prior policies and requirements. As previously indicated, it is DHCD's intent to provide maximum stability and predictability from year to year in the administration of the LIHTC program. The need for stability and predictability is even greater during these still uncertain times.

Despite the challenges during 2020 and 2021, DHCD was able to fund more than 6,100 total units in LIHTC projects. Of the 6,100+ units, more than 5,500 units will be affordable to individuals or households earning less than 60% of area median income (AMI). In addition, 1,470 units will be further restricted for extremely low-income individuals or household -- those earning less than 30% of AMI and often transitioning from homelessness. The total units funded during the two-year cycle are located in 91 projects and in every region of the state. The projects are mission-worthy in many respects. DHCD funded all types of housing, including new construction, adaptive re-use, preservation projects, affordable family housing, mixed-income housing, senior housing, and housing with services for special populations. Numerous projects are located near mass transit and feature important elements of green and sustainable design. Many projects will be service-enriched. Multiple projects will bring abandoned historic mill buildings back to life as affordable or mixed-income housing. Two projects represent the first conversion of COVID-impacted hotels to permanent supportive housing units for homeless individuals.

DJCD also wishes to note the launch of the highly-anticipated Massachusetts Housing Navigator. The Department commends the Kuehn Foundation for its exemplary leadership in working with the public and private sectors to design and implement a search engine capable of identifying Massachusetts affordable rental housing units by location, characteristics, and availability in real time. The 2021 launch of the Massachusetts Housing Navigator has been highly successful. Only one other state in the country has implemented a comparable search engine to provide such detailed and useful information on its affordable rental housing stock. Under the 2022-2023 QAP, sponsor/owners seeking LIHTC and/or subsidy funds from the Department must participate in Housing Navigator.

## **I. Other Areas of Emphasis During 2022-2023:**

Through the 2022-2023 QAP, DHCD intends to continue its emphasis on all the following matters related to the allocation process:

- The ongoing importance of managing project costs;
- The ongoing need to prioritize preservation projects in accordance with the interagency preservation matrix;

- The ongoing importance of producing more integrated housing opportunities for persons with disabilities;
- The ongoing need to continue promoting thoughtful and strategic efforts to affirmatively further fair housing in every community in the Commonwealth.

### **The Ongoing Need to Better Manage Project Costs:**

With limited tax credit and subsidy resources available, it is critical that all affordable housing be built as cost effectively as possible. The effort to manage and control costs is an ongoing process: it will continue during 2022 and 2023 and into the foreseeable future. While DHCD recognizes the cost challenges directly and indirectly related to COVID, the Department will require every developer to make every possible effort to manage costs.

### **The Ongoing Need Strictly Prioritize Preservation Projects:**

Sponsors of projects dependent on tax exempt bonds with 4% credits must carefully review the Department's priorities for these resources, which are in great demand. Sponsors of preservation projects also must carefully review and adhere to the preservation matrix and instructions contained in Section VIII of this document. (The matrix was revised under the 2018-2019 QAP; the revisions remain in effect in this document.)

### **The Ongoing Need to Produce More Mixed-Income Housing:**

While there is widespread acknowledgement of the housing needs of ELI households and the homeless, there is growing recognition of the housing burdens faced by many middle-income working households -- especially those who live in highly desirable areas such as metropolitan Boston. To help address this issue, DHCD is encouraging the production of mixed-income housing projects, as well as affordable housing projects, whether through the creation of new units or, in limited instances, through modification of the income mix in existing projects.

### **The Ongoing Need to Produce More Units Accessible to Persons with Disabilities:**

Working in recent years with the Executive Office of Health and Human Services (EOHHS), the Department has been involved in the Community First initiative and other efforts to increase housing opportunities and quality of life for persons with disabilities. In its work with EOHHS, its commissions, and various advocacy groups, DHCD has identified potential design approaches in new construction, adaptive re-use, and preservation projects that will increase opportunities for persons with disabilities. These approaches include the application of the principles of universal design and visitability. The Department will continue its work with the development community during 2022 and 2023 to implement these approaches. DHCD also encourages developers to include within their projects more units accessible to persons with disabilities than are required by various federal and state statutes, and to indicate in their applications that they would accept Section 811 project-based rental assistance for persons with disabilities. Certain additional assistance for interested sponsors also may be available from the Department's affiliated quasi-public, the Community Economic Development Assistance Corporation (CEDAC).

## **The Ongoing Need to Promote Thoughtful and Strategic Efforts to Affirmatively Further Fair Housing:**

The Department has consistently sought to affirmatively further fair housing by prioritizing the development of housing in communities with excellent public schools and access to employment and public transportation, while maintaining a commitment to investment in low-income neighborhoods. HUD's final rule, issued in 2015, reinforces the importance of affirmatively furthering fair housing through a balanced approach that creates meaningful housing choice across a broad range of communities while continuing to invest in place-based strategies within low-income neighborhoods. Consistent with the HUD rule and with Section 42(m)(1)(B) of the Internal Revenue Code, the Department will continue to implement a balanced approach to affirmatively furthering fair housing. But in evaluating projects in low-income communities, DHCD will prioritize proposals in which housing development is demonstrably part of a larger, concerted community revitalization plan to expand access to jobs, education, transportation, and other amenities to enhance residents' access to opportunity.

## **II. Ongoing Implementation of Priority Funding Categories and Pre-Application Process:**

The Department's priority funding categories and its pre-application process are important to its efforts to achieve the goals identified in this document. First implemented in 2013, the current priority funding categories and pre-application process are described as follows:

### **Priority categories for funding:**

Applications to DHCD for funding awards in 2022-2023 will be required to fit within one or more of the following five categories.

- 1) **Housing for extremely low-income individuals (ELI), families, and seniors** earning less than 30 percent of area median income with a particular focus on those who are homeless or at risk of homelessness. Projects in this category must be supported by tenant services and include at least 20 percent ELI units. Projects can serve families or individuals, seniors, persons with disabilities, and persons with special needs.
- 2) **Investment in distressed and at-risk neighborhoods** where strategic housing investment has a strong likelihood of catalyzing private investment, improving housing quality, promoting occupancy for a range of household incomes, and supporting a broader concerted plan for community revitalization through investment in jobs, transportation, and education. Projects in this category include projects located in the Commonwealth's 24 Gateway Cities and/or Qualified Census Tracts (QCTs, as defined by Section 42 of the Internal Revenue Code). Projects serving families, seniors, persons with disabilities, or populations with special needs are eligible in this category.
- 3) **Preservation of existing affordable housing** that extends affordability in situations that are consistent with QAP policies and the preservation working group policies. (Please refer to the preservation matrix included in this document in the

section beginning on page 25.) Projects serving families, seniors, persons with disabilities, or populations with special needs are eligible in this category.

- 4) **Family housing production in neighborhoods and communities** that provide access to opportunities, including, but not limited to, jobs, transportation, education, and public amenities. Access to opportunity locations will be defined by publicly-available data. At least 65% of the units in a project must include two or more bedrooms, and at least 10% must be three-bedroom units, unless that percentage of two-bedroom or three-bedroom units is infeasible or unsupported by public demand. Projects serving families, including families with a member with a disability or special needs, are eligible in this category.
- 5) **Family or senior housing production in communities in which the affordable housing stock, as defined by the state Subsidized Housing Inventory (SHI), is lower than 12%.** Sponsors who seek to build affordable senior housing in these communities should note that DHCD will evaluate each community's prior support for affordable family housing. This priority category first became available to sponsors in 2018.

### **Pre-Application process:**

The pre-application process, established in 2013, is described in detail in Section XII of this document.

The Department urges all LIHTC sponsors, as well as other interested parties, to carefully review the full QAP for 2022-2023. The Department wishes to express its gratitude to many members of the Massachusetts delivery system and to other agencies within state government for their thoughtful input and comments.

## **Section II. Federal and State Requirements of the Qualified Allocation Plan**

Each year, the state allocating agency for the federal Low Income Housing Tax Credit is required to publish a plan describing how it intends to award the credit. The requirement that states publish a plan was established in the Omnibus Reconciliation Act of 1989. The plan is called the Qualified Allocation Plan, or QAP.

In the Commonwealth of Massachusetts, the Department of Housing and Community Development, or DHCD, is the allocating agency for tax credits. The Department is responsible for preparing the annual allocation plan and making it available for review by interested members of the public before final publication.

Section 42 of the Internal Revenue Code is the federal statute governing the tax credit program. In accordance with Section 42(m), each state allocating agency must include the following in the annual allocation plan:

- Selection criteria for projects receiving tax credit allocations
- Preference for projects serving the lowest income tenants and for projects serving tenants for the longest period of time



- Preference for projects located in qualified census tracts, the development of which will contribute to a concerted community revitalization plan. (Qualified census tracts now are defined as tracts in which either 50% or more of the households have incomes less than 60% of the area median gross income or in which the poverty rate is 25% or greater.)

In addition, Section 42(m) states that the selection criteria must take into consideration the following project, community, or development team attributes:

- Location
- Need for affordable housing
- Project characteristics
- Sponsor capacity
- Tenants with special needs as a target population
- Public housing waiting lists
- Individuals with children as a target population
- Projects intended for tenant ownership

The 2022-2023 Qualified Allocation Plan prepared by the Department of Housing and Community Development conforms to all the plan requirements summarized in the paragraphs above. In preparing the QAP, the Department has paid particular attention to the first three project attributes (location, need, and project characteristics) in order to implement the Commonwealth's sustainable development principles; to support green, sustainable and climate resilient housing; and to address the critical need to produce new affordable rental housing in Massachusetts, including units with services for homeless individuals and families. The 2022-2023 Qualified Allocation Plan reflects the ten sustainable development principles that have been in effect in Massachusetts since 2007. The ten principles are listed below and on the following page. The Department will use the ten principles as part of the threshold evaluation for tax credit applications.

As of May 2007, the sustainable development principles are:

**1. Concentrate Development and Mix Uses**

Support the revitalization of city and town centers and neighborhoods by promoting development that is compact, conserves land, protects historic resources, and integrates uses. Encourage remediation and reuse of existing sites, structures, and infrastructure rather than new construction in undeveloped areas. Create pedestrian friendly districts and neighborhoods that mix commercial, civic, cultural, educational, and recreational activities with open spaces and homes.

**2. Advance Equity**

Promote equitable sharing of the benefits and burdens of development. Provide technical and strategic support for inclusive community planning and decision making to ensure social, economic, and environmental justice. Ensure that the interests of future generations are not compromised by today's decisions.

**3. Make Efficient Decisions**

Make regulatory and permitting processes for development clear, predictable, coordinated, and timely in accordance with smart growth and environmental stewardship.

**4. Protect Land and Ecosystems**

Protect and restore environmentally sensitive lands, natural resources, agricultural lands, critical habitats, wetlands and water resources, and cultural and historic landscapes. Increase the quantity, quality and accessibility section of open spaces and recreational opportunities.

**5. Use Natural Resources Wisely**

Construct and promote the developments, buildings, and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, and materials.

**6. Expand Housing Opportunities**

Support the construction and rehabilitation of homes to meet the needs of people of all abilities, income levels, and household types. Build homes near jobs, transit, and where services are available. Foster the development of housing, particularly multifamily and smaller single-family homes, in a way that is compatible with a community's character and vision and with providing new housing choices for people of all means.

**7. Provide Transportation Choice**

Maintain and expand transportation options that maximize mobility, reduce congestion, conserve fuel and improve air quality. Prioritize rail, bus, boat, rapid and surface transit, shared-vehicle and shared-ride services, bicycling, and walking. Invest strategically in existing and new passenger and freight transportation infrastructure that supports sound economic development consistent with smart growth objectives.

**8. Increase Job and Business Opportunities**

Attract businesses and jobs to locations near housing, infrastructure, and transportation options. Promote economic development in industry clusters. Expand access to education, training, and entrepreneurial opportunities. Support the growth of local businesses, including sustainable natural resource-based businesses, such as agriculture, forestry, clean energy technology, and fisheries.

**9. Promote Clean Energy**

Maximize energy efficiency and renewable energy opportunities. Support energy conservation strategies, local clean power generation, distributed generation technologies, and innovative industries. Reduce greenhouse gas emissions and consumption of fossil fuels.

**10. Plan Regionally**

Support the development and implementation of local and regional, state and interstate plans that have broad public support and are consistent with these principles. Foster development projects, land and water conservation, transportation and housing that have a regional or multi-community benefit. Consider the long-term costs and benefits to the Commonwealth.

The Department is committed to allocating tax credits to projects in suburban, exurban, and rural communities in order to provide increased opportunities for underserved populations in those

locations. This commitment is captured in part through DHCD’s priority funding categories relating to family housing production in “areas of opportunity” or in communities that have not achieved 12% affordability housing stock on the state’s Subsidized Housing Inventory (SHI). The Baker Polito Administration also is committed to working with municipal governments to address local zoning obstacles faced by project sponsors as they attempt to produce critically needed affordable rental units. The enactment of Housing Choice legislation in January 2021 is an example of the effort to reduce barriers to multifamily rental production in the Commonwealth.

Sponsors of tax credit projects are strongly encouraged to seek project sites that will accomplish both sustainable development and fair housing objectives. The Department will continue to work closely with members of the development community and other stakeholders to determine appropriate strategies for achieving these goals.

In preparing the 2022-2023 QAP, the Department considered various measures and indicators of affordable housing need in Massachusetts. The measures or indicators included the number of households on public housing waiting lists; average and median sales prices and rental rates, both statewide and in various regions; vacancy rates for rental housing; median household income, both statewide and in various regions; and number of households living below the federal poverty level. In preparing this QAP, the Department also considered the need for quality affordable housing in communities that have been seriously impacted by the COVID-19 pandemic.

During 2022-2023, the Department encourages developers to structure projects that emphasize the following characteristics:

- 1) projects that create new affordable housing units, in particular units suitable for families in locations with job growth potential and locations that constitute areas of opportunity
- 2) projects that actively promote principles of fair housing
- 3) projects that are consistent with the ten sustainable development principles
- 4) projects whose sponsors incorporate green, sustainable, and climate resilient elements into their design, including Passive House design
- 5) projects whose sponsors are deeply committed to MWBE participation and to diversity within their development teams
- 6) projects that are part of comprehensive neighborhood improvement plans or initiatives, including projects in the federal Choice Neighborhoods pipeline
- 7) projects that preserve valuable existing affordable units and meet DHCD’s preservation priorities
- 8) projects that include units for individuals or households with incomes below 30% of area median income, including homeless families and individuals
- 9) projects that include both affordable and workforce or market-rate units
- 10) projects that include more units than required that will be accessible to persons with disabilities and that place emphasis on visitability
- 11) projects with acceptable per-unit costs and projects with lower-than-average per-unit costs
- 12) projects located in communities or neighborhoods with expanding social and/or educational opportunities, expanding employment opportunities and/or significant revitalization and investment activity

- 13) projects located in communities that have less than 12% affordable housing stock as defined by the Commonwealth's Subsidized Housing Inventory (SHI).

In addition, the Department has established five priority categories for all projects submitted for consideration during 2022-2023. The five priority categories are identified in earlier sections of this document.

This allocation plan also sets forth the application process and scoring system for 2022-2023.

It is important to note that the priorities included in this plan to a large extent are priorities for the Department's other affordable housing programs as well. This is true for two reasons. First, tax credit projects often require other DHCD resources in order to proceed. Thus, the priorities established for the tax credit program have a direct impact on DHCD's other housing programs. For example, when DHCD, through the tax credit allocation plan, establishes recommended cost limits for tax credit projects, the cost limits clearly apply to other DHCD programs in support of the same project.

The second reason is that the tax credit program, through the annual allocation plan, undergoes greater and more frequent scrutiny than other state housing programs. Although other housing programs have guidelines and regulations that are modified from time to time, the annual tax credit allocation plan is the public document in which the Department most clearly and most frequently attempts to state its priorities for state-assisted affordable housing projects.

Section 42 requires allocating agencies to make an allocation plan available for public review and comment before publishing a final plan. During 2021, DHCD contacted developers, consultants, architects, municipal officials, housing advocates, environmental advocates, and other state and quasi-public agencies to seek comments on the 2022-2023 QAP. DHCD has incorporated many of their comments into this document, including comments on the effects of COVID-19, the status of the equity markets, cost management, emerging approaches to greener and more sustainable design, ways to achieve deeper affordability within projects, and other matters. In accordance with Section 42 code requirements, the Department presented the draft allocation plan for public review and comment at a public hearing held on December 23, 2021. The Department wishes to publicly acknowledge the Massachusetts development community for its thoughtful contributions during the QAP discussions, as well as for its outstanding work in the production and preservation of affordable housing.

### **Section III. Federal Credit Available in 2022-2023**

#### **9% Credit**

As of the effective date of the 2022-2023 QAP, the Department of Housing and Community Development anticipates having provided reservation letters allocating all but approximately

\$1,000,000 of the total available 2022 credit of approximately \$18,000,000. Under this QAP, the Department will continue allocating 2023 annual per capita credit. The total amount of 9% tax credits available for allocation in 2022 and 2023 is subject to change. Additional credit may become available if projects that received allocations in prior years return tax credits to DHCD or if Congressional action increases the per-capita annual authority. Please note that DHCD will

revise this section of the 2022-2023 QAP at the end of 2022, to reflect the credit anticipated to be available in 2023 and 2024.

DHCD will continue its efforts to encourage developers to strongly consider tax-exempt bond financing and 4% credits, rather than 9% credits, to finance their projects. The value of the 4% credit has increased significantly due to recent federal action. On a case-by-case basis, DHCD reserves the right to ask developers seeking 9% credits to prepare alternative 4% scenarios for evaluation by the Department. Developers of preservation projects are required to submit 4% credit applications, not 9% credit applications, as discussed in other sections of this document.

#### **4% Credit**

Prior to 2007, DHCD delegated the authority to allocate the federal 4% credit to two Massachusetts quasi-public housing agencies – MassHousing and MassDevelopment. Both agencies have the authority to issue tax-exempt bonds subject to the Commonwealth’s private activity bond volume cap. As of October 31, 2007, DHCD opted not to delegate such authority and therefore is the sole agency that determines eligibility and allocates federal 4% credit to projects. Both MassHousing and MassDevelopment retain the authority to issue tax-exempt bonds to multifamily rental projects. In 2022-2023, DHCD will continue working closely with both agencies to coordinate the allocation of the 4% credit with the allocation of volume cap for tax-exempt bond financing.

Working with MassHousing, MassDevelopment, and its other quasi-public affiliates, DHCD over time has made changes to the 4% allocation process to ensure that the projects most in need of assistance and most ready to proceed will receive priority in securing allocations. Developers who hope to secure 4% credits and tax-exempt financing should refer to Sections VII and VIII of this document for additional information and also should contact DHCD’s tax credit staff early in the development process. DHCD will require each developer seeking 4% credit to submit two items:

- a pre-application
- the preservation checklist (see Section VIII)

Based on these submissions, DHCD and its quasis will determine whether the project is eligible to pursue tax-exempt financing and/or 4% credits. Developers may submit OneStop+ applications with 4% credit requests to DHCD on a rolling basis, rather than waiting for a DHCD rental funding competition, if 4% credit is the only DHCD source being sought. However, the only determination DHCD will make on a rolling basis is whether the project is eligible for 4% credit. Developers who also are seeking DHCD subsidy financing and/or state LIHTC must submit a full funding application during a regularly-scheduled rental funding competition.

#### **Section IV. Impact of Federal Legislation Enacted in Recent Years**

The purpose of this section of the 2022-2023 QAP is to maintain a historical record of Congressional actions that have affected the LIHTC over time. This section does not address legislation pending in Congress late in 2021.

Federal legislation enacted late in December 2020 affected the LIHTC by establishing a “4% floor” for tax-exempt bond projects using 4% credit. The new “floor” has generated millions of dollars in additional equity for 4% projects during 2021.

Federal legislation enacted in 2018 directly affected the credit by establishing the “average income” election. Up until 2018, under federal statute, sponsors had to elect one of two tests to determine whether their project constituted a qualified low-income housing project: The two tests were/are as follows:

- Within a LIHTC project, 20% of the total units must be restricted for individuals or households earning less than 50% of AMI,
- or
- Within a LIHTC project, 40% of the total units must be restricted for individuals or households earning less than 60% of AMI.

Sponsors of tax credit projects may continue to select one of the two options described above. However, the legislation creates a third option: the so-called average income test. Under the average income test, all units designated as tax credit units must be restricted for individuals or households in income tiers that, in the aggregate, have an average income limit of less than 60% of AMI. (As with the 20/50 test and 40/60 test, the average income test is based on the income limit applicable to a unit, not the actual household income.) Further, the federal legislation limits the permitted rent restriction tiers on all units to the following percentages of AMI:

- 20%
- 30%
- 40%
- 50%
- 60%
- 70%
- 80%

Under the 2018 legislation, state allocating agencies have the option to decide whether or not to implement the average income test and are permitted to impose additional restrictions or limitations beyond those in the federal statute. Most state allocating agencies appear to be allowing this election, but with various restrictions placed on implementation. For example, a number of states, including Massachusetts, are allowing the average income election only for 4% credit projects. In addition, a number of states, including Massachusetts, are limiting the income bands that sponsors may include in their projects. DHCD permits projects to have up to four tiers, with income restrictions at 30%, 50%, 60%, and 80% of AMI.

The U.S. Department of the Treasury issued a notice of proposed rulemaking in October 2020 setting forth proposed guidance on the average income test on topics including the initial designation of units, a modified “next available unit” rule, and “mitigation” measures that a taxpayer can take if one of the designated units ceases qualifying as a low-income unit. As of November 2021, Treasury had not yet issued final regulations. In the absence of Treasury regulations implementing the 2018 legislation, there remains considerable uncertainty regarding the interpretation of the statutory language.

To date, in Massachusetts, relatively few sponsors have chosen the average income election. The election clearly can benefit tenants in preservation projects whose incomes are greater than 60% of

AMI, but less than 80% of AMI. Sponsors of projects with a large number of current tenants whose incomes fall between 60% and 80% of AMI also may benefit from the ability to count those tenants' units as LIHTC units. However, the average income election brings added complexity to LIHTC projects, both in initial structuring and in management/compliance following placement in service. Projects with market rate units present particular challenges with respect to the next available unit rule, as additional requirements apply to properties electing the average income test. In addition, sponsors should note that projects receiving tax-exempt bond financing must also satisfy either the 20/50 test or the 40/60 test, as Section 142 of the Internal Revenue Code (governing tax-exempt bonds) has not yet been amended to incorporate the average income test.

The Department from time to time will reevaluate the efficiency of the still new average income election. Sponsors considering use of this election should be mindful that, in accordance with Section 42(g) of the Internal Revenue Code, the election of the test to be applied in determining whether a project is a qualifying low-income housing project is irrevocable. The sponsor/owner of a LIHTC project cannot change an election after issuance of Form 8609 for the project.

Prior to 2018, the most significant federal legislation affecting the LIHTC was the American Recovery and Reinvestment Act (ARRA) of 2009. Signed into law by President Barack Obama on February 17, 2009, the ARRA statute contained two critically important relief measures for stalled tax credit projects. ARRA created both the Tax Credit Assistance Program (TCAP), administered by the U.S. Department of HUD, and the Tax Credit Exchange Program (Section 1602), administered by the U.S. Department of the Treasury. In total, the two new programs provided more than \$170 million in funds to stalled credit projects in Massachusetts. The rapid and simultaneous implementation of two new programs in a short time period -- less than four months -- presented the Department with significant challenges. But DHCD was able to make the first TCAP awards in August 2009, and, two months later, the Department issued the first awards to Tax Credit Exchange projects. As of January 2011, all of the 32 TCAP or TC-X projects were either in construction or completed. As of January 2012, all 32 TCAP or TC-X projects were complete. During 2022-2023, DHCD will continue working with its asset management contractors to regularly evaluate the status of the TCAP and TC-X projects, now occupied for seven or eight years and performing successfully.

Prior to the enactment of ARRA, Congress in 2008 enacted HERA -- the Housing and Economic Recovery Act. That important legislation also contained provisions favorable to the tax credit program. DHCD incorporated certain changes allowed by HERA into the 2009 Qualified Allocation Plan, including changes to the calculation of the 9% credit and to the Department's annual allocation authority. As permitted by HERA, the Department from 2009 through 2017 added 61 cities and towns to the list of "difficult to develop areas" ("DDAs") in Massachusetts. Per the HERA legislation, these DDA designations do not apply to 4% credit projects financed with tax-exempt bonds. The cities and towns designated by DHCD are listed as follows:

- |                 |                |                     |                  |
|-----------------|----------------|---------------------|------------------|
| 1. Andover      | 17. Fall River | 33. Methuen         | 49. Springfield  |
| 2. Arlington    | 18. Fitchburg  | 34. New Bedford     | 50. Stow         |
| 3. Ashland      | 19. Gardner    | 35. North Adams     | 51. Taunton      |
| 4. Attleboro    | 20. Gloucester | 36. North Attleboro | 52. Tyngsboro    |
| 5. Beverly      | 21. Greenfield | 37. Northampton     | 53. Uxbridge     |
| 6. Boston       | 22. Hanover    | 38. Northbridge     | 54. Wareham      |
| 7. Brookline    | 23. Haverhill  | 39. Orange          | 55. Webster      |
| 8. Cambridge    | 24. Holyoke    | 40. Paxton          | 56. Westfield    |
| 9. Chelmsford   | 25. Lawrence   | 41. Pittsfield      | 57. Westford     |
| 10. Chelsea     | 26. Leominster | 42. Provincetown    | 58. Westport     |
| 11. Chicopee    | 27. Littleton  | 43. Quincy          | 59. Weymouth     |
| 12. Danvers     | 28. Lowell     | 44. Revere          | 60. Williamstown |
| 13. Dartmouth   | 29. Ludlow     | 45. Rockland        | 61. Worcester    |
| 14. Duxbury     | 30. Lunenburg  | 46. Salem           |                  |
| 15. Easthampton | 31. Lynn       | 47. Somerville      |                  |
| 16. Easton      | 32. Medfield   | 48. Spencer         |                  |

In 2022-2023, DHCD will continue the DDA designations of the Barnstable County communities and the communities located in the Brockton, MA, HMFA, made in the 2011 QAP.

The Department will determine the extent of the basis boost (up to 130%) for a project or a building within a project in the communities listed above, based on a given project's financial feasibility. The Department's decision to permit a basis boost will not necessarily apply to other projects or buildings in the same community if the basis boost is not needed for financial feasibility. The per-unit eligible basis caps and the per-project tax credit allocation limits are described in Section IX of this QAP and will still apply. The sponsor of a credit project located in a community not currently designated as a DDA may contact the Department if he or she believes the community should be included on the designation list. The Department will require the sponsor to submit substantial documentation before it will evaluate such requests.

It is also important to note that legislation enacted by Congress in 2000 and subsequent years provided changes to the amount of the Commonwealth's per capita allocation of credit, beginning with legislation passed in December 2000 that provided \$1.75 in per capita allocation authority to each state, subject to regular cost-of-living increases. As of January 2019, pursuant to Congressional authorization, the per capita allocation authority was raised again. However, for calendar years 2022-2023, state allocating agencies will use \$2.60 as the multiplier to calculate their per capita authority. As of November 2021, the new multiplier was released by the IRS in Revenue Procedure 2021-45.

In addition to providing a per capita increase, the December 2000 legislation required all states to incorporate certain changes in their annual Qualified Allocation Plans. Based on an advisory memo to all state allocating agencies from the National Council of State Housing Agencies (NCSHA), DHCD incorporated the following program changes in the 2002 QAP. These changes remain in effect in the 2022-2023 QAP:

- In accordance with the December 2000 law, the 2022-2023 QAP must give preference to projects located in qualified census tracts, the development of which



contributes to a concerted community revitalization plan. (Please note that the Commonwealth of Massachusetts QAPs historically have given preference to such projects.)

- In accordance with the law, the 2022-2023 QAP requires every tax credit applicant to submit a market study of the housing needs of low-income individuals in the area to be served. A non-related party approved by DHCD must conduct the study at the developer's expense.
- In accordance with the law, DHCD will continue its practice of conducting regular site inspections to monitor compliance. (Please note that DHCD inspects projects at least once every three years.)
- In accordance with the law, DHCD will make available to the general public a written explanation of any allocation not made "in accordance with the established priorities and selection criteria of the agency."
- In accordance with the law, DHCD will permit sponsors of tax credit projects that receive allocations "in the second half of the calendar year" to qualify under the ten percent test within six months of receiving the reservations, regardless of whether the 10% test is met "by the end of the calendar year". (Please note that developers who receive reservations during the first half of a calendar year must meet their ten percent deadline by the end of the calendar year, or by an earlier deadline established by DHCD.) In addition, and in accordance with NCSHA's recommended industry practices, DHCD will require that developers provide a certified accountant's opinion relative to the ten percent test. The accountant's opinion must be in the format established by National Council of State Housing Agencies.

## **Section V. The Massachusetts State Housing Tax Credit**

Operational in 2001, the state housing tax credit has become a highly useful source for Massachusetts affordable housing projects. The annual allocation authority available to DHCD has fluctuated over time. In the first few years following enactment of the state credit, DHCD received annual allocating authority of \$10 million. Later legislative action increased DHCD's allocation authority for state housing credits from \$10 million to \$20 million. Initially, this increase was to have been effective only during 2013 and 2014. However, a major housing bond bill enacted in November 2013 extended the \$20 million state credit allocation authority through 2019. In May 2019, another comprehensive housing bond bill raised DHCD's annual allocation authority to \$25 million, with \$5 million reserved for preservation projects. In January 2021, an economic development bond bill created significant expansion credit authority for a five-year period. DHCD welcomes the expansion authority and is deploying it in part to support the conversion of existing and available projects to suitable housing for homeless individuals and families.

Because of the steady and increasing demand for the state housing credit, DHCD has established limits on per-unit and per-project state LIHTC requests. While the Department may entertain some exceptions, sponsors should limit their state credit requests as follows:

- \$ 400,000 for projects with 40 or fewer units
- \$ 700,000 for projects with 41 to 60 units
- \$1,000,000 for projects with 61 to 100 units
- \$1,500,000 for projects greater than 100 units

Please note that DHCD typically will make exceptions to the limits listed above only if projects are very large-scale or have unusually compelling characteristics. In addition, during 2022 and 2023 competitions, DHCD reserves the right to limit each sponsor to no more than one state credit award.

During 2022-2023, the selection process for state credit projects fundamentally will be the same as the selection process for federal 9% credit projects. The sponsors of multifamily rental projects may request an allocation of state credit in combination with federal credit. It is important to note that state credit typically will be allocated in lieu of a portion of federal credit which the project might otherwise receive.

In advance of the 2022 and 2023 funding rounds, sponsors of projects seeking state credit should contact the Department to discuss the raises they hope to achieve from the sale of the credits. At present, DHCD will not accept raises of less than 75 cents per state credit dollar.

Sponsors should note that an eligible investor may claim each dollar of state credit allocated for a five-year period. In accordance with the process set forth in Section XII of this document, DHCD may elect to issue binding forward commitments during 2022-2023.

Interested sponsors should note that legislative changes in 2016 created a “donation tax credit” within the state LIHTC. The Department has published donation credit regulations effective as of 2017. However, there is no additional state LIHTC authority available exclusively for donation credit projects. Sponsors must follow the normal competitive process for state LIHTC.

## **Section VI. Evaluation of the Need for Affordable Housing in Massachusetts**

Each year, in deciding how to allocate the housing credit, the Department of Housing and Community Development must consider the need for affordable rental units throughout Massachusetts. The effort to evaluate need is complicated by the fact that there is no single Massachusetts housing market. Rather, there are hundreds of local housing markets, and they differ significantly from each other. The median home sales prices in the most affluent western suburbs of Boston exceed \$1,000,000, yet homebuyers in the more rural areas of the state can still find units priced below \$200,000. In addition, the effects of the COVID pandemic continue to impact some communities far more than others.

As the severity of the pandemic wanes, the city of Boston again is experiencing unprecedented pressure on the multifamily rental market. Boston rents recently have soared, and available units are hard to find at almost all income levels. The shortage of units for ELI individuals and households is of exceptional concern.

Because of the disparate characteristics of various local housing markets, the best measures of affordable housing need in one market may not be the best measures in another. For example,

some communities have relatively few residents with household incomes below 50% of area median income, but the average sales prices for homes in these communities may be above \$1,000,000. There may be virtually no rental units available to serve local housing needs, including the needs of elders, people with disabilities, and local workers. So, while one indicator of need -- the number of poverty households -- may be low, another indicator -- average or median sales prices -- may be extremely high.

While the indicators or measures of need in given market areas are too numerous to list in full, the most basic measures of need include many or all of the following:

- impacts of the COVID-19 pandemic
- low median household income
- high percentage of low-income households
- high percentage of households at ELI poverty level
- high percentage of homeless individuals or families in shelter
- high percentage of persons with disabilities who are unable to find suitable rental housing
- high percentage of renters in proportion to homeowners
- high percentage of households receiving public assistance
- lack of affordable housing stock suitable to meet the needs of frail elders
- generally poor condition of the housing stock
- high rate of unemployment
- high rental rates in and near the market area
- high condominium and single-family sales prices in and near the market area
- low vacancy rates
- long public housing waiting lists

For purposes of identifying need in prior allocation plans, the Department has used the comprehensive data and analysis prepared by its policy staff as part of the consolidated plan submission to HUD.

It is abundantly clear that there is ongoing and substantial need for affordable housing in all regions of the state. As new tax credit projects came online in certain Massachusetts markets in 2020-2021, the number of tenant applications exceeded the number of available units by a ratio of 40:1. Rental vacancy rates in some metropolitan communities are below 2%. With the effects of the pandemic easing, new data indicates that markets such as metropolitan Boston now are experiencing very tight vacancy rates.

After evaluating the available information, the Department has drawn the following basic conclusions regarding need:

- In most Massachusetts communities, there is a shortage of affordable rental units in good condition.
- In many Massachusetts communities, the need for family rental housing is still greater than the need for other types of affordable rental housing.
- Homelessness remains an issue in Massachusetts communities.

- The need for additional housing with services for extremely low-income and homeless individuals remains significant.
- There is an ongoing need for affordable accessible housing throughout the state.
- The development boom and steady population growth in metropolitan Boston has placed enormous stress on both the rental and homeownership markets within the city and surrounding communities;
- In certain areas with low rental rates and sales prices, the housing stock is so deteriorated that it must either be substantially rehabilitated or demolished and replaced by new units.
- In other areas, the affordable housing stock includes affordable rental projects faced with expiring use restrictions. In some areas, these units will be lost as affordable housing unless there is intervention.
- The rebounding housing markets in certain parts of the state also have caused significant issues for middle-income households seeking to rent.
- The COVID-19 epidemic has increased the need for affordable housing in many neighborhoods and communities.

The Department's determination of need is reflected in the set-aside categories established for 2022-2023 and described in detail in Section VII of this allocation plan. DHCD's determination of need also is reflected in the scoring system established for 2022-2023 applications and described in Section XI of this plan.

## **Section VII. Set-Aside Categories for 2022-2023**

After careful consideration, the Department will retain two set-asides for purposes of allocating the credit during 2022-2023: a set-aside for production projects and a set-aside for preservation projects. The set-aside categories apply to both the 9% and the 4% credit. As noted earlier, DHCD expects developers of preservation projects to seek the 4% credit rather than the 9% credit.

The percentages of available credit established for each set-aside in 2022-2023 are goals rather than absolute minimums or maximums. In evaluating all projects and determining the most effective use of the available credit, DHCD, in its sole discretion, may choose to modify the percentages established as goals for each set-aside.

The two set-aside categories for 2022-2023 are described in brief below.

### **1) Production set-aside -- 70% of the available credit**

The need and demand for affordable rental units is directly linked to the relative shortage of supply. Through this set-aside, the Department intends to allocate the competitive 9% credit to support the production or creation of new affordable rental units. However, developers also may structure production projects using the 4% credit. All applications for new construction projects will be evaluated in the production category. In addition, applications for rehabilitation will be evaluated in this category if:

- a) The units have been vacant for two or more years; or
- b) The units have been condemned or made uninhabitable through fire damage; or

- c) The project previously was non-residential in use.

Seventy percent of the credit available for allocation in 2022-2023 is intended to support production. The minimum project size will be twelve units.

## **2) Preservation Set-Aside -- 30% of the available credit**

Thousands of affordable housing units currently exist in privately owned Massachusetts properties. Developers often are able to gain control of these properties and submit them to DHCD for LIHTC consideration. To encourage preservation applications, the Department historically has included a preservation set-aside in its annual Qualified Allocation Plan. Consistent with past practice and with its ongoing commitment to preservation, DHCD is including a preservation set-aside in the 2022-2023 QAP and is requiring sponsors of preservation projects to structure their applications as tax-exempt bond transactions using 4% credits. Working with MassHousing or MassDevelopment, sponsors of preservation projects should be able to structure a tax-exempt bond/4% application in lieu of a 9% application. All sponsors of preservation projects should anticipate that only the 4% credit will be made available for their applications.

However, the fact that the bond and equity markets are relatively healthy has increased the pressure on the 4% credit. In consultation with its quasi-public affiliates, DHCD made certain changes relative to preservation projects in the 2018-2019 QAP. The changes remain in effect in the 2022-2023 QAP. Sponsors should review the preservation section of this QAP with care and should contact DHCD with any questions. In any 2022-2023 competition, preservation projects seeking 4% credit and DHCD subsidy will be considered under this set-aside only if the projects qualify under at least one of the subsections described below and in the section of the QAP entitled "The Massachusetts Preservation Matrix".

In brief, sponsors should evaluate proposed preservation projects in accordance with the subsections below:

- a) *The housing is at risk of loss due to market conversion.* Typically, projects qualifying under this subsection will be existing affordable housing projects whose owners are able either to opt out of the Section 8 subsidy contract or prepay the existing mortgage financed through HUD, MassHousing, or Rural Development. In addition, some projects are reaching the end of their 30- or 40-year government-financed mortgages, or government use restrictions. If these projects are converted to market, the units will continue to exist, but will be lost from the Commonwealth's inventory of affordable housing. In some cases, this will result in the displacement of existing residents through steep rent increases. Many of these projects fill a critical need for their residents and community, given the lack of other affordable housing in rapidly gentrifying communities. The replacement costs would far outweigh the cost to the state of preserving the existing stock. In general, projects will not be considered for funding under this set-aside unless they can be converted to market within 36 months. Rare exceptions may be made for particularly valuable projects in the strongest market areas.
- b) The housing is at risk of loss due to physical condition or financial distress. A project in poor physical condition may be at risk of condemnation or other governmental action to close the property. A property in financial distress has

experienced serious cash flow problems that will likely lead to foreclosure. DHCD will evaluate an application to preserve a project in poor physical condition based on a capital needs assessment included in the OneStop+ submission. The assessment must describe how all the major capital needs of the project will be addressed. Applications to assist projects in financial difficulty must demonstrate that the financing, property management, and asset management plans will be sufficient to ensure the project's ongoing financial stability. In general, projects will not qualify for funding under this set-aside unless the capital needs assessment indicates a minimum rehabilitation expenditure of \$30,000 per housing unit. However, sponsors should note that all DHCD resources are in high demand, and that DHCD may cap the resources available to support a given preservation project.

- c) The application represents a time-limited opportunity to purchase existing affordable housing. In some cases, a preservation sponsor may have the opportunity to purchase a property due to a seller's need or desire to sell at a particular time. A purchase under Chapter 40T would also qualify under this subsection. While they may represent desirable transactions, projects qualifying as preservation projects under this subsection generally will rank lower than projects qualifying pursuant to subsections a and b above.

The Department intends to award its most valuable resources, including the 4% credit, to the projects that are at greatest risk of loss, or that represent an extraordinary opportunity to purchase and preserve a valuable property. In addition to the threshold criteria in Section X, and the competitive scoring criteria in Section XI, the Department will take into account the "Priority Matrix for Preservation Properties", included in Section VIII. The matrix was revised within the 2018-2019 QAP. The revisions remain in effect for 2022-2023.

Within the preservation set-aside, the minimum project size will be twelve units, although the Department expects that most or all applications in this category will represent fairly large-scale projects. There is no maximum project size in this category, although the availability of resources may well restrict project size. Limits on cost, basis, and allocation amounts are described in a later section of this allocation plan. DHCD subsidy limits are described in the section of this plan entitled "The Competitive Scoring System".

Sponsors seeking DHCD allocations within the preservation set-aside should note that preservation projects, like production projects, must meet all eligibility and scoring criteria set forth in this QAP. Preservation sponsors should note the Department's ongoing commitment to supporting sustainable development with an emphasis on projects located near major public transit as well as extensive retail and commercial opportunities and services. Preservation sponsors also should note the new design requirements, within this QAP, including the requirement that the design and scope of projects must be consistent with the current goals of Enterprise Green Community standards.

The Department recognizes that certain preservation transactions are too large to fit within the normal funding limits yet represent projects of scale well worth preserving. From time to time, if resources are available, DHCD is prepared to accept very large-scale preservation applications on a rolling basis. Such applications typically must represent projects that will include more than 500 units. Such applications also must include significant awards of local funds from the communities in which the projects are located.

It is likely that some applications will be submitted for projects that include both production and preservation units, as defined in this QAP. If the majority of the units in a project qualify for the production set-aside, DHCD will evaluate the project in the production category. Conversely, if the majority of the units qualify for the preservation set-aside, DHCD will evaluate the project in the preservation category.

**Non-profit set-aside:**

Federal law requires that at least 10% of the credit available in 2022-2023 be allocated to projects involving “qualified non-profit organizations”. DHCD will meet the 10% requirement by allocating credit to such organizations through the set-aside categories described in this section. Historically, the Department has allocated at least half of its 9% credit authority to qualified non-profit organizations.

To be considered a “qualified non-profit”, an organization must:

- \* Meet criteria described in Section 501(c)(3) or (4) of the Internal Revenue Code and be exempt from payment of taxes under Section 501(a);
- \* Have as one of its exempt purposes the fostering of low-income housing; and
- \* Not have a prohibited affiliation with, or be controlled by, a for-profit organization, as determined by DHCD.

DHCD will include in the tax credit application the necessary certification to substantiate qualified non-profit status. DHCD will make the required non-profit determination after reviewing the certification.

In order to count toward the 10% set-aside, a qualified non-profit organization, in accordance with Section 42 of the Internal Revenue Code, must:

- \* Own an interest in the project, directly or through a partnership; and
- \* Materially participate (on a regular, continuous, and substantial basis within the meaning of Section 469(h) of the Internal Revenue Code) in the development and operation of the project throughout the tax credit compliance period.

In addition, qualified non-profit developers -- with or without material participation -- must have a right of first refusal to acquire a tax credit project after year 15, in accordance with Section 42 of the code.

Whether projects fit into the production or preservation category, they must include characteristics that make them worthy of consideration by numerous housing and development standards. The Department is intent on allocating its extremely valuable resources, the 9% and 4% credit, only to the strongest possible applications. The following statements describe some of the characteristics the Department seeks to encourage and reward through the scoring system, regardless of project type:

- The project will fill a genuine, documented need, readily supported by available market information.
- The project will provide affordable family housing in an area of opportunity.

- The project will provide enhanced accessibility and visitability for persons with disabilities beyond the minimum required by law.
- The completed project will include units reserved for individuals or families earning less than 30% of area median income, including individuals or families making the transition from homelessness.
- The completed project will contain elements of green, sustainable, and climate resilient design and will promote conservation of energy resources.
- The completed project will be consistent with the goals of the Enterprise Green Communities standards and will include other characteristics consistent with the Commonwealth's climate change goals.
- The completed project will have a positive impact on the surrounding neighborhood.
- From an architectural perspective, the completed project will be compatible with the surrounding neighborhood.
- Consistent with fair housing policies, the completed project will offer expanded opportunities to racial, ethnic, and other groups protected under fair housing laws who are underserved in the community in which the project is located.
- The units, including the affordable units, will be well-designed, desirable places to live.
- The developer will have made every effort to secure strong local support for the project.
- The development team has the financial strength to carry out the project.
- The development team has an excellent record in affordable housing development and management.
- The developer is committed to diversity within members of the development team.
- The project sponsor (and, if identified, the contractor) has an excellent record in utilization of MBEs and WBEs and in making employment opportunities available to a diverse workforce.
- Whether new construction or rehabilitation, the intended scope of work is appropriate for the proposed project.
- The total development cost of the project is reasonable, both in the context of industry standards and in the context of public perception.
- The developer's fee and overhead are consistent with the Department's written standards.
- Specific categories of project costs are reasonable, including estimated hard costs, estimated soft costs, and projected operating costs.
- The amount of public subsidy to be invested in the project is reasonable: typically, less than \$100,000 per affordable unit, unless the project primarily is a special needs and/or supportive housing project.
- No member of the development team will profit unduly from participating in the project.
- The project meets a recognizable public purpose.



In addition, as described in Section I of this document, each application submitted during 2022-2023 must meet at least one of the five priority categories for funding and must have been pre-approved for submission by DHCD.

## **Section VIII. The Massachusetts Preservation Matrix**

### **Background:**

The Department of Housing and Community Development is a long-time member of the Massachusetts Interagency Working Group (IWG)<sup>1</sup> on preservation issues. Several years ago, as part of the effort to prioritize preservation projects seeking scarce public resources, the IWG created a priority preservation matrix. Broadly speaking, the goal of the matrix is to help various stakeholders understand which characteristics of preservation projects best fit with the funding priorities of DHCD and other Massachusetts public lenders.

In Massachusetts, the term “preservation” is used in a general sense to describe any occupied project with an affordable housing component and use restrictions. But the characteristics of preservation projects can vary significantly. The Commonwealth’s overarching goal is to preserve as many affordable projects and units as possible. However, at any given point in time, some preservation projects, because of their underlying characteristics, are more in need of scarce public funding than other projects. The preservation matrix is intended to set forth the characteristics that are most important for funding during a particular time period – often the calendar years governed by the tax credit Qualified Allocation Plan.

The matrix contained in the 2017 QAP was modified within the 2018-2019 QAP. The modifications remain in effect within this document -- the 2022-2023 QAP. In part, the modifications reflect a highly stressed resource environment for preservation projects, including significant pressure on the availability of tax-exempt financing and 4% credits. Tax-exempt financing for Massachusetts multifamily rental projects is in significant demand; neither MassHousing nor MassDevelopment is able to provide tax-exempt financing within a given calendar year to every sponsor who seeks it. Other sources that can be used to support preservation projects, including the state LIHTC and certain state bond programs, also are highly stressed. The demand for these sources far outstrips the financing that will be available in 2022-2023.

During 2017, the IWG revised and streamlined the matrix by eliminating the second table and replacing it with a set of additional evaluation criteria that more clearly reflect DHCD’s current priorities. In particular, DHCD will consider the total amount of state-controlled subsidy per affordable unit (including federal and state LIHTC equity) as a factor in awarding preservation resources, and also will carefully scrutinize proposed acquisition, rehabilitation, and soft costs for projects seeking higher amounts of state-controlled subsidy per affordable unit. Preservation projects that exceed \$200,000 per affordable unit in state-controlled subsidies (including tax credit equity) will be especially scrutinized. The matrix identifies the preservation project characteristics that will be granted priority for funding consideration by the public lenders. However, it is

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<sup>1</sup> IWG members include Massachusetts Department of Housing and Community Development, MassHousing, Massachusetts Housing Partnership, MassDevelopment, Community Economic Development Assistance Corporation (CEDAC), Massachusetts Housing Investment Corporation, and the City of Boston.

important to note that priority status does not guarantee funding for a given project. For example, all preservation projects seeking tax credits and/or other DHCD resources must conform to the various thresholds and scoring criteria contained within the 2022-2023 QAP.

The first section of the attached matrix identifies four priority eligibility criteria for preservation projects in Massachusetts. As part of any funding consideration, DHCD and its quasi-public affiliates will rank each project based on one of the four priority criteria. Although many preservation projects may meet more than one priority criterion, the public lenders will rank each project against a sole criterion and will select the highest priority criterion for a given project. If a project does not meet one of the four priority criteria, it is highly unlikely that it will be considered for funding from DHCD and/or its quasi-public affiliates during 2022-2023.

If a project meets one of the four priority criteria, DHCD and the quasi-public agencies will use the additional guidance in the matrix to further evaluate the priority status of the project, relative to the Commonwealth's multiple preservation goals. The additional guidance identifies six additional criteria for preservation projects that will be evaluated. As indicated, only those projects that meet one of the four priority eligibility criteria will be further evaluated against the six additional criteria.

While it can be challenging for sponsors of preservation/rehabilitation projects to achieve green, sustainable, and climate resilient goals, the Department expects all sponsors to make every effort to incorporate Enterprise Green Communities standards into their approach to rehabilitation. DHCD will release a design checklist specific to preservation/rehabilitation requirements early in 2022. The checklist will emphasize the importance of green, sustainable, and climate resilient design in rehabilitation projects. In addition, both preservation and production sponsors will be required to submit a one-page narrative from their architects to DHCD, describing the approach they have used to achieve green, sustainable, and climate resilient design.

### **Chapter 13A Preservation Projects:**

Sponsors of the preservation projects initially financed by MassHousing through the state Chapter 13A program should note the following:

- MassHousing, working with DHCD, identified a pool of funding resources to help current owners or new owners preserve these important projects. The affordability restrictions on most of the projects either have expired or will expire during 2022-2023. Most chapter 13A projects already have been preserved.
- It is DHCD's expectation that owners of Chapter 13A projects that have not yet been preserved will work closely with MassHousing to access the funds identified by the Agency as appropriate to protect the 13A residents and support preservation of the projects.
- It is DHCD's further expectation that owners of Chapter 13A projects -- either current or new owners -- will not seek additional resources from DHCD for a given project unless MassHousing specifically recommends that they do so.

### **Examples of Preservation Decisions Based on the Matrix:**

The following examples are intended to help stakeholders understand the matrix:

Project A is a 100-unit family preservation project located in a strong market with use restrictions expiring in 2023. Despite the strength of the market, the property is financially troubled, although able to maintain loan payments. Using the first section of the preservation matrix, DHCD and its quasi-public affiliates rank this project as a category I/tier I project (although the project also qualifies as a category I/tier 3). Moving on to the second section of the matrix, DHCD and its quasi-public affiliates assess the extent to which the project addresses the six additional evaluation criteria. The sponsor intends to seek pre-development and acquisition assistance from CEDAC as well as funding through DHCD's competitive rental round. The sponsor is directed to proceed with preparing various funding applications.

Project B is a 100-unit family preservation project located in a weak market with use restrictions expiring in 2026. The project is in need of rehabilitation but is not at risk due to its physical condition. The owner of the project typically is able to meet its debt service covenant. The owner intends to seek tax-exempt financing and 4% credits during 2022-2023 in order to resyndicate and recapitalize the project. However, DHCD and its quasi-public affiliates make the determination that this project does not fit within any of the four priority funding categories of the matrix and should not be considered for tax-exempt financing and 4% credits during 2022-2023. Unless the availability of volume cap to support tax-exempt financing increases dramatically during these calendar years, resources will be insufficient to support a preservation project that does not rank well against matrix criteria. DHCD and its quasi-public affiliates strongly encourage the project owner to evaluate the feasibility of taxable financing, including through one of the quas.

The updated preservation matrix is shown on the following pages.

		TIER 1	TIER 2	TIER 3	
<b>ELIGIBILITY CATEGORY</b>	<b>I.</b>	<b>Risk of Loss to Market Conversion<sup>1</sup></b> in Next 5 Years	Strong rental market with no legal impediments to conversion to market rate.	Market is strong enough for potential impediments to conversion to market rate.	Weak market, legal restrictions, or inability of project to compete for market rate tenants.
	<b>II.</b>	<b>Risk of Loss Due to Physical Condition<sup>2</sup></b>	Probable loss of the property in the next 2-4 years due to condemnation or government action. Significant code and safety issues.	Significant code and safety issues that present a risk to tenants and/or threaten the long-term viability of the property.	Extensive capital needs
	<b>III.</b>	<b>Risk of Loss Due to Financial Viability<sup>3</sup></b>  Analysis based on 3 years of financials.	Lender has declared or threatened to declare a default due to a payment default by the current owner.	Property income is insufficient to pay debt service and basic operating expenses plus required reserve deposits, requiring contributions from other sources.	Property is financially troubled, but able to maintain loan payments and basic operating expenses plus required reserve deposits.
	<b>IV.</b>	<b>Unique Acquisition Opportunity<sup>4</sup></b>	Unique opportunity to purchase a project at a below-market price due to seller motivations, or opportunity as 40T designee.	Sale price based on present value of reduced income stream -- value will increase as expiration date approaches.	Property for sale -- no particular economic benefit to purchase at this moment.

### Other Factors to Evaluate in Prioritization of Preservation Projects

Project is eligible for funding primarily under Eligibility Category \_\_\_\_\_ and qualifies as Tier \_\_\_\_\_

- Amount of state-controlled subsidy (including LIHTC) per affordable unit needed to preserve the property
- Degree to which affordability is preserved or enhanced, especially for ELI residents, relative to the current affordability level
- Duration of new use restrictions
- Risk of tenant displacement
- Location of the project in an Area of Opportunity
- Location of the project within a comprehensive neighborhood revitalization plan

<sup>1</sup> Need to evaluate regulatory issues, marketability of project, conversion costs, etc.

<sup>2</sup> Factors to consider: year facility was built, number of years since last rehab, annual replacement reserve contribution, total reserves balance

<sup>3</sup> Factors to consider: vacancy, municipal liens, sponsor financial condition, property management quality

<sup>4</sup> Availability of non-state resources to take advantage of the opportunity is important

## Section IX. Recommended Cost Limits; Caps on Eligible Basis; Cap on Allocations Per Project

The Department, its quasi-public affiliates, and members of the Massachusetts development community engaged in extensive discussions between 2013 and 2015 on how best to manage costs in LIHTC and other publicly funded projects. Informed by these discussions and careful analysis, the Department then implemented recommended total residential development cost limits within successive QAPs. Initially, it was the Department’s intent to revise the recommended cost limits within the draft 2022-2023 QAP. However, DHCD now will release updated and revised cost limits during 2022. The ongoing effects of the COVID-19 pandemic – for example, on the global supply chain – are one reason for DHCD’s decision to delay the release of new cost limits. In addition, the Department wishes to gather more data on the costs related to increased requirements for green, sustainable, and climate resilient design before releasing new limits. DHCD in particular wishes to acknowledge the work of its quasi-public affiliate, the Massachusetts Housing Partnership, in the effort from year to year to identify appropriate cost limits for LIHTC projects in Massachusetts.

The recommended limits included below will continue to apply to all LIHTC projects in 2022-2023 until DHCD releases new recommended limits. The limits included below will apply to all rental projects funded by DHCD with any of its rental resources.

Production Project	(Residential TDC/Unit)
<b><i>Outside Metro Boston*</i></b>	
Single Room Occupancy/Group Homes/Assisted Living/Small Unit**	
Supportive Housing	\$199,000
Suburban/Rural Area with Small Units	\$279,000
Suburban/Rural Area* with Large** Units	\$319,000
Urban* Area with Small Units	\$359,000
Urban Area with Large Units	\$379,000
<b><i>Within Metro Boston*</i></b>	
Single Room Occupancy/Group Homes/Assisted Living/Small Unit	
Supportive Housing	\$259,000
Suburban Area with Small Units	\$329,000
Suburban Area with Large Units	\$349,000
Urban Area with Small Units	\$379,000
Urban Area with Large Units	\$399,000

Preservation Project	(Residential TDC/Unit)
<b><i>Outside Metro Boston*</i></b>	
Single Room Occupancy/Group Homes/Assisted Living/Small Unit	
Supportive Housing	\$139,000
Suburban/Rural Area, All Unit Sizes	\$199,000
Urban Area with Small Units	\$209,000
Urban Area with Large Units	\$219,000
<b><i>Within Metro Boston*</i></b>	
Single Room Occupancy/Group Homes/Assisted Living/Small Unit	
Supportive Housing	\$189,000
Suburban/Rural Area, All Unit Sizes	\$229,000
Urban Area with Small Units	\$299,000
Urban Area with Large Units	\$299,000

\* See the map contained in Appendix B to determine the proper geographic category for each project based on its location.

\*\* Large Unit projects must have an average of at least two bedrooms per unit or consist of at least 65% two or more bedroom units and 10% three or more bedroom units. All other projects are considered Small Unit projects.

**Sponsors should note the following: DHCD reserves the right to deny a tax credit award to any project deemed to be too costly.**

**Additional limitations for competitively allocated credits:** Even if an application is accepted for review with costs higher than the recommended limits, DHCD typically will cap the project's eligible basis. For the purpose of this QAP, DHCD typically will cap the allowable eligible basis in the production set-aside at \$250,000 per assisted unit for projects within the Boston metropolitan area and \$200,000 per assisted unit for projects outside the Boston metro area. DHCD typically will cap the allowable eligible basis in the preservation set-aside at \$175,000 per assisted unit.

To determine the amount of tax credits for which a production project within the Boston metropolitan area is eligible, the sponsor must multiply \$250,000 in maximum basis times the number of tax credit units times 9%. The sponsor of a preservation project must multiply \$175,000 in maximum basis times the number of tax credit units times 4%. **As one example, a 30-unit 100% tax credit production project within the Boston metro area will be eligible for \$675,000 ( $\$250,000 * 30 * .09 = \$675,000$ ). As a second example, a 30-unit 100% tax credit production project outside the Boston metro area will be eligible for \$540,000 ( $\$200,000 * 30 * .09 = \$540,000$ ).**

Finally, in order to ensure equitable distribution of limited tax credit resources, the Department has established per-project limits for 9% credit allocations. The Department has established \$500,000 as the maximum amount that typically can be awarded to an assisted living project. In 2022-2023, the Department has established \$1 million as the maximum allocation amount that typically will be awarded to other projects under this QAP. Requests for allocations greater than \$1 million will be considered on a case-by-case basis only if the sponsor is able to demonstrate the unusual impact of the proposed project and if DHCD has sufficient credit to make a larger allocation.

## Section X. Threshold Criteria for 2022-2023 Tax Credit Applications

During any 2022-2023 competition, DHCD, through its pre-application process, will first establish that an application meets at least one of five priority categories for funding, as described in Section I of this document. DHCD then will evaluate each tax credit application in accordance with threshold criteria, followed by competitive scoring criteria totaling 182 points. Unless an application meets all the threshold criteria set forth in this section, the Department will not review the application in the competitive scoring categories. In addition, each applicant must submit a narrative addressing the project's ability to satisfy the threshold requirements.

The 13 threshold criteria that all applications must meet are as follows:

- Threshold #1: Conformance with Set-Aside Categories
- Threshold #2: Quality of Site
- Threshold #3: Evidence of Local Support or Local Processing
- Threshold #4: Creditworthiness of Sponsor/Owner
- Threshold #5: Evidence of Site Control
- Threshold #6: Identification of All Financing Sources
- Threshold #7: Status of Compliance Monitoring of Other Tax Credit Projects
- Threshold #8: Good Standing with Respect to Other State Housing Programs
- Threshold #9: Commitment to a Thirty-Year Term of Affordability
- Threshold #10: Tenant Supportive Services
- Threshold #11: Inclusion of Units for Extremely Low-Income Persons or Families
- Threshold #12: Consistency with the Commonwealth's Sustainable Development Principles
- Threshold #13: Fair Housing Narrative

The requirements included in each threshold criterion are as follows:

### ***Threshold #1: Conformance with Set-Aside Categories***

Each project submitted to a 2022-2023 competition must meet at least one of five priority funding categories as well as the criteria for either the production or the preservation set-aside. The production set-aside, described in detail in an earlier section of this plan, includes a minimum project size of twelve units. 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. DHCD will permit exceptions on the number of bedrooms only if efficiency or one-bedroom units are appropriate for the intended residents. (For example, assisted living projects primarily will include efficiency or one-bedroom units and will not be subject to the two-bedroom requirement. An exception to the bedrooms requirement also will be made for single room occupancy projects.)

The preservation set-aside also is described in detail in an earlier section of this plan. The minimum project size in this category is twelve units. There is no maximum project size in this category. The Department encourages the preservation of projects that include units suitable for families, but also encourages the preservation of projects consisting primarily of one-bedroom units for rental by older households. Other preservation projects are predominantly single room occupancy units for rental by individuals with special needs.

### ***Threshold #2: Quality of Site***

The quality of the site is one of the most fundamental aspects of any housing project. Like other lenders, both public and private, the Department ideally wishes to fund only those projects in outstanding locations, on problem-free sites. However, in reality, many tax credit applications represent existing, occupied residential properties located on sites that are acceptable, but not ideal. Additional applications represent abandoned or distressed properties that previously were occupied by tenants or homeowners. The sites of these properties also may be less than ideal.

The Department anticipates that some 2022-2023 applications will represent occupied or previously occupied HUD properties. If DHCD were making the decision on quality of site, it might not agree with the decision already made by the U.S. Dept. of HUD. Since an entire class of applications includes sites that have been accepted by the federal housing agency, DHCD has elected not to evaluate “site” as a competitive category in 2022-2023.

However, every 2022-2023 application submitted for consideration still must include a site acceptable, by Department standards, for the proposed housing use. Sponsors should review their sites in light of the Commonwealth’s sustainable development principles outlined in Section II of this QAP. Although site characteristics that are generally consistent with the sustainable development principles may be present more often in urban areas, the Department believes that there are opportunities for housing development in all communities. Infill sites near services and transportation, buildings for adaptive re-use, former commercial or industrial sites, and other “smart growth” opportunities exist in rural and suburban communities. The Department encourages the development of projects in such locations, especially since such projects tend to offer greater opportunity to underserved racial and ethnic groups.

Before preparing a OneStop+ affordable housing application, each tax credit sponsor should contact DHCD’s tax credit staff to schedule a site review. The Department will presume that a site is acceptable if it currently is the location of an occupied housing project, with no significant change proposed to the tenant group to be served. However, the Department strongly encourages developers to make enhancements to the existing site and project that are consistent with green and sustainable design. DHCD staff will conduct an on-site assessment using, among other measures, the Commonwealth’s sustainable development principles. To schedule a site review, the tax credit sponsor should contact the Department at least one month prior to the competition deadline for submitting applications. With less than one month's notice, the Department may not be able to conduct a site visit prior to the competition deadline.

### ***Threshold #3: Evidence of Local Support or Local Processing***

In an ideal world, every affordable housing project would have the support of two key constituencies: its neighbors and the elected leaders of the community. Unfortunately, many projects lack local support, whether from the owners of abutting properties, local elected officials, or both. In some cases, support is withheld for good reasons; in other cases, support is unreasonably withheld.

In general, DHCD encourages applications from tax credit projects that have full local support. In certain circumstances, sponsors may submit applications for DHCD’s credit authority for projects that are not locally supported. If a sponsor/owner cannot demonstrate local support, he or she must instead demonstrate through a written narrative included in the OneStop+ application substantial



efforts to respond to local concerns and obtain the chief elected official's support. If DHCD is not satisfied that the sponsor/owner has made every reasonable effort to obtain support, the Department will reject the tax credit application.

With respect to local contributions, numerous projects submitted for tax credit consideration are located in municipalities that have their own funds through federal sources (i.e., Community Development Block Grant monies, the HOME Program, etc.), or through other sources. For projects located within such municipalities, DHCD typically requires a local contribution of funds in order for the project to receive tax credit consideration. However, if DHCD determines that local support or local contributions have been unreasonably withheld despite reasonable efforts by the sponsor/owner to obtain support, DHCD will consider alternative proposals by the sponsor/owner to defray project costs through other non-state funding sources.

***Threshold #4: Creditworthiness of Sponsor/Owner***

The Department will accept tax credit applications from sponsoring entities that are creditworthy by DHCD standards. The standards of creditworthiness include the following:

- 1) The debt obligations of a partner or other principal of the sponsor/owner entity and the proposed mortgagor/owner entity are paid current,
- 2) No involuntary liens exist against property owned by the partner or other principal;
- 3) The partner or other principal of the sponsor/owner entity and the proposed mortgagor/owner entity has not failed to respond to a public filing such as a lien or a judgment;
- 4) The sponsor/owner entity and the proposed mortgagor/owner entity (including any affiliates) have not experienced any event(s) of foreclosure over the past five years.
- 5) The sponsor/owner entity and the proposed mortgagor entity (including any affiliates) have not declared bankruptcy.

In general, a corporation will not be considered creditworthy if there are tax liens against the corporation, its affiliates, its subsidiaries, or its properties. In addition, if there is a bankruptcy lien against the corporation, it will not be considered creditworthy. DHCD also will determine whether a corporate sponsor is current in payments to its creditors and will require a certificate that all state tax payments are current. The Department will require that a sponsor certify that all of the standards of creditworthiness listed above have been satisfied as part of the OneStop+ application submission package.

DHCD will examine the financial strength of a project sponsor using financial statements submitted by the sponsor. Financial statements must be no more than one year old. An audit will be required for corporations, but not individuals.

Criteria for financial review include the following: The current ratio (current assets divided by current liabilities) must be greater than one. The liabilities to net worth ratio must be less than four. Net worth must be positive, and there must be no “going concern” issue raised by the

sponsor's auditors or reviewers. DHCD staff will ascertain whether the amount of unrestricted cash on hand appears sufficient to cover fixed operating expenses. Sponsors may submit explanations for variations from these criteria, and DHCD will consider these explanations in assessing the financial capacity of a project sponsor.

DHCD is considering entering into a Memorandum of Understanding (MOU) with the Internal Revenue Service in order to obtain tax information useful in determining an applicant's creditworthiness and good standing with the agency. If an MOU is executed during 2022-2023, DHCD reserves the right to require that all tax credit applicants complete Form 8821, Tax Information Authorization (Rev. 9-98), naming DHCD as the appointee to receive tax information.

***Threshold #5: Evidence of Site Control***

The project sponsor must be able to demonstrate full control of all land and buildings included in the project through a fully executed agreement such as an option agreement, a purchase or sale agreement, or another similar instrument. The instrument demonstrating site control must include a sales price and an expiration date. The expiration date of the instrument should extend at least six months beyond the tax credit application deadline. Ownership of a note and assignment of a mortgage when combined with other factors may constitute full site control in certain limited circumstances.

The "Competitive Scoring System" section of this QAP discusses the Internal Revenue Code requirement for incurring costs which meet the so-called ten percent test. Property acquisition often serves as a substantial portion of these costs. If a project sponsor receives a tax credit reservation and later cannot meet the ten percent test, DHCD risks losing the credits. In order to avoid this potential outcome, DHCD always attempts to ascertain that sponsors have full site control of all properties included in their respective projects.

The Department will consider all relevant circumstances in determining whether the site control threshold has been satisfied.

***Threshold #6: Identification of All Financing Sources***

In the OneStop+ affordable housing application, the sponsor of each tax credit project must identify funding sources sufficient to cover all development and operating costs. The sponsor may not be able to submit firm financing commitments for all sources by the application submission deadline. However, at minimum, the sponsor must submit documentation demonstrating a strong interest from each financing source. All sponsors are expected to submit strong letters from lending sources and a tax credit syndicator or investor. During 2022-2023, DHCD will place particular emphasis on the letters from syndicators and investors.

***Threshold #7: Status of Compliance Monitoring of Other Tax Credit Projects***

Many development team members submitting projects for 2022-2023 consideration previously have participated in the development of tax credit projects that now are occupied. These projects may already have been monitored to determine compliance with Section 42 of the Internal Revenue Code. DHCD will not accept 2022-2023 applications for tax credits if the proposed development team includes members who are affiliated with existing projects for which Forms 8823 ("Low Income Housing Credit Agencies Report of Noncompliance") have been issued for material and/or continuing non-compliance. In addition, DHCD may decide not to accept applications from

developers of tax credit projects financed in previous years with outstanding compliance monitoring fees due to the agency. These restrictions apply to all members of the development team. (Ownership and management of a project constitute an affiliation.) Before submitting a 2022-2023 application, a sponsor/owner must verify that all team members can meet this threshold requirement.

***Threshold #8: Good Standing with Respect to Other State Housing Programs***

Many development team members submitting 2022-2023 tax credit applications have participated in other DHCD-assisted projects. All key members of a development team seeking 2022-2023 tax credits must be in good standing with DHCD with respect to other DHCD-assisted projects. As one example, many tax credit developers have used state HOME assistance. If a developer – or other key team member – participated in a state-assisted HOME project that has been monitored and determined to be out of compliance, DHCD may decide not to accept a 2022-2023 tax credit application from a team that includes this team member.

As another example, if a key team member has not made satisfactory progress on an earlier DHCD-assisted project, the Department may decline to accept a 2022-2023 tax credit application that includes this team member. Developers of tax credit projects financed by DHCD in previous years will not be considered in good standing with the agency unless compliance monitoring and/or tax credit processing fees have been paid in full for all their existing projects. Before submitting a 2022-2023 tax credit application, the sponsor/owner must determine that the following members of the team are in good standing with DHCD: consultant; architect; contractor; management agent; attorney. Obviously, the sponsor/owner also must be in good standing with DHCD.

***Threshold #9: Commitment to a Thirty-Year Term of Affordability***

The sponsor/owner of each 2022-2023 application must commit to at least a 30-year term of affordability (45 years if applying for Massachusetts State Low Income Housing Tax Credits). With respect to affordability, the sponsor/owner must commit:

- To maintain the tax credit project as low income rental housing for at least 30 years (45 years if applying for Massachusetts State Low Income Housing Tax Credits); and
- To offer to the state an opportunity to present a “qualified contract”, as such term is defined in Section 42 of the Internal Revenue Code, for the purchase of the project after expiration of the term of the Agreement.

Each tax credit project owner will be required to sign a Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants (“the Agreement”) before receiving the IRS Form(s) 8609. In the Agreement, the owner will be required to submit to DHCD a written request one year before expiration of the term of the Agreement (i.e., applicable term of affordability) for DHCD to procure such a qualified contract.

***Threshold #10: Tenant Supportive Services***

Sponsors of some tax credit projects -- including but not limited to assisted living projects, other senior projects, and federal Choice Neighborhoods projects -- provide extensive supportive services for their tenants. At these projects, the cost of services often is included in the project operating budget, although many sponsors also are able to secure additional service funding from

private sources. At other tax credit projects, developers – especially non-profit developers -- work with neighborhood groups, churches, local schools, and local employers to attempt to create opportunities for their tenants. The services ultimately available at these projects are not part of the project operating budget but may prove highly beneficial to both tenants and owners over time.

In the 2022-2023 Qualified Allocation Plan, DHCD is requiring each applicant for credit to provide a narrative with the OneStop+ funding application describing services available in the community to the existing or future tenants of the project. Developers do not necessarily have to pay for the services but must identify the services and indicate how they will notify tenants, on a regular basis, of opportunities for further education, employment training, and other important services.

In 2017, DHCD established the requirement that sponsors of senior projects provide services appropriate for the intended tenants. Any developer seeking funds for senior housing projects in 2022-2023 must provide a highly developed service plan for the tenants who will live in the project. The Department wishes to ensure that this potentially vulnerable population -- frail seniors -- is provided with housing, but also with the services necessary to ensure their safety and enhance their quality of life. With respect to senior housing, DHCD's priority is to provide support for those projects serving persons age 62 and older.

***Threshold #11: Inclusion of Units for Extremely Low-Income Persons or Families***

DHCD requires sponsors of 2022-2023 tax credit applications to reserve a minimum percentage (13%) of the total number of units in their projects for persons or families earning no more than 30% of area median income. These units are referred to as extremely low income, or ELI, units. Sponsors seeking allocations of 4% credit for primarily affordable projects will be required to reserve at least ten percent of the total number of units in their projects for persons or families earning no more than 30% of area median income. If a sponsor is using tax exempt financing and 4% credits for a mixed income project with at least 50% of the units at market rates, the sponsor must reserve 15% of the total affordable units for persons or families earning no more than 30% of the area median income.

Many tax credit sponsors are able to provide more than 13% ELI units in their projects but typically can do so only if they are able to secure sufficient federal or state project-based assistance. Without rental assistance, most ELI tenants simply cannot pay even an affordable rent. DHCD encourages tax credit sponsors to seek alternative sources of federal or state project-based assistance to support additional ELI units, including rental assistance available through local housing authorities as well as Section 811 project-based assistance.

***Threshold #12: Consistency with the Commonwealth's Sustainable Development Principles***

The Commonwealth's sustainable development principles will be applied as a threshold for projects seeking state funding from DHCD and its partner entities. A listing of the principles can be found in an earlier section of this document.

***Threshold # 13: Fair Housing Narrative***

Each sponsor must provide a narrative describing how the project location and type, tenant selection plan, and other applicable policies and procedures will further the Department's Fair Housing Principles as provided in Appendix D. The narrative also should clearly describe the

efforts that will be made to ensure affirmative fair housing marketing and outreach to those households and individuals least likely to apply for the affordable units within a project.

Each tax credit applicant must submit a narrative addressing the project's ability to satisfy all threshold requirements listed above and on the preceding pages.

## **Section XI. The Competitive Scoring System**

During the 2022-2023 funding competitions, DHCD will evaluate all tax credit applications to confirm that they fit within at least one of five priority funding categories established for the pre-application process. DHCD will further evaluate all applications in accordance with threshold criteria described in the preceding section, then in accordance with competitive criteria, totaling 182 points. Applications for projects that meet all applicable threshold criteria will be scored in two competitive categories totaling 182 points. The two competitive categories are:

- I) Fundamental Project Characteristics -- 100 points
- II) Special Project Characteristics -- 82 points

As indicated, the five priority funding categories and the threshold criteria are set forth in preceding sections of this plan. The components of the two competitive categories — Fundamental Project Characteristics and Special Project Characteristics -- are described in this section of the QAP.

All LIHTC sponsors should note that the Department has made numerous changes within this document to the design/scope evaluation components of both fundamental and special project characteristics. The changes have been made to further DHCD's goals relative to green, sustainable, and climate resilient design. Climate change is a reality. The need to respond to climate change is a societal imperative. In return for DHCD's substantial investment in projects, the Department expects all members of development teams to thoughtfully and carefully pursue green, sustainable, and climate resilient goals, and to design projects that respond to the clear and ongoing threats posed by climate change.

Since the publication of the 2020-2021 QAP, Governor Charles D. Baker has issued two executive orders related to climate change:

- Executive Order 594: Leading by Example
- Executive Order 596: Establishing the Commission on Clean Heat

As DHCD invests valuable public resources in affordable housing projects, it will evaluate the projects to ensure that they are in compliance with any and all applicable mandates contained within the executive orders. In addition, DHCD expects sponsors seeking LIHTC to ensure that the design and scope of their projects are consistent with the goals expressed in the current Enterprise Green Communities standards for new construction and rehabilitation. DHCD has added this requirement to the 2022-2023 QAP.

## **Section XI-A. Fundamental Project Characteristics**

A total of 100 points is available in this category, which includes the five fundamental components of any affordable housing project, regardless of type. The five fundamental components, valued equally at 20 points each, are:

- A. Financial Feasibility
- B. Design
- C. Development Team
- D. Marketability
- E. Readiness to Proceed

Each of the five components of “Fundamental Project Characteristics” is described in detail below and on the following pages. Every tax credit application must score at least 12 points in each of the five components of fundamental project characteristics. If an application scores fewer than 12 points in any of the five categories, it will not receive an allocation of tax credits during 2022-2023. Nor will the application be evaluated for “Special Project Characteristics”. If an application scores at least 12 points in each of the five categories, totaling at least 60 points, it will be evaluated and scored in the second competitive category, “Special Project Characteristics”.

As noted, the design section of fundamental project characteristics has been revised to provide increasing emphasis on the importance of green, sustainable, and climate resilient design. In preparing changes, DHCD has worked with numerous interested parties, including Massachusetts architects, developers, other public lenders, and state environmental officials and experts, to determine the most appropriate modifications to the design narrative and project evaluation.

Sponsors should further note that the “Special Project Characteristics” section of this QAP also has been revised to strongly encourage sponsors to incorporate more green, sustainable, and climate resilient elements into their projects. In addition, the checklists included as attachments to this QAP have been modified to conform to the new design and scope requirements. The Department now will require all sponsors to evaluate the design components of their projects to ensure consistency with the goals expressed in the current Enterprise Green Communities standards. Further, DHCD strongly encourages sponsors of new construction projects to evaluate the benefits of designing to standards that will result in Passive House certification. LIHTC sponsors and their architects should pay close attention to all the design and scope modifications within this 2022-2023 QAP and should contact the Department’s Division of Housing Development with any questions.

Two years ago, DHCD made changes to the criteria it uses to evaluate the design of LIHTC projects intended to serve seniors age 62 and older. The criteria also will apply, in part or in full, to projects intended to serve individuals and households age 55 and older. At the request of the Governor’s Council on Issues Related to Aging, DHCD incorporated a senior housing design checklist (Appendix L) to the QAP. All sponsors of senior projects must submit the completed checklist and incorporate the required aspects of the checklist into the design of their projects.

**A-1. Financial Feasibility -- 20 points total; 12 points required minimum**

The information contained in the OneStop+ Affordable Housing Application must demonstrate to DHCD's satisfaction that the proposed project will be financially feasible during construction and after completion. The sponsor/owner must include in the application solid evidence of financing commitments from construction and permanent lenders. The sponsor/owner must include a comprehensive letter of interest (LOI) from a syndicator or investor. Further, the LOIs must come from syndicators/investors who are not involved, and are not affiliated with parties who are involved, in activities challenging or attempting to subvert the exercise of existing rights of refusal or purchase options by LIHTC developers. Such activities have been determined by DHCD to be detrimental to the goals of long-term affordability and nonprofit participation in the LIHTC program.

The business practices of the investor/syndicator providing the LOI are of utmost importance in 2022-2023. Regardless of whether the sponsor is a nonprofit or for-profit, DHCD expects that investors will exit the ownership entity in accordance with Section 42 and industry best practices. DHCD will update and publish its current requirements from time to time.

For projects sponsored by a nonprofit, DHCD expects investors/syndicators to commit to business terms assuring that a qualified nonprofit organization will be permitted to exercise the statutory right of first refusal (ROFR) under Section 42(i)(7) of the Internal Revenue Code at the statutory price and at terms that permit a purchase option at fair market value without any add-on for investor exit taxes. In practice, this means at a minimum that the investor/syndicator LOI must acknowledge that the final transaction documents will allow the general partner/managing member to take all necessary actions to convey the property to a qualified nonprofit holding the ROFR or to a purchaser at market value during a period of at least three years after the end of the 15-year initial tax credit compliance period, without the need for any further consent or approvals by the investor/syndicator or its successor(s) in interest. Without limitation, such actions may include:

- (a) soliciting offers to purchase the property,
- (b) commissioning an MAI appraisal to determine the fair market value of the property,
- (c) in the sole discretion of the general partner/managing member, based on the advice of tax counsel, determine whether an offer to purchase the property is adequate to trigger the ROFR, and
- (d) in the sole discretion of the general partner/managing member, either convey the property to the nonprofit holding the ROFR at the statutory purchase price or convey the property to a purchaser, including an entity related to the developer at fair market value (but not less than the total debt secured by the property).

The investor/syndicator LOI must further acknowledge that the ROFR/option are an integral part of the overall business deal contemplated in the LOI and, accordingly, the sale of the property by the general partner/managing member pursuant to the terms of the ROFR/option, as well as actions to trigger the ROFR/option, shall not constitute a breach of fiduciary duty, and the investor's projected return on investment is not dependent on the receipt of any proceeds at the time of exit other than the ROFR statutory purchase price.

DHCD will review final investor/syndicator LOIs at the beginning of the closing process for consistency with these principles, and may decide to provide further guidance to sponsor/owners as to requirements for DHCD approval of final investor/syndicator LOIs.

**A-2. Fundamental Design Characteristics -- 20 points total; 12-point minimum required score**

As indicated, the design section of this QAP has been revised to further promote the Department's goals related to green, sustainable, and climate resilient development. It is widely accepted among scientific experts that climate change and global warming are phenomena of extreme significance. Further, it is widely accepted that the world's energy systems are in transformation. Therefore, it is incumbent on all tax credit allocating agencies and the delivery systems they work with to carefully consider how best to design and build publicly assisted housing projects during an unprecedented period of environmental uncertainty. Certain changes related to these matters have been incorporated into this 2022-2023 QAP -- in this section, in the "Special Project Characteristics" section, and in the appendices related to design and scope. DHCD is committed to making further changes on a regular basis, in response to changing technologies and sound data on best practices.

DHCD has added the following requirement related to design to the OneStop+ submission requirements:

- Each sponsor with an approved pre-application who intends to submit a full OneStop+ funding application on or before January 13, 2022, also must submit a one-page narrative prepared by the project architect, describing the team's approach to green, sustainable, and climate resilient design. The narrative must be submitted by email before the end of business on January 13, 2022. The email should be sent to [catherine.racer@mass.gov](mailto:catherine.racer@mass.gov), with a copy to [rebecca.frawley@mass.gov](mailto:rebecca.frawley@mass.gov).

The design elements and the proposed scope of work for each 2022-2023 tax credit project will be reviewed by architects and/or cost estimators under contract to DHCD, to determine whether the scope and costs are appropriate. In addition, the architects and/or cost estimators will evaluate the architectural aspects of each project to determine:

- Whether the project conforms with current DHCD design requirements, including consistency with the goals of Enterprise Green Communities standards, and all applicable laws, regulations, and code requirements, including those specific to accessibility;
- Whether the project has incorporated certain aspects of "universal design" to increase the functionality of the project to the widest range of residents possible and to allow residents to age in place (see attached checklist in Appendix J and in Senior Housing Development checklist (Appendix L));
- Whether the architectural and site design, as well as project impact on nearby sites, is appropriate, given community standards and the surrounding neighborhood, as well as the project site;
- Whether proposed amenities are sufficient, appropriate for the target population, but not excessive;



- Whether the site layout and site design adequately address environmental issues (wetlands, nearness to active waterways, impact to wildlife, presence of hazardous materials, etc.); parking needs (including provisions for transformer capacity and locations for future E-Vehicle charging stations); stormwater management; appropriate usable open space; outdoor improvements appropriate for the target population, visitability, etc.;
- Whether the project complies with the checklist in Appendix K of the QAP;
- Whether the owner/developer has incorporated energy conservation measures that meet or exceed those required by the applicable Massachusetts Stretch Energy Code (regardless of whether the project is located in a stretch code community or a non-stretch code community);
- Whether the project complies with energy efficient fixtures and appliances, such as building envelope/air sealing standards and EPA’s Energy Star guidelines;
- Whether the owner/developer has incorporated material selection consistent with promoting a healthful interior environmental quality;
- Whether the owner/developer has incorporated mechanical ventilation measures to provide fresh air and control humidity in order to promote good interior air quality;
- Whether the project has been designed to be “solar PV ready” for new and substantial renovation projects with flat roofs;
- Whether the project exceeds state and local code-mandated regulations for water conservation requirements (maximum 1.28 gallon toilets, low-flow devices at showerheads and faucets, etc.). The sponsor should identify which aspects of the project go beyond state/local regulations. (See Appendix K);
- Whether the owner/developer has provided for sufficient construction oversight, building envelope testing, and building system commissioning to ensure that the efficiency measures are properly installed and adjusted;
- Whether the owner/developer has employed effective cost management techniques in the design process, including but not limited to Integrated Project Delivery methods, significant involvement by a contractor or professional cost estimator early in the design process, cost-effective building approaches (such as modular construction, innovative but proven building materials, etc.).
- Whether the owner/developer has applied for, or plans to apply for, all utility subsidy and rebate funding programs applicable to the project (i.e., LEAN Energy rebates, Mass CEC rebates, etc.)

Project designs that incorporate site planning strategies, exterior envelope design, detailing, and mechanical system technologies to achieve energy efficiency are strongly encouraged. Demolition, renovation, and new construction processes that result in waste reduction and conservation of resources are strongly encouraged. Building materials that are local in origin, are durable, incorporate recycled content, and avoid toxic materials and manufacturing processes are strongly encouraged. Sponsors must submit the completed forms found in Appendix K to demonstrate the measures that were utilized to achieve high performance and efficiency.

Sponsors also must submit the accessibility checklist found in Appendix J in order to enable DHCD’s reviewing architects to better evaluate the accessibility proposed for each project. The Department is strongly urging all developers to incorporate Universal Design features into their

projects. Sponsors must meet mandatory DHCD requirements that are intended to maximize visitability beyond code requirements. As reflected in Appendix J, DHCD believes that Universal Design and visitability can be incorporated into numerous preservation projects, particularly adaptive re-use, without substantially increasing costs. Sponsors of adaptive re-use projects should strive to meet the MAAB Group I standards that are applicable to new construction.

Sponsors of renovation and adaptive re-use projects must submit a capital needs analysis prepared by qualified professional, prepared within two years of the submission date. Analysis must provide detailed capital improvement inventory and projected costs for repair or replacement over a 20-year period.

In order to be considered eligible for tax credit funding, all units should be built with three distinct features:

- Capacity of “landline” service in each dwelling unit
- Capacity for internet access in each dwelling unit (preferably configured in a fashion that gives residents access to multiple internet providers).
- Capacity for TV services (cable, satellite or fios).

Costs associated with installing telephone/internet/TV capacity are eligible development cost expenses.

In general, DHCD will follow the DHCD Design Requirements (or more stringent local requirements) with respect to the minimum unit and room square feet and dimensions, minimum counter space, etc., for tax credit projects. With respect to the rehabilitation of existing structures, these minimum standards are intended for guidance and should be met wherever possible. The Department recognizes that, in some cases, constraints such as existing partitions, walls, plumbing, or excessive construction costs will prevent compliance with these standards. If a sponsor determines that it is not feasible to comply with all the DHCD Design Requirements, he or she should provide an explanation in the tax credit application.

During 2022-2023, DHCD will again require that each sponsor include in his or her application a construction cost pro forma prepared by a qualified contractor or a qualified construction cost consultant. DHCD also will require that all sponsors of preservation projects submit a letter from the project’s first mortgage lender supporting the construction cost pro forma and the proposed scope of work and confirming that such costs cannot be funded in part through a mortgage increase. In addition, in accordance with industry recommended practices, sponsors of projects applying for funding under the preservation set-aside must submit a capital needs assessment and 20-year replacement reserve analysis that support the scope of proposed improvements to the Department’s satisfaction. A qualified licensed architect, engineer, or qualified capital needs assessment provider must perform this analysis.

In cases where the developer and the general contractor are affiliated, a qualified but unrelated third-party contractor, architect or qualified construction cost consultant must prepare the construction cost pro forma. Related party contractors are subject to the maximum allowable builder’s profit and overhead and general requirements indicated in the program guidelines as well.

The streamlined and revised guidelines, incorporating approaches and saving costs, are posted on the websites of the participating agencies. Sponsors of tax credit projects should follow the revised design guidelines as they prepare applications to submit to DHCD in 2022-2023.

**A-3. Development Team -- 20 points total; 12-point minimum required score**

The key members of the development team are the owner/developer; the consultant; the architect; the contractor; the management agent; and the attorney. DHCD will review the background of the key team members to determine:

- Successful experience in developing tax credit projects
- Successful experience participating in DHCD-assisted projects
- Financial strength and capacity
- Physical and financial condition of other properties developed by the sponsor/owner
- Inclusion within the developer/sponsor entity, as well as other entities within the development team, of minority professional staff
- Documented efforts to further increase diversity among team members
- Inclusion of SOMWBA-certified Minority/Women's Business Enterprise members on the team as sponsor/owner; management agent; contractor; architect; consultant
- Track record of sponsor/owner, contractor, architects, and other team members in MBE/WBE utilization (Sponsors must complete M/WBE checklist attached as Appendix C to this document.)
- Outreach/utilization plan for MBE/WBE participation in the proposed project (Sponsors must complete MBE/WBE checklist attached as an appendix to this document)
- sponsor/owner's experience participating in the Massachusetts New Lease initiative to house homeless families
- Sponsor/owner's experience in successfully leasing units through Section 811
- Sponsor/owner's agreement to participate in Housing Navigator

The intent of this scoring category is to identify those teams capable of financing and developing complicated tax credit projects and managing the projects successfully after completion and occupancy. The scoring in this category will reflect whether members of the team currently own or manage troubled properties. The scoring also will reflect whether members of the team recently have been involved with other DHCD-assisted projects that have not progressed to DHCD's satisfaction. In addition, the scoring will reflect whether the team includes members who are MBE/WBE certified in Massachusetts by the State Office of Minority and Women Business Assistance (SOMWBA). DHCD also will evaluate whether the sponsor/owner has included minority professionals within its organization and is able to document efforts to increase diversity among members of the development team. The scoring also will reflect whether the sponsor/owner previously has helped especially vulnerable populations by participating in the New Lease initiative and by leasing units through Section 811. As part of its evaluation, DHCD also will verify whether the sponsor/owner is appropriately listing completed units on Housing Navigator.

To determine the application score in this category, the Department will evaluate the capacity of each key member of the team as identified in the OneStop+. Sponsors of tax credit projects should note that they have two options with respect to identifying a general contractor:

- 1) A sole contractor can be listed in the OneStop+, and the Department will evaluate the capacity of that contractor as part of the scoring process; or
- 2) The names of up to three possible general contractors can be listed in the OneStop+, and the Department will evaluate all three entities for scoring purposes. If the sponsor chooses this option, the score for the contractor will be the average of the scores for each of the three entities listed.

Whether the sponsor chooses to make the final selection of a contractor before or after submitting the tax credit application, certain subcontract bidding processes must be followed to the Department's satisfaction. If a general contractor is selected before the project is submitted, the sponsor will have to demonstrate at a later time that subcontractors were selected through a process demonstrating competitive pricing of construction. This requirement will be a condition in the tax credit reservation letter. If the sponsor elects to choose a contractor after receiving a tax credit reservation, he or she must select the lowest qualified bidder from a pool of at least three bidders and must document the selection process to the Department's satisfaction. Again, this requirement will be a condition in the tax credit reservation letter.

Regardless of which approach the sponsor selects, the Department will require a submission describing bidding procedures later in the tax credit process. Sponsor/owners should note that the general contractor selected for the project must submit an independent cost certification to DHCD following the completion of construction.

In order to ensure that management entities have adequate experience in managing tax credit properties, DHCD reserves the right to require tax credit compliance training as a condition of its funding award.

#### **A-4. Marketability-- 20 points total; 12 points required minimum**

Unless a market exists for the proposed project, the project will fail. The sponsor/owner identified in each 2022-2023 tax credit application must include in the OneStop+ Affordable Housing Application a detailed market study prepared by a qualified professional acceptable to DHCD. This Internal Revenue Service requirement applies to all projects, whether production projects or occupied preservation projects. Sponsors who propose to incorporate income tiering into their projects must ensure that the market study addresses the proposal.

The National Council of Housing Market Analysts (NCHMA) has adopted Model Content Standards detailing its standards for definitions and content in a housing market study. These standards can be found on the web at: [http://services.housingonline.com/nhra\\_images/Final%20Model%20Content%20V%203.0.pdf](http://services.housingonline.com/nhra_images/Final%20Model%20Content%20V%203.0.pdf)

The Department will accept membership in the NCHMA organization as indication that the market analyst is a qualified professional acceptable to the Department. DHCD strongly encourages

sponsors to direct their market analyst to produce a market study consistent with NCHMA Model Content Standards.

If, during the course of its review, DHCD determines that the market study submitted with the application is inadequate, DHCD will require the sponsor/owner to submit a new market study. An application that includes a market study that does not confirm the viability of the proposed project will in all likelihood not score the minimum points required in this category. The market study included in the application should address need and demand in the specific housing market, including typical sales prices, rental rates for various types of projects, and vacancy rates. The market study should include the sponsor/owner's analysis of why the proposed project will be competitive.

As part of the determination of marketability, DHCD will conduct an independent evaluation of housing need. This evaluation will investigate the project's marketability including whether the project is located:

- a) In a community in which the public housing waiting list exceeds, by a ratio of three to one, the total number of existing federal and state public housing units available for the proposed population (not including units occupied by federal or state rental assistance certificate holders); or
- b) In a community in which there is no public family housing; or
- c) In a community where the rent burden for many individuals or households is greater than 30%. Rent burden is defined as the median percentage of gross income spent on housing in the community in which the proposed project is located.

Sponsors of projects for populations with special needs and/or persons with disabilities should carefully address the anticipated demand for the proposed project and the reasons why the project will be attractive to the particular consumer group(s). This requirement applies also to projects intended to serve seniors. Sponsors of these projects must include a resident social services plan acceptable to DHCD. (DHCD recognizes that some tenants will bring services with them, and the Department will accept evidence of such services.) DHCD will place special emphasis on the market study for assisted living applications. Given the marketing issues that some assisted living projects have encountered, DHCD may require significant additional documentation from sponsors of such projects. It has become clear to the Department that assisted living projects are particularly challenging to market and operate successfully over time. Sponsors of new assisted living projects will have to make an exceptional case to the Department as to why their projects should be considered for tax credits and other DHCD resources.

DHCD also will review the proposed rent structure for every project. In general, the proposed rents will be compared to rents for comparable, unassisted units in the subject market. DHCD also may consider such market factors as home sales, rentals, and average vacancy levels. Additional factors to be evaluated include, but are not limited to, the sponsor's comparables submitted with the OneStop+ application and/or market study information, media ads, etc. In determining the feasibility of the projected rents, DHCD will use Section 8 contract rents only if satisfactory evidence of a housing assistance payments contract is included with the OneStop+ application. If an executed payments contract is not included, DHCD will compare the proposed rents to the lower of the current HUD FMR for the area or to comparable market rents for the area.

DHCD also will evaluate the sponsor/owner's marketing and outreach plan. All sponsor/owners should include a detailed plan with their respective applications. The plan must indicate in detail how the sponsor intends to market to and attract underserved populations to the project, indicating persons with disabilities and minority households.

**A-5. Readiness to Proceed -- 20 points total; 12 points required minimum**

The sponsor/owner of each tax credit application must demonstrate to DHCD's satisfaction the ability to meet the Internal Revenue Code ten percent test and to receive a carryover allocation in timely fashion. The ability of the sponsor to attract an investor obviously is critical to readiness. For projects receiving a reservation of tax credits in 2022-2023, the sponsor/owner must incur costs, no later than the close of the respective calendar year, which are more than ten percent of the project's reasonably expected basis. In keeping with recent amendments to the IRS Code, a sponsor/owner receiving a reservation of tax credits in the second half of the calendar years 2022-2023 will have an additional six months from the date of the 2022-2023 carryover allocation or binding forward commitment to meet the ten percent test. The Department recognizes that ten percent test deadlines could be further extended but, at this time, has decided to extend the ten percent test deadline by six months, rather than longer. Sponsor/owners must include with the OneStop+ a narrative that addresses the proposed costs to be incurred in meeting the ten percent test as well as an anticipated timeframe for meeting the test.

The OneStop+ application should include evidence of substantial progress in areas including but not limited to land use and zoning approvals, environmental and historic reviews, ability to close on sources of financing, and so on. All applications for projects seeking tax credits should include an ASTM Phase One environmental site assessment for all properties in the project and any other applicable environmental reviews, including but not limited to lead, asbestos, and radon testing. For properties located in historic districts or designated as buildings having historical significance, the sponsor/owner must include in a narrative the status of required historical approvals and evidence that the Massachusetts Historical Commission review process is underway or completed.

Sponsors of historic projects must have received federal Part I approval in order to be competitive in the "readiness" evaluation. DHCD also expects sponsors requiring state historic credits to have received a high percentage of the total requested historic allocation in order to be competitive in "readiness" and other scoring categories. A sponsor seeking tax credits for a project that requires a comprehensive permit under Chapter 40B should note that the Department will not issue a reservation of tax credits until the sponsor has been granted the comprehensive permit from the local zoning board of appeals and until the requisite appeals period has ended with no appeal filed.

During 2022-2023, DHCD will give special consideration in this scoring category to projects submitted during a previous competition(s) but not selected for funding, if DHCD determines that the project sponsors have addressed all issues that prevented them from receiving an earlier allocation.

**Section XI-B. Special Project Characteristics**

The Department has designed this scoring category to encourage and reward projects that include some of the characteristics DHCD would most like to support in affordable housing projects. The points in this scoring category are available to projects that include the following special characteristics:

- Official local support
- Inclusion of MBE/WBE members on the development team; inclusion of an acceptable MBE/WBE utilization plan; completed MBE/WBE checklist (refer to QAP appendices)
- Non-profit sponsorship
- Location in a community with less than 12% subsidized stock
- Persons with disabilities as intended consumers
- Special needs groups as intended consumers
- Inclusion of market rate units within the project
- Location in an area of opportunity for families (jobs, services, good schools, etc.)
- Conformance with Section 42 Code preferences
- Emphasis on green, sustainable, and climate resilient design
- Part of a comprehensive neighborhood planning effort
- Proximity to transit
- Enhanced accessibility
- Contribution to a concerted community revitalization planning effort

The Department values all of these project characteristics. The maximum points available per category are described on the following pages:

**B-1. Official Local Support -- 2 Points Maximum:**

DHCD will award up to two points to any application with a letter of support from the chief elected official of the community to benefit from the tax credit project. The support letter must specifically endorse the proposed project. The number of points awarded in this category will depend, in part, on whether the chief elected official commits local resources to the project and the extent to which the chief elected official offers support and resources in furtherance of the Department’s Fair Housing Principles provided in Appendix D.

**B-2. Contribution to a Concerted Community Revitalization Planning Effort – 6 points maximum**

Many proposals for tax credit projects are part of neighborhood plans approved by municipal officials, housing production plans approved by DHCD, and/or comprehensive local plans designed to enhance local residents’ access to jobs, education, and/or health care. The Department encourages the submission of projects in areas addressed by municipal or state-approved plans or comprehensive local planning. DHCD will award points in this category as follows:

- 2 points for projects to be developed in locations included in formal neighborhood plans, with revitalization components enhancing access to jobs, education, and/or health care that either have been approved by the chief elected official of the host municipality or have been developed with significant, demonstrated community input, with identified resources for revitalization. The formal written plan must delineate the neighborhood; should identify properties to be demolished or rehabilitated and sites to be redeveloped; and must provide information on current and proposed access to mass transit, retail and commercial opportunities, and necessary services; and must describe in detail the non-housing revitalization components, including a timeline and plan for completion.

- 2 additional points if the project is sponsored by a community-based non-profit entity certified by DHCD as a Community Development Corporation under the provisions of Chapter 40H, providing that the non-profit has adopted a Community Investment Plan to undertake community development programs, policies, and activities, including non-housing activities.
- 2 points for a project to be developed in a location included in a housing production plan approved by DHCD's Division of Community Services; or two points for projects to be developed in approved "Priority Development Areas" as determined by state agencies including MassDOT and the Executive Office of Housing & Economic Development.

Please note that projects will not be eligible for points for "inclusion in a comprehensive revitalization effort" unless the sponsor consents to enter into a written agreement with DHCD to evaluate on a regular basis the effects of the development on the surrounding neighborhood. These reports will include tenant income demographics as well as reports on other community revitalization investments in the limited geographic area, concentrating on the investments potentially generated in part or in whole by the presence of the tax credit project.

**B-3. MBE/WBE Membership on the Development Team -- 6 Points Maximum:**

The Department is committed to expanding opportunities for individuals and entities that have not historically been able to participate in affordable housing development. If the project sponsor, general contractor, or management agent is certified by the State Office of Minority and Women Business Assistance (SOMWBA) as a Minority Business Enterprise (MBE) organization or a Women's Business Enterprise (WBE), DHCD will award six points in this category. If another key member of the development team -- the architect; the developer's consultant; the attorney; the accountant, the syndicator -- is SOMWBA-certified as MBE or WBE, DHCD will award a maximum of three points in this category. It is important to emphasize that six points will be awarded only if the sponsor, contractor, or management agent is MBE or WBE certified by SOMWBA. No points will be awarded for development team members who are certified in trades not to be used at the proposed project nor will points be given for any subcontractors who are not under contract with the owner. All SOMWBA certifications must be current in order for the application to receive points in this category. Sponsors also must complete the MWBE checklist in Appendix C in order to qualify for any points in this category.

**B-4. Non-Profit Sponsorship -- 5 Points Maximum:**

Section 42 of the Internal Revenue Code requires that each allocating agency award at least 10% of the annual credit available to projects sponsored by non-profit organizations. In addition to meeting the Section 42 requirements, DHCD wants to encourage non-profit sponsorship of tax credit applications. These applications often represent community-based projects that have strong local support and are critical to the redevelopment of troubled neighborhoods.

In an ongoing effort to encourage qualified non-profits to develop affordable rental housing, DHCD will award points within this category as follows:



- 5 points for a non-profit sponsor that has been certified by DHCD as a Community Development Corporation under the provisions of Chapter 40H. The sponsor must have the ability to develop a complex affordable rental housing project, either through in-house staff or through consultants expected to serve the project through completion into occupancy.
- 3 points: If a project is sponsored by a non-profit organization that previously has sponsored and successfully completed at least two LIHTC projects in Massachusetts, DHCD will award three points in this category.

**B-5. Persons with Disabilities or Special Populations as Intended Consumers – 8 Points**

DHCD will award points in this category to projects that offer units for persons with disabilities integrated into larger projects. DHCD will award up to eight points to projects that offer no more than 15% of the total number of units for persons with disabilities -- either individuals or families with a household member with a disability. The points will be awarded only if the project design, amenity package, and services are appropriate for the population to be served. Sponsors should note that approval from the Executive Office of Health and Human Services will be required before DHCD can provide certain subsidy funds to support tax credit projects with units for persons with disabilities.

DHCD also will award points in this category to projects that serve other populations in need of support services. DHCD was a member of the Governor’s Interagency Supportive Housing Working Group (SHWG) that, between 2013 and 2015, was instrumental in helping achieve the SHWG’s goal of creating 1,000 SH units in less than two years. DHCD remains active in the Supportive Housing Production and Services Committee of the Interagency Council on Housing and Homelessness, and, in 2022-2023, the Department will continue its financial assistance to supportive housing projects. Under this QAP, DHCD will provide up to eight points in this category for projects that provide units with services that are appropriate for special populations that may include, but are not limited to, persons with disabilities, including but not limited to homeless veterans, other homeless individuals or households with identified special needs, frail elderly to be served in service-enriched senior housing or assisted living facilities. The points will be awarded only if at least 20% of the units in the project are reserved for a special population and if the project design, amenity package, and population-specific services are appropriate for the population to be served.

**B-6. Inclusion of Market Rate Units in the Project -- 6 Points Maximum:**

The Department will award six points to a tax credit application that includes at least 50% market rental units. Three points will be awarded to a project with at least 25% market rental units. DHCD will award points in this category only if the marketing information presented by the sponsor and confirmed by the Department supports the proposed mix of market and affordable units. Projects that include “workforce” units may be eligible for points in this category, if the “workforce” units also may be considered market rate units based on the relationship between “workforce” rents and market rents in the market area.

**B-7. Location in an Area of Opportunity-- 14 Points Maximum:**

For purposes of allocating the credit in 2022-2023, DHCD will use five priority funding categories, including location of a family project in an “area of opportunity”. The Department defines an area

of opportunity in part as a neighborhood or community with a relatively low concentration of poverty based on U.S. Department of HUD data. In addition, DHCD identifies an area of opportunity as a neighborhood or community that offers access to opportunities such as jobs, health care, high-performing school systems, higher education, retail and commercial enterprise, and public amenities. To determine whether a location is an area of opportunity, sponsors should use publicly available data such as employment statistics; location near mass transit, green space, and other public amenities; educational testing data; and so on. Sponsors also should confirm with DHCD that their evaluation of an area of opportunity is consistent with the Department's evaluation since the Department will make the ultimate decision.

To be eligible to receive points within this category, a family housing project typically must be located in a census tract with a poverty rate below 15%. Projects located in municipalities with overall poverty rates below 15% may also qualify for points within this scoring category. On a case-by-case basis, at its sole discretion, the Department will permit certain projects to receive points in this category if the poverty rate in the census tract and/or the municipality is 15% or higher, as long as the project is located in an area with compelling attributes that make the location desirable to renters.

To be eligible to receive points within this category, a family housing project also must include certain design characteristics: the project must be configured to contain at least 65% two-bedroom or larger units and at least 10% three-bedroom units, unless either percentage is demonstrated to be infeasible or unsupported by public demand.

If the thresholds described above have been met, DHCD will award points within this category as follows:

Up to 8 points for strength of public school system:

Points will be awarded to family housing projects as follows based on the percentage of 10th grade students that score in the Advanced or Proficient categories using an average of the 3 MCAS tests (English Language Arts, Mathematics, and Science and Technology Engineering) as available at <http://www.doe.mass.edu/mcas/results.html>:

90% or above: 8 points

85% or above: 6 points

80% or above: 4 points

75% or above: 2 points

Up to 6 points for access to employment:

Points will be awarded as follows based on the proximity to jobs of the municipality in which the family housing project is located as defined by average vehicle miles travelled by commuter as available at <http://www.mass.gov/hed/housing/affordable-rent/low-income-housing-tax-credit-lihtc.html>:

5 miles or less: 6 points  
7 miles or less: 4 points  
9 miles or less: 2 points

In addition, up to 4 points will be awarded in this category to projects located within .5 miles of a major public transit station, permitting ready access to employment opportunities.

Up to 2 points for access to higher education:

Two points will be awarded within this category to family housing projects located within two miles of community colleges and/or state colleges/universities within the University of Massachusetts system.

Up to 2 points for access to health care:

Two points will be awarded within this category to family housing projects located within one mile of a major health care facility, such as a hospital, an urgent care center, or a neighborhood health clinic.

The maximum number of points to be awarded in this category will be 14 points.

**B-8. Conformance with Section 42 Code Preferences -- 3 Points Maximum:**

In this category, the total number of points available to any project is three.

**Extended Term of Affordability -- 3 Points Maximum**

DHCD will award three points in this category to applications whose sponsors commit to a term of affordability of 50 or more years. The extended term of affordability will be included in the project's regulatory agreement. If a project receives points in this category, DHCD will not permit the term of affordability to be reduced at a later date.

**Lowest Income Population to be Served -- 3 Points Maximum**

DHCD will award three points in this category to projects whose sponsors commit to renting at least 15% of the tax credit eligible units to individuals or families with incomes at or below 30% of area median income. If a project receives points in this category, DHCD will require the sponsor's commitment to be included in the project's regulatory agreement. Units intended to count towards this set-aside must be clearly identified in the application in order for the project to earn points in this category.

**Projects Located in Qualified Census Tracts -- 3 Points Maximum**

DHCD will award three points in this category to a project located in a qualified census tract, the development of which contributes to a concerted community revitalization plan, including investment in jobs, education, and/or health care. Internal Revenue Code 42 (d)(5)(C)(ii) defines "Qualified Census Tract" as any census tract designated by the Secretary of HUD in which 50 percent or more of the households have an income less than 60 percent of area median gross income or, in certain instances, there is a poverty rate of at least 25 percent. A concerted community revitalization plan may be formally adopted by a municipality or may be an action plan developed by the project sponsor in contact with one or more organizations within the community,

provided that it addresses proposed investments in the community to improve residents’ access to jobs, education, and/or health care.

**I. Emphasis on Green, Sustainable, and Climate Resilient Design and Enhanced Accessibility—26 Maximum Additional Points**

The Department is strongly committed to providing tax credits to housing projects that incorporate green, sustainable, and climate resilient features of design. The Department is also strongly committed to supporting enhanced accessibility in its LIHTC projects. To support these goals, DHCD will award up to 26 points (up to 20 points for green, sustainable, and climate resilient design and up to 6 points for enhanced accessibility) in the following categories for projects that meet the design criteria described in this section. However, sponsor should note that the green, sustainable, and climate resilient points are available only to projects already in compliance with Enterprise Green Community Standards.

**Green Building Certification – 3 points maximum**

- Enterprise Green Communities Certification or
- LEED Certification (Gold or platinum)

**Building Energy Performance – 8 points maximum**

<b>New Construction Projects</b>	<b>Rehabilitation Projects</b>
HERS index of 45 <sup>1</sup> or less for each unit – 4 points	HERS index of 65 or less for each unit – 3 points
	HERS index of 55 or less for each unit – 5 points
Passive house certification – 8 points	EnerPHit <sup>2</sup> or Passive house certification – 8 points

**Electrification – 3 points maximum**

- Electrification of heating and cooling (2 points)
- Electrification of hot water (1 point)

**On-Site Clean Energy Systems – 3 points maximum**

- On-site solar photovoltaics<sup>3</sup> (2 points)
- On-site wind energy (2 points)
- On-site hydro-electric power (2 points)
- Solar hot water generation (1 point)
- Energy storage technology (1 point)

**Reduced Embodied Carbon of Building Materials – 3 points maximum**

- Concrete: Compliance with low embodied carbon concrete Marin County Code for concrete used on project (2 points)
- Insulation: Low embodied carbon exterior rigid insulation

<sup>1</sup> HERS 45 is both the proposed 2023 stretch code level for electric heated units and the expected tier for MassSave new construction electric unit incentives.

<sup>2</sup> EnerPHit is the PHI Passive house certification designed specifically for retrofit projects.

<sup>3</sup> Solar ready roofs are already required by code on buildings up to five stories.

- o Wood fiberboard (2 points)
- o Low GWP XPS foamboard<sup>1</sup> for below grade (1 point)
- LEED Materials analysis of embodied carbon impact of structure, insulation, and cladding systems and use of strategies to reduce embodied carbon by 10% in these building components (i.e., reduction of concrete and steel due to building form/design approach or alternative materials specifications) (1 point)

**Certified Exemplary Energy Performance—5 Points Maximum**

Projects will be eligible for up to five points as delineated below if they are designed to meet the following standards:

- LEED Certification (1 point new construction; 2 points rehabilitation projects)
- Enterprise Green Communities Certification – 2 points
- Passive House (PHI or PHIUS+ precertification) – 5 points

Sponsors of projects designed to meet Passive House certification standards must agree to provide DHCD with appropriate reports, including annual per unit operating cost reports, for at least five years post-occupancy.

**Enhanced Accessibility—6 Points Maximum**

DHCD will award up to six points to projects that incorporate any of the following into their plans and specifications.

- 5% or more Group 2 units (minimum 1 unit) in developments otherwise exempt from this requirement.
- 10% of more Group 2 units in projects that are subject to 5% requirement
- Provision of fully accessible common spaces in developments otherwise exempt from this requirement.
- Group 1 units in adaptive reuse projects in existing buildings where Group 1 units are not otherwise required.
- In projects that consist of 1 or 2 family dwellings that may otherwise be exempt, provide a minimum of 5% Group 2 units.
- 5% of units outfitted with devices for vision or hearing-impaired residents.
- In Group 2 units, if not otherwise required by code, provide two accessible means of egress directly to the outdoors (that do not include an egress stair with an area of refuge).
- Provision of features of Universal Design (see Appendix J, Part B)
- Provision of features of Visitability beyond DHCD mandatory requirements (see Appendix J, Part C).

**J. Proximity to Transit—6 Points Maximum**

The economic development legislation enacted in January 2021 created the Transit Oriented Development Program (TOD). While this program contains elements of prior Massachusetts

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<sup>1</sup> Low GWP XPS foam board known as “greyboard” is now widely available and affordable in MA and other states plus Canada as part of a global commitment to phase out high GWP blowing agents through the Kigali agreement.

programs targeted to housing near transit, it also contains new or modified requirements. DHCD will administer the new TOD program in coordination with the Massachusetts Housing Partnership (MHP), as authorized in the legislation, and will make up to \$10 million in TOD funds available for the first time during 2022.

DHCD anticipates making TOD funding awards of \$1 million to \$1.5 million per project with a maximum of \$75,000 in TOD funds per affordable unit. The Department reserves the right to make larger awards -- for example to larger-scale projects. Eligible projects typically must be located within .5 miles of an existing or planned transit node, defined as a subway station, commuter rail station, bus station served by multiple high-frequency bus lines, or a ferry terminal, with safe and direct pedestrian or bicycle access between the proposed project site and the transit node. An eligible planned transit node must have an expected completion date on or before the expected occupancy of the proposed project. Projects also may be eligible if they are located between .5 and 1 mile of an eligible transit node and have other compelling TOD features, such as parking ratios of less than one space per unit or proximate secondary transit connections such as a public or private bus line. In accordance with the legislation, at least 25% of the occupants of projects assisted by TOD must have incomes no greater than 60% of AMI. In accordance with the legislation, preference will be given to projects located in communities most severely impacted by COVID-19. Sponsors of age-restricted housing will not be eligible to seek this resource, but will be eligible to seek many other DHCD resources in upcoming competitions.

A maximum of six points is available within this scoring category to LIHTC projects that meet the criteria and Section XII. The Application Process for Credit in 2022-2023

## **Section XII. The Application Process for Credit in 2022-2023**

The Department of Housing and Community Development typically awards the 9% credit through regularly scheduled competitive funding rounds. In winter 2022 and winter 2023, DHCD will hold competitive funding rounds for the 9% credit and other rental resources. The Department also anticipates holding mini-round competitions in 2022 and 2023.

### **Pre-Application Process**

The Department's pre-application process has helped DHCD identify projects that are at an early stage and not ready to proceed to competitive review. The process also has helped DHCD identify projects that have significant cost issues and need to be restructured. In general, it is DHCD's belief that the process helps developers as well as the Department. DHCD issued a NOFA for the winter 2022 funding competition in September 2021. Pre-applications for the winter 2022 rental funding competition were due on October 28, 2021. Full applications will be due on January 13, 2022. Projects must receive DHCD approval through the pre-application process in order to be eligible for the January 2022 competition. Sponsors should refer to DHCD's Notice of Funding Availability for the January 2022 competition to determine the pre-application fee amount for their projects.

DHCD anticipates scheduling at least one additional funding competition in 2022. Any additional competitions will be available to highly ready production projects. DHCD will announce details and deadlines for the additional 2022 competitions, including pre-application dates, through a

Notice of Funding Availability (NOFA) in spring 2022. The Department also anticipates holding two funding competitions in 2023, with details to be provided in future NOFAs.

All pre-applications must be submitted online at: <https://massonestopplus.intelligrants.com>. The information requested in the pre-application is intended to confirm that a project will be ready to move quickly if selected for funding during a full competition.

**2022 Winter Rental Funding Round:**

The deadline for submitting applications for the winter 2022 rental funding round will be January 13, 2022. Sponsors may submit applications for the winter round only if they have received approval from DHCD in the pre-application process. All funding applications must be submitted by the close of business on January 13, 2022, using the on-line OneStop+ affordable housing application.

Online applications received after the close of business on the submission deadline -- January 13, 2022 -- will not be reviewed. Prospective applicants are strongly encouraged to meet with DHCD tax credit staff to discuss their particular projects prior to the pre-application deadline as well as the funding round deadline.

In addition to the submissions to DHCD, each tax credit sponsor must provide a full copy of the OneStop+ application to the chief elected official of the municipality in which the project is located. Within 30 days of the submission deadline, the sponsor must submit to DHCD a certification that an application identical to the submission to DHCD has been delivered to the chief elected official. If at any time during the competition, DHCD determines that the sponsor failed to fully comply with this requirement, the Department reserves the right to disqualify the sponsor's application.

**Rolling Application Process for Massachusetts Projects:**

The application process in Massachusetts for the 9% credit is a competitive process. DHCD typically accepts applications for the 9% credit as well as the Department's rental subsidy resources during regularly scheduled funding competitions. From time to time during past years, DHCD has accepted certain applications with very specific characteristics on a rolling basis. At this time, DHCD reserves the right to consider accepting a very limited number of rolling applications, but only if the following conditions are met:

- (1) the project must include a very significant number of ELI units coupled with a very significant local match, and
- (2) the project must be located in a city or town with great numerical need for ELI units, and
- (3) the project must present a significant potential benefit to an underserved population;
- (4) DHCD must determine that resources would permit a rolling application.

It will always be DHCD's strong preference to evaluate projects within the context of a funding competition, rather than on a rolling basis. No sponsor should assume that DHCD will make the decision to accept a rolling application.

**Application Completeness:**

Although most development projects change over time, and some projects change substantially, the Department must evaluate all project applications in a fair and equitable way. The OneStop+ application essentially is a “snapshot” of a project on the day of submission. Except as specifically outlined in the next paragraph, for purposes of threshold review and competitive evaluation, the Department will not accept the submission of additional documentation after the application deadline. Each project will be reviewed based on the materials contained in the OneStop+ on the deadline for all submissions.

During 2022-2023, DHCD will make an exception to this policy for projects that receive favorable financing commitments during funding competitions conducted by other public-purpose lenders. DHCD will consider these new commitments in its review process during the 2022-2023 tax credit competitions if they are submitted before final scoring has occurred. In addition, at its sole discretion, the Department may contact tax credit applicants after the application deadline to seek clarification on certain materials contained in the OneStop+ application.

**Section XIII. Processing Fees; Late Fees; Compliance Monitoring Fees****A. Processing Fees:**

Sponsors seeking 4% or 9% federal tax credits during 2022-2023 will be required to pay processing fees as follows. Assuming that the sponsor/owner meets Department deadlines for submitting carryover documentation, the total processing fee will be either 8.5% or 4.5% of the annual credit amount, depending on the type of project sponsor. For tax credit projects sponsored by for-profit developers, the total processing fee is equal to 8.5% of the annual credit amount. For projects sponsored by non-profit developers, the total processing fee is equal to 4.5% of the annual credit amount. The credit amount will be the amount identified on the carryover allocation. If the project does not need a carryover allocation, the credit amount will be the amount identified on IRS Form 8609.

Sponsors seeking state tax credits during 2022-2023 will be required to pay processing fees as follows. Assuming that the sponsor/owner meets Department deadlines for submitting carryover documentation, the total processing fee will be either 3% or 1.5% of the annual credit amount. For state tax credit projects sponsored by for-profit developers, the total processing fee is equal to 3% of the annual state credit amount, depending on the type of project sponsor. For projects sponsored by non-profit developers, the total processing fee is equal to 1.5% of the annual state credit amount. The state credit amount will be the amount identified on the carryover allocation. If the project does not need a carryover allocation, the state credit amount will be the amount identified on state credit eligibility statement.

The processing fee(s) for each project submitted during 2022-2023 will be due in three installments:

- at the time of application;
- at the time the project receives a carryover allocation or binding forward commitment;
- at the time of final commitment of the credit.



It is important to note that the Department will charge a late fee to all sponsors of projects who fail to submit the required documentation and processing fee installments by their deadlines as described below.

**First Installment at Application:**

All tax credits sponsors must pay either \$1,050 or \$5,250 at the time of application (for 4% credit projects, this fee will be due at the time of the request for Official Action Status from MassHousing or MassDevelopment). Checks must be made payable to the Department of Housing and Community Development. The application fee is non-refundable. The application fee for non-profit sponsors and for sponsors of projects with 20 or fewer units is \$1,050. All other sponsors must pay \$5,250.

**Second Installment at Carryover or Binding Forward Commitment:**

Sponsors must pay the second installment of the processing fee(s) before receiving a carryover allocation or binding forward commitment from DHCD. The amount due in this installment will be one-third of the total processing fee, less the amount of the first installment paid at the time of application. This second payment also is non-refundable. Since 4% credit project sponsors do not need to submit carryover documentation unless they are also state credit projects, this second installment only applies to 4% credit projects if they are state credit projects.

**Third Installment at Allocation:**

Each sponsor must pay the remainder of the total amount of the processing fee(s) before receiving a final allocation of credit and IRS form 8609 and/or state credit eligibility statement from DHCD. The third installment also is non-refundable. For 4% credit projects, the remainder of the total processing fee is due prior to issuance of a 42(m) tax credit eligibility determination letter by DHCD.

**B. Late Fees:**

Given the time-sensitive and critical nature of various Internal Revenue Code requirements, DHCD reserves the right to charge late fees to any and all sponsors failing to meet the deadlines for submitting required documentation and processing fee payments. The Department will assess a \$3,000 penalty to any non-profit sponsor and a \$5,000 penalty to any for-profit sponsor who fails to remit the required documentation and the second or third installments of the processing fee within the time specified by DHCD. Materials that are more than 60 days past due will trigger an additional penalty fee in the amount of \$3,000 to a non-profit sponsor and \$5,000 to a for-profit sponsor. The carryover allocation and/or IRS Form 8609(s) will not be released to the sponsor until any outstanding processing fees and late fees have been paid.

Late submission of a signed regulatory agreement to the Department is also subject to a late fee. A finalized regulatory agreement, suitable for execution by the Department, must be submitted by the due date indicated in the regulatory agreement notification package forwarded to the sponsor by tax credit program staff. A fee assessed for late submission of a regulatory agreement - \$3,000 to a non-profit sponsor, \$5,000 to a for-profit sponsor - will be in addition to any late fee detailed above.

In addition, any sponsor who fails to meet his or her carryover allocation deadline -- thus endangering a portion of the Commonwealth's valuable tax credit resource -- should note that the

Department has the right to withdraw the tax credit commitment to the particular project. Furthermore, the Department reserves the right to reject future applications for tax credits from those parties who have failed to meet the Department's deadlines for year-end submissions. The Department is prepared to exercise these rights if necessary.

**C. Compliance Monitoring Fees:**

An annual monitoring fee will be due and payable by all projects (allocation years 1987-2021) to DHCD or its authorized delegate during the term of the compliance period (as defined in Internal Revenue Code Section 42) or required to be placed in an escrow by the owner. The fee will be based on a charge of \$30 per low-income unit per year, as adjusted periodically by DHCD by the Consumer Price Index (CPI) subject to a cap as described below. If the actual compliance period for a project will begin in a year later than 2018, the monitoring fee will be required beginning in that same year. Projects which received an allocation of tax credits in years prior to 2018 will be required to pay only a tax credit monitoring fee as set forth below, notwithstanding any provision to the contrary in any prior year's Qualified Allocation Plan and/or Program Guidelines, including without limitation provisions for an annual administrative or monitoring fee. DHCD will utilize 1997, the first year that it collected compliance monitoring fees, as its base year in determining all subsequent fee adjustments.

The actual annual fee will be calculated and collected according to one of the two following methods, the selection of which will be at DHCD's sole discretion:

- The annual monitoring fee will be due and payable on a date designated annually by DHCD throughout the term (or remaining term) of the compliance period. Under this method, the fee will be calculated at \$30 per low-income unit in 2022-2023, which amount may be adjusted by DHCD periodically by the Consumer Price Index (CPI) for subsequent years. The total annual fee will not exceed the amount of \$4,000 per project in 2022-2023, which amount may be adjusted by DHCD periodically by the Consumer Price Index (CPI) for subsequent years;
- The total amount of monitoring fees for the 15-year compliance period (or remaining years of the compliance period beginning with 2018 (for projects that received an allocation of tax credits in years prior to 2018) will be due and payable in one payment at a date designated by DHCD. DHCD may require projects that have not previously received IRS Form 8609 to make payment prior to the release of Form 8609. Under this method, the fee will be calculated at \$30 per low-income unit multiplied by 15 or the number of remaining years in the compliance period, whichever number is less.
- The total fee will not exceed the amount of \$4,000 per project multiplied by 15 or the number of remaining years in the compliance period, whichever number is less. At DHCD's discretion, this total amount will be placed in escrow by DHCD or the Owner and will be used for the purpose of monitoring during the compliance period. If DHCD does not institute this method of collection in 2022-2023, DHCD may adjust the \$30 per low-income unit and \$4,000 per project amounts by the Consumer Price Index (CPI) in any subsequent year.

DHCD reserves the right to charge a reasonable monitoring fee to perform compliance monitoring functions after the completion of the tax credit compliance period (as defined in Internal Revenue Code Section 42) for the remainder of the term of the Tax Credit Regulatory Agreement and Declaration of Restrictive Covenant.

Projects that receive funding through the Tax Credit Assistance Program or the Tax Credit Exchange Program must pay an asset management fee in addition to a compliance monitoring fee.

#### **Section XIV. Modification of the Allocation Plan**

DHCD will administer the allocation of tax credits in such a manner as it deems appropriate in accordance with federal law and procedure. It will make determinations, publish rules and guidelines, and require use of particular forms as necessary.

The Governor delegates to DHCD the power to amend this plan in response to changes in federal law or regulations. In addition, the Governor recognizes that circumstances not foreseen in the Plan may arise, and therefore delegates to DHCD the authority to resolve conflicts, inconsistencies, and ambiguities in the plan and operation of the program; to respond to any abuse of the allocation system; and, if necessary, to amend the plan after a public hearing. (Please refer also to Appendix F.)

#### **Section XV. Program Policies**

Sponsors of 2022-2023 tax credit projects should take into consideration the program policies described in this section. Additional program policies are described in the Low-Income Housing Tax Credit Guidelines available from DHCD. All applicants should read the guidelines in effect at the time of application.

##### **A. Assumptions Regarding Value of the Credit and Least Amount Necessary for Feasibility**

Federal legislation requires that the administering agency allocate only the amount of credit necessary to make a project feasible. To determine the least amount of credit necessary for feasibility, DHCD must be aware of the full extent of financial resources available to a project and the project costs. In particular, federal law requires developers to certify to state credit agencies the extent of all federal, state, and local resources that apply or might apply to a project, as well as project costs at three different points in time:

- 1) At the time of application,
- 2) At the time an allocation is made (carryover allocation or binding forward commitment), and
- 3) When the project is placed in service.

To determine the least amount of credit necessary for feasibility at the time of application and at the time of allocation, DHCD will assume that a project is to be syndicated and will determine a credit amount based on a set of assumptions regarding projected net equity to be raised. Developed by DHCD, these assumptions will be applied to all tax credit projects unless the developer provides definitive information, acceptable to DHCD, indicating that different assumptions should be used.

When a project places in service, DHCD requires an audited cost certification in its established format. The IRS Form 8609(s) will not be released to the project owner until the final analysis is completed by DHCD. DHCD may reduce the final allocation as it appears on the 8609(s) for the project if:

- The project does not have enough basis to support the original allocation; or
- The project costs are not acceptable to DHCD.

DHCD will examine all costs for reasonableness, including but not limited to the following: acquisition; construction costs; general development costs; syndication costs; builder's profit, overhead, and general requirements; operating revenues, expenses and cash flow. Only reserves required by a lender and/or DHCD will be allowed. If a developer has proceeded with or completed construction of a project without DHCD's knowledge, DHCD may deem tax credits unnecessary for the feasibility of that project. In these circumstances, the project will not be eligible for an award of tax credits. DHCD will not allow a development budget line item carried both as a source and a use, if the item has no reasonable basis for being paid but is included for the purpose of calculating the eligible basis in an effort to increase the annual tax credit calculation.

#### **B. Developer's Fee/Overhead**

DHCD will determine the calculation of each tax credit allocation based on eligible costs that include a developer's fee and overhead that conform to DHCD's maximum allowable developer's fee and overhead limits as calculated below. Please note that the calculation of fees was changed in the 2018 QAP and these changes are described below and on the following page. In addition, the developer's fee and overhead limits are now being tied to the "Total Residential Development Cost Limits" included in an earlier section of this QAP. Sponsors of identity-of-interest projects may not seek a paid fee for their transactions and should refer to Section IX of this document for additional information.

DHCD will determine the developer's fee and overhead at three points in time: at the time of application, at the time of carryover allocation, and when the project sponsor applies for IRS Form 8609. If the developer's fee and overhead exceed the allowable limits at any of the three points in time, the tax credits allocation will be reduced accordingly. Although DHCD recognizes the evolving nature of projects, in order to promote readiness and to encourage the best possible cost estimates, DHCD reserves the right to disallow increases in total developer's fee and overhead that result primarily from increases in replacement costs after the time of application. For purposes of calculating the developer's fee and overhead, total replacement costs are defined as all total development costs net of project reserves and syndication costs approved by DHCD. In addition, sponsors should note that DHCD does not permit a calculation of "fee on fee".

In calculating the allowable developer's fee and overhead, sponsors should consider any development or operating reserves or escrows funded by cash at closing or through syndication as part of the developer's fee and overhead, as follows:

- Reserves or escrows that are intended to remain in the project for more than five years will not be included in the developer's fee and overhead. The five year holding period is assumed to begin on the first day that the development has achieved full occupancy, and end five years following such date;

- 80% of reserves or escrows that are intended to remain in the project for less than five years are included in the developer's fee and overhead;

All consultant costs, including but not limited to development consultant, syndication consultant, and historic consultant fees, are included in the maximum developer's fee and overhead allowed.

The maximum allowable developer's fee and overhead shall be calculated according to the following schedule (see the exceptions below):

- Developer's fee and overhead may equal up to 5% of acquisition costs, and, in addition;
- Developer's fee and overhead may equal up to 15% of the first \$3 million in total replacement costs less acquisition, and, in addition;
- Developer's fee and overhead may equal up to 12.5% of the total replacement costs less acquisition that are from \$3 million to \$5 million, and, in addition;
- Developer's fee and overhead may equal up to 10% of the total replacement costs less acquisition that exceeds \$5 million, subject to the limitations on paid fee described below.

For large projects, the amount of the developer's fee and overhead that is payable in cash out of the development budget shall be further limited as follows:

- For projects with total replacement costs less acquisition between \$15 million and \$25 million, the paid fee shall be equal to the fee as calculated above plus 7.5% of the amount over \$15 million; and, in addition;
- For projects with total replacement costs less acquisition that exceed \$25 million, the paid fee shall be equal to the fee as calculated above plus 5% of the amount over \$25 million.

Furthermore, for projects involving acquisition by a related party, the maximum paid fee shall be equal to 2.5% of the acquisition cost.

Any fees not payable in cash out of the development budget in keeping with the provisions above may be deferred and payable from operating cash flow over time. Payment of deferred developer fees out of operating cash flow will have payment priority over DHCD cash flow repayment requirements provided that the terms of the deferred developer fee note are acceptable to DHCD.

If the developer's fee and/or overhead for a project is determined to be unreasonable, DHCD reserves the right to reduce the permissible fee, even though that fee may otherwise meet program guidelines based on the project's size. Projects with total development costs that exceed DHCD's cost limits may have the maximum allowable fee reduced by 10% of the amount that the project exceeds the cost limits.

### **C. Compliance Monitoring**

Beginning with 1990 allocations, the federal legislation requires that an extended low income use agreement be in effect for a minimum of 30 years for every project receiving tax credits. To enforce these and other program use restrictions, DHCD will require that each project owner enter

into a Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants (the “Agreement”). In the case of buildings which are financed with the proceeds of tax-exempt bonds and receive an allocation of 4% tax credits, DHCD will require that the owner enter into an Extended Low Income Housing Agreement and Declaration of Restrictive Covenants (the “Agreement”) with the DHCD. These Agreements limit the use of all of the low-income units to rental housing, with income and rental restrictions, for a minimum period of thirty years.

In addition, DHCD has an obligation, as of January 1, 1992, to monitor the compliance of all tax credit projects with tax credit requirements as set forth in Section 42 of the Internal Revenue Code and applicable regulations. DHCD will monitor tax credit projects for compliance with the requirements of the Agreement. DHCD also will perform physical inspections taking into consideration local health, safety and building codes. Owners may be charged an annual fee to cover the administrative costs of such monitoring.

DHCD's procedure for monitoring compliance with Low Income Housing Tax Credits requirements is outlined in Appendix E to this plan. DHCD's procedure is adopted pursuant to Section 42(m) (1) (B) of the Internal Revenue Code and Treasury Regulation Section 1.42-5. DHCD reserves the right to amend this procedure as may be necessary or appropriate to conform to applicable changes in the Internal Revenue Code or regulations promulgated thereunder. Notwithstanding anything to the contrary in this Allocation Plan, DHCD may adopt such amendments without a public hearing process but shall give reasonable notice before implementation of any such amendment to all tax credit applicants and owners. In addition, DHCD may adopt further monitoring forms and procedures as part of its Low-Income Housing Tax Credit Guidelines or as otherwise deemed appropriate.

Pursuant to Section 42(m)(1)(B) and Treasury Regulation Section 1.42-5(f), DHCD may retain an agent or other private contractor (“authorized delegate”) to perform compliance monitoring functions. Any reference to DHCD in this monitoring procedure shall also include, where appropriate, an authorized delegate of DHCD.

Pursuant to Section 42 (m)(1)(B)(iii), this monitoring procedure applies to all owners of buildings or projects for which the low-income housing credit is or has been claimed at any time. If DHCD becomes aware of noncompliance that occurred prior to January 1, 1992, DHCD is required to notify the Internal Revenue Service of such noncompliance. The monitoring procedure includes provisions for record keeping and record retention, annual certification and review, on-site records review, building inspection, and notification to owners and the Internal Revenue Service of noncompliance.

#### **D. 130% Rule**

Projects located in qualified census tracts or difficult-to-develop areas as identified by the U.S. Department of Housing and Urban Development and/or by the Department of Housing and Community Development may seek up to 130% of the rehabilitation credit basis amount for which they are eligible. Current information on the designation of difficult development areas by DHCD is included in Section IV of this QAP. The 130% factor may not be applied to the acquisition basis. DHCD will award up to 130% of the rehabilitation credit at its discretion and only if necessary for project feasibility. Current information about the designation of qualified census

tracts and difficult development areas was issued by HUD on April 20, 2012 and September 28, 2012, respectively.

Tax-exempt projects are eligible for up to 130% of credit, subject to the determination of least amount of credit necessary for feasibility, only if the project is located in a qualified census tract or difficult-to-develop area as identified by the U.S. Department of Housing and Urban Development.

**E. Lead Paint**

All units in all tax credit buildings must be de-leaded prior to the issuance of a final allocation (IRS Form(s) 8609) for the project. All de-leading work must be performed in accordance with the provisions of M.G.L. c.111, 190-199B, 105 CMR 460.000, as well as all EPA requirements.

**F. Physical Accessibility**

In order to enable DHCD to evaluate the accessibility provisions of each project, sponsors must provide summary information regarding accessibility using the checklist found in the Appendix J. In addition to the requirements of the Massachusetts Architectural Access Board (MAAB), projects may also be subject to other applicable federal, state, and local statutes and regulations such as the Fair Housing Act (FHA), Section 504 of the Rehabilitation Act of 1973, the Architectural Barriers Act of 1968 (ABA), and the Americans with Disabilities Act (ADA). Sponsors should note that Appendix J is regularly modified.

**G. Affirmative Fair Housing**

DHCD requires developers to establish affirmative fair housing marketing goals for occupancy of each project, taking into account the demographics of the region in which the housing is located. Developers and management agents must establish effective marketing plans to reach the identified minority groups that are least likely to apply for the housing being provided. Prior to initial occupancy of any unit in the project, the owner shall adopt and implement 1) an affirmative fair housing marketing plan for all units and 2) a tenant selection plan for the low-income units, in both cases consistent with any standards and guidelines adopted by DHCD as then in effect and consistent with all applicable laws. Both the affirmative fair housing marketing and tenant selection plans shall be submitted in timely fashion and shall be subject to review by DHCD.

If a tax credit project is located in a predominantly white neighborhood in the city of Boston, according to a list maintained at DHCD, the affirmative fair housing marketing plan shall have the percentage goals for occupancy of the low-income units which reflect the racial and ethnic composition of the city of Boston as determined in the most recent U.S. Census. As per the most recent U.S. Census, the percentage goals for the city of Boston are as follows:

## H. Race

Total Population:	100.0%
White alone	47.1%
Black or African American alone	20.6%
American Indian and Alaska Native alone	0.4%
Asian alone	11.3%
Native Hawaiian and Other Pacific Islander alone	0.1%
Other total (some other race and two or more races)	20.6%

## Ethnicity

Hispanic or Latino	18.7%
Not Hispanic or Latino:	81.3%

## I. Local Preference

DHCD will allow a percentage of local preference in tax credit projects if the sponsor is able to demonstrate to DHCD's satisfaction that a need for such preference exists and that such a preference will not have a discriminatory effect on protected classes. During 2022, DHCD will carry out a study on the potential discriminatory effects of local preference. The Department reserves the right to modify its current practices regarding local preference at a later date.

The documentation of local housing need must be fully substantiated in the project's market study or through other supporting documentation such as the municipality's Consolidated Plan or a local affordable housing plan. To ensure that the local preferences established for the project do not violate applicable fair housing laws and, therefore, do not have a discriminatory effect on protected classes, the sponsor must:

- develop an affirmative fair housing marketing plan targeting those least likely to apply in accordance with DHCD's Affirmative Fair Housing Marketing Plan guidelines provided in Appendix D;
- list the units in the project on Housing Navigator
- list vacant units upon availability with Citizen's Housing and Planning Association's (CHAPA's) Massachusetts Accessible Housing Registry at <http://www.chapa.org>;
- list vacant units located in the Boston-Cambridge-Quincy MSA, upon availability, with the City of Boston's Metrolist (Metropolitan Housing Opportunity Clearing Center), at Boston City Hall, P.O. Box 5996, Boston, MA 02114-5996 (617-635-3321);
- develop a tenant selection lottery system consistent with that described in the "Guidelines for Housing Programs in Which Funding is Provided Through a Non-Governmental Entity" (NEF Guidelines) as published by the Department as well as the additional provisions provided in Appendix D.

Both the affirmative fair housing marketing plan and the tenant selection lottery system will be reviewed by DHCD program staff at the time of carryover allocation. Please see Appendix D for additional information on developing the lottery.



#### **J. HUD Subsidy Layering Guidelines**

Pursuant to Section 911 of the Housing and Community Development Act of 1992, HUD is required to determine that projects receiving or expecting to receive both federal, state, or local assistance and tax credits do not obtain subsidies in excess of that which is necessary to produce affordable housing. On December 15, 1994, the U.S. Dept. of HUD issued administrative guidelines referred to as subsidy layering guidelines, regarding limitations on combining Low-Income Housing Tax Credits with HUD and other government assistance in the Federal Register. The guidelines make a provision for housing credit agencies to implement the subsidy layering reviews for projects that are at least receiving HUD housing assistance and are receiving or allocated Low Income Housing Tax Credits. Housing credit agencies may perform the subsidy layering review function provided that the housing credit agency certifies to HUD that it will properly apply the guidelines that HUD establishes. DHCD is the housing credit agency in Massachusetts and, as of September 2017, has made the required certification to HUD that it will properly apply the HUD subsidy layering guidelines. Sponsors of LIHTC projects should contact the Low-Income Housing Tax Credit staff for further information.

#### **K. Project Size**

In order to avoid undue concentration of resources in any one area, DHCD will consider tax credit projects of 100 units or more on a case-by-case basis. DHCD will require a detailed market study and will closely examine the probable absorption rate for these projects.

#### **L. Single Room Occupancy**

Federal law requires that a Low-Income Housing Tax Credit unit may not be used on a transient basis. Tax regulations require a minimum lease term of six months. However, single room occupancy units rented on a month-to-month basis may qualify for the credit if they are funded under the Stewart B. McKinney Act.

#### **M. Housing for the Homeless**

The tax credit has become a substantial resource for transitional housing for the homeless. The portion of a building used to provide supportive services may be included in the qualified basis. Transitional housing for the homeless must contain sleeping accommodations and kitchen and bathroom facilities and be located in a building used exclusively to facilitate the transition of homeless individuals to independent living within 24 months.

#### **N. Luxury Items in Tax Credit Projects**

In accordance with federal tax law, the eligible basis of a building must be reduced by the amount of the adjusted basis attributable to those market units in the building that are above average quality standard of the low-income units. However, the developer may elect to exclude from the eligible basis the excess cost of the market units, provided that such excess cost does not exceed 15% of the cost of a low-income unit.

#### **O. Fair Housing and Occupancy Data Collection**

The mission of DHCD through its programs and partnerships is to be a leader in creating housing choice and providing opportunities for inclusive patterns of housing occupancy for all residents of the Commonwealth, regardless of income, race, religious creed, color, national origin, sex, sexual orientation, age, ancestry, familial status, veteran status, or physical or mental impairment. It shall be DHCD's objective to ensure that new and ongoing programs and policies affirmatively advance

fair housing, promote equity, and maximize choice. In order to achieve this objective, DHCD shall be guided by the principles found in Appendix D of this document.

In order to help the Department assess the impacts of local preference on affirmative marketing goals and compliance with applicable civil rights laws, all project owners will be required to report household characteristic data for all tax credit units at the time of final rent-up and on an annual basis from that point forward. The report will include but may not be limited to the following data points: capital subsidies restricting the unit, size of the tenant household, income level of the tenant household, race, and ethnicity of the head of household (to the extent available), number of children under the age of six, number of children under the age of 18, and type of rental assistance if any. Project owners or their specified designees will be required to report using the web-based data collection system developed by the Department.

# **APPENDICES**

**Appendix A: 2022-2023 Rental Round Pre-Application to DHCD**

## **Appendix A: - 2022-2023 Rental Round Pre-Application to DHCD**

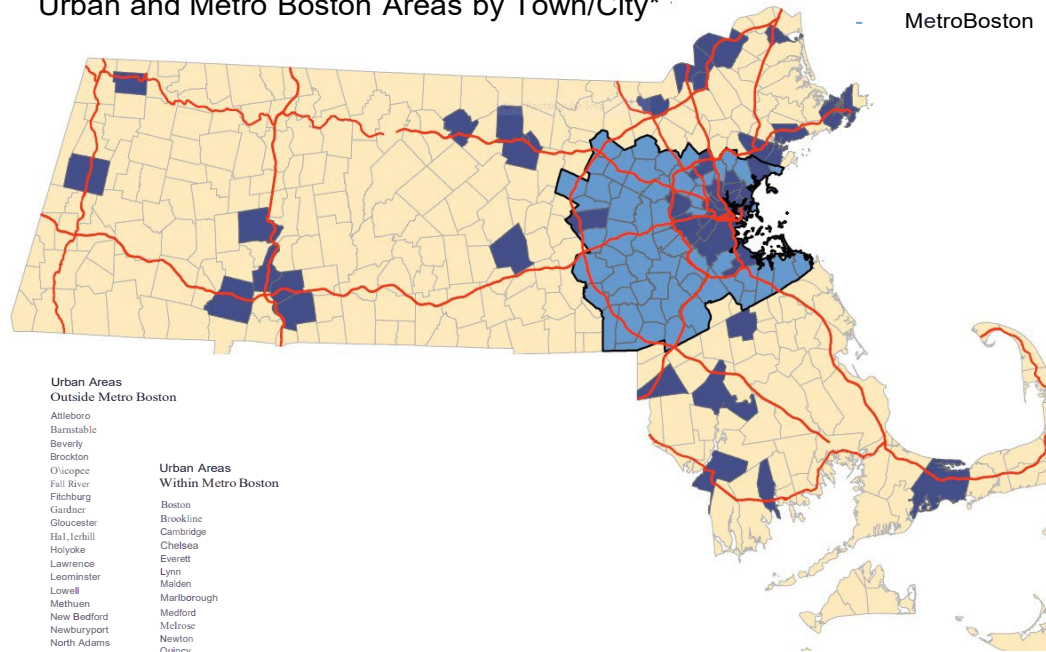
Pre-applications must be submitted online to DHCD. Information on the pre-application process is included elsewhere in this document. All applications must be submitted using the online OneStop+ Affordable Housing Application. Sponsors who wish to see a pre-application template should contact DHCD's LIHTC staff.

**Appendix B: Map of Recommended Cost Limit Areas**

# 1201s QAP Geography:

## Urban and Metro Boston Areas by Town/City\*

- Urban Areas
- MetroBoston



### Urban Areas Outside Metro Boston

- Attleboro
- Barnstable
- Beverly
- Brockton
- Oliver
- Fall River
- Fitchburg
- Gardner
- Gloucester
- Haverhill
- Holyoke
- Lawrence
- Leominster
- Lowell
- Methuen
- New Bedford
- Newburyport
- North Adams
- Northampton
- Peabody
- Pittsfield
- Salem
- Springfield
- Taunton
- Westfield
- Worcester

### Urban Areas Within Metro Boston

- Boston
- Brookline
- Cambridge
- Chelsea
- Everett
- Lynn
- Malden
- Marlborough
- Medford
- Metrose
- Newton
- Quincy
- Revere
- Somerville
- Waltham
- Woburn

\* Metro Boston is the MassBenchmarks Region as defined by the Donahue Institute (UMass Boston).

## **Appendix C: M/WBE Self-Evaluation**



## **Appendix C: M/WBE Self-Evaluation**

Sponsors and development teams must have a satisfactory history of diverse development team assembly and diverse supplier contracting, as well as a demonstrated commitment to full participation by MBE, WBE, and other diverse businesses in all areas of development, including contracts for construction, design, goods, and services. Diverse businesses may either be certified by the Massachusetts Supplier Diversity Office (SDO) or self-certify and can include sponsors, development partners and/or owners. Under the Qualified Allocation Plan, DHCD's scoring of projects will consider whether sponsors have provided sufficient evidence of both their history of diverse supplier contracting and their current plan for utilization of MBE and WBE businesses on the proposed project.

As part of this application, all sponsors must submit a current written plan (Exhibit 32.2) for outreach, recruitment, and utilization of MBE and WBE businesses and other diverse business enterprises. For those projects subject to Section 3 requirements, sponsors must also include information (Exhibit 32.3) for outreach, recruitment, and utilization of Section 3 workers and businesses within the plan. Below are instructions for completing this written plan.

Also, in order to enable DHCD to evaluate the provisions of each project's plan, sponsors must complete the MBE & WBE and Section 3 Form following these instructions and attach it to the written plan.

For additional information on MBE and WBE definitions, please see the Commonwealth's regulation at 425 CMR 2.02. For additional information on the SDO, please see Executive Order No. 565. For additional information on Section 3 applicability and requirements, please see HUD's Section 3 FAQ.

### **Instructions:**

The MBE & WBE and Section 3 Plan should:

- Be the sponsor's own plan, rather than the general contractor's plan
- Be specific to the project for which the sponsor is requesting funds and include efforts that are appropriate for the project type, its location and the population being served
- Indicate whether the sponsor, development partner (if applicable) and/or owner are diverse business enterprises themselves
- Discuss in detail the sponsor's prior track record with MBE and WBE business contracting in both hard and soft costs, including numerical performance data (as a percentage of total hard costs)
- If the general contractor has been selected, discuss in detail the general contractor's prior track record with MBE and WBE business contracting, including numerical performance data (as a percentage of total hard costs)

- Describe efforts to identify and solicit bids from MBE and WBE general contractors for the proposed project
- Include specific and separate goals for the percentage of total hard costs allocated to 1) MBEs and 2) WBEs
- If applicable, include specific and separate goals for the percentage of 1) total construction work hours by people of color; 2) total construction work hours by women; and 3) hard costs allocated to any other relevant diverse business or demographic categories (e.g., Disability-Owned Business Enterprise, Veteran Business Enterprise, etc.)
- If the project is subject to Section 3 requirements, include specific and separate goals for the percentage of 1) total construction work hours by Section 3 workers; 2) total construction work hours by Targeted Section 3 workers; and 3) total dollar amount of the construction contract to Section 3 businesses
- Include proactive steps for increasing MBE and WBE contracting by the general contractor during construction, even if the general contractor has not yet been selected (e.g. breaking trades into smaller tasks or quantities, hiring a recruiter, etc.)
- Discuss how the project's percentage goals for MBE and WBE business contracting during construction will be memorialized and tracked (e.g. goals written into construction contract, reporting requirements, etc.)
- Provide information on the sponsor's plan for MBE and WBE business contracting in soft costs, including any specific joint venture or subcontracting efforts. Soft costs include all project costs except for acquisition, hard costs, interest, taxes, fees, reserves, developer overhead and developer fee.
- Provide information on the sponsor's plan for MBE and WBE business contracting by the property manager during operations (for all costs, including goods, supplies and services), even if the property manager has not yet been selected.
- Discuss any other innovative or unique efforts for increasing diverse supplier or worker contracting, including engaging businesses with diverse management, staff, or boards that may not qualify as MBE or WBE

### **MBE & WBE and Section 3 Form**

All sponsors must complete the below form and attach it to the end of the plan. If Section 3 is applicable for the proposed project, please provide the requested Section 3 information.

## **GENERAL INFORMATION**

Project name:

Location:

Sponsor name:

Development partner name (if applicable):

Is sponsor a diverse business enterprise? If so, list relevant designations (e.g. MBE, WBE, etc.):

Is development partner (if applicable) a diverse business enterprise? If so, list relevant designations:

Is sponsor non-profit or for-profit?

## **CONSTRUCTION**

General contractor (if selected):

MBE contracting percentage goal during construction (as a percentage of total hard costs):

WBE contracting percentage goal during construction (as a percentage of total hard costs):

If applicable, other percentage goals for diverse contracting (e.g. Disability-Owned Business Enterprise, Veteran Business Enterprise, etc.) during construction (as a percentage of total hard costs):

If applicable, percentage goal for total construction work hours by people of color:

If applicable, percentage goal for total construction work hours by women:

If applicable, other contracting or hiring goals during construction not included above:

## **SOFT COSTS**

Property manager (if selected):

Please list all MBEs (business name and trade area) included in soft costs:

Please list all WBEs (business name and trade area) included in soft costs:

### **SECTION 3 (if applicable)**

Percentage goal for total construction work hours by Section 3 workers:

Percentage goal for total construction work hours by Targeted Section 3 workers:

Percentage goal for total dollar amount of construction contract to Section 3 businesses:

**Appendix D: Fair Housing Principles and Affirmative Fair Housing  
Marketing Plan Guidelines**

## Appendix D. Fair Housing Principles and Affirmative Fair Housing Marketing Plan Guidelines

1. **Encourage Equity.** Support public and private housing and community investment proposals that promote equality and opportunity for all residents of the Commonwealth. Increase diversity and bridge differences among residents regardless of race, disability, social, economic, educational, or cultural background, and provide integrated social, educational, and recreational experiences.
2. **Be Affirmative.** Direct resources to promote the goals of fair housing. Educate all housing partners of their responsibilities under the law and how to meet this important state and federal mandate.
3. **Promote Housing Choice.** Create quality affordable housing opportunities that are geographically and architecturally accessible to all residents of the commonwealth. Establish policies and mechanisms to ensure fair housing practices in all aspects of marketing.
4. **Enhance Mobility.** Enable all residents to make informed choices about the range of communities in which to live. Target high-poverty areas and provide information and assistance to residents with respect to availability of affordable homeownership and rental opportunities throughout Massachusetts and how to access them.
5. **Promote Greater Opportunity.** Utilize resources to stimulate private investment that will create diverse communities that are positive, desirable destinations. Foster neighborhoods that will improve the quality of life for existing residents. Make each community a place where any resident could choose to live, regardless of income.
6. **Reduce Concentrations of Poverty.** Ensure an equitable geographic distribution of housing and community development resources. Coordinate allocation of housing resources with employment opportunities, as well as availability of public transportation and services.
7. **Preserve and Produce Affordable Housing Choices.** Encourage and support rehabilitation of existing affordable housing while ensuring that investment in new housing promotes diversity, and economic, educational, and social opportunity. Make housing preservation and production investments that will create a path to social and economic mobility.
8. **Balance Housing Needs.** Coordinate the allocation of resources to address local and regional housing need, as identified by state and community stakeholders. Ensure that affordable housing preservation and production initiatives and investment of other housing resources promote diversity and social equity and improve neighborhoods while limiting displacement of current residents.
9. **Measure Outcomes.** Collect and analyze data on households throughout the housing delivery system, including the number of applicants and households served. Utilize data

to assess the fair housing impact of housing policies and their effect over time, and to guide future housing development policies.

10. **Rigorously Enforce All Fair Housing and Anti-Discrimination Laws and Policies.** Direct resources only to projects that adhere to the spirit, intent, and letter of applicable fair housing laws, civil rights laws, disability laws, and architectural accessibility laws. Ensure that policies allow resources to be invested only in projects that are wholly compliant with such laws.

Please follow the link below to access DHCD's AFHMP Guidelines:  
<https://www.mass.gov/files/documents/2016/07/oj/afhmp.pdf>.

## **Appendix E: Compliance Monitoring Procedures**



## Appendix E. Compliance Monitoring Procedures

The compliance monitoring procedure includes five components:

- I. Record keeping and Records Retention
- II. Annual Certification and Review
- III. Records Review
- IV. Building Inspection
- V. Notification of Noncompliance

These components are based on and incorporate the requirements of Internal Revenue Code Section 42 and Treasury Regulation Section 1.42-5. “Low-income units” refers to tax credit eligible units as defined by Section 42(g).

### I. Record keeping And Record Retention

**Record keeping:** For each year in the compliance period, which is equal to 15 taxable years beginning the first year the tax credit is taken, the Owner shall maintain records for each building in the project showing the:

- a. Total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- b. Percentage of residential rental units in the building that are low-income units as defined by Section 42(g), and the size in square feet of each low-income unit.
- c. Rent charged on each residential rental unit in the building (including any utility allowance).
- d. Number of occupants in each low-income unit if the rent is determined by the number of occupants per unit under Section 42(g)(2) (as in effect prior to 1989 amendments);
- e. Annual income certification for each low-income tenant per unit unless specifically waived by the Internal Revenue Service under Revenue Procedure 2004-38.
- f. Documentation to support each low-income tenant’s income certification (for example, a copy of the tenant’s federal income tax returns, W-2 Form, verification from a third party such as an employer or a state agency paying unemployment compensation, and/or a statement from the local housing authority declaring that the tenant did not exceed the income limit under Section 42(g) if a tenant is receiving Section 8 housing assistance payments);
- g. Each low-income vacancy in the building and information that shows when, and to whom, the next available units were rented;
- h. Eligible basis and qualified basis of the building at the end of the first year of the credit period; and
- i. Character and use of the nonresidential portion of the building included in the building’s eligible basis under Section 42(d).

**Specific Requirements:** In accordance with Treasury Regulation Section 1.42-5 and Revenue Procedures 94-64 and 94-65, DHCD adopts the following specific requirements: (i) as provided in Section 5.01(3) of Revenue Procedure 94-64, the requirement for annual income re-certification

will apply to all owners, including all owners of 100% low-income buildings unless specifically waived by the Internal Revenue Service under Revenue Procedure 2004-38; (ii) as provided in Section 4.04 of Revenue Procedure 94-65, DHCD will require owners to obtain documentation, other than the statement described in Section 4.02 of the Revenue Procedure, to support a low-income tenant's annual certification of income from assets.

**Records Retention:** The Owner shall retain records for the first year of the credit period for at least six years beyond the due date (with extensions) for filing the tax return for the last year of the compliance period of the building. The Owner shall retain the records described above for all subsequent years in the compliance period for at least six years after the due date (with extensions) for filing the federal income tax return for that year.

Additionally, for each year that the Agreement remains in effect after the compliance period, the Owner shall retain records adequate to demonstrate compliance with the terms and conditions of the Agreement, including, but not necessarily limited to, income and rent records pertaining to tenants. The Owner shall retain the records pertaining to a particular year for at least six years following the close of that year.

**Inspection Records Retention:** The Owner shall also retain and provide, for DHCD's inspection, any original report or notice issued by a state or local authority of a health, safety, or building code violation concerning the Project. Retention of the original violation report or notice is not required beyond the time when DHCD reviews the report or notice and completes its inspection pursuant to Section III below, except where the violation remains uncorrected.

## **II. Annual Certification and Review**

**Submission of Certification:** The Owner of every project that has received tax credits must submit to DHCD at least annually for each year in the compliance period an Owner's Certification of Continuing Tax Credit Compliance, which will be provided by DHCD. In this document, the Owner shall certify to DHCD, under the penalty of perjury, that for the preceding 12-month period:

- a. The project was continually in compliance with the terms and conditions of its Agreement with DHCD, MHFA or MDFA;
- b. The project met either the 20-50 test under Section 42(g)(1)(A), the 40-60 test under Section 42(g)(1)(B), or the average income test under Section 42(g)(1)(C), whichever minimum set-aside test was approved by DHCD as being applicable to the project. The 20-50 test means that a minimum of 20% of the project's units were set aside for tenants at 50% of the area median income at tax credit restricted rent levels. The 40-60 test means that a minimum of 40% of the project's units were set aside for tenants at 60% of the area median income at tax credit restricted rent levels. The average income test, which may only be utilized if approved by DHCD consistent with DHCD administrative guidelines, means that a minimum of 40% of the project's units were set aside for tenants at designated imputed income limitations, so long as the average of the imputed income limitations does not exceed 60% of the area median income at restricted rent levels corresponding to the designated income limitations;

- c. There was no change in the applicable fraction as defined by Section 42(c)(1)(B) of any building in the project, or that there was a change, and a description of that change is provided;
- d. The Owner has received an annual income certification from each low-income tenant, and documentation to support that certification; or in the case of a tenant receiving Section 8 housing assistance payments, that the Owner has received a statement from a public housing authority that the tenant's income does not exceed the applicable income limit under Section 42(g). In accordance with Treasury Regulation Section 1.42-5 and Revenue Procedures 94-64, 94-65 and 2004-38, DHCD adopts the following specific requirements: (i) as provided in Section 5.01(3) of Revenue Procedure 94-64, the requirement for annual income re-certification will apply to all owners, including all owners of 100% low income buildings, unless specifically waived by the Internal Revenue Service under Revenue Procedure 2004-38; (ii) as provided in Section 4.04 of Revenue Procedure 94-65, DHCD will require owners to obtain documentation, other than the statement described in Section 4.02 of the Revenue Procedure, to support a low income tenant's annual certification of income from assets;
- e. Each low-income unit in the project was rent-restricted under Section 42(g)(2);
- f. All units in the project were for use by the general public (as defined in Treas. Reg. 1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred for the project. (A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court.);
- g. The buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government office responsible for making local health, safety, or building code inspections did not issue a violation report or notice for any building or Low-Income unit in the project. Alternatively, if a violation report or notice was issued by a state or local government office, the owner must state whether the violation has been corrected and must also attach to the Owner's Certification either a statement summarizing the violation report or notice or a copy of the violation report or notice;
- h. There was no change in the eligible basis (as defined in Section 42(d)) of any building in the project, or there was a change, and information regarding the nature of that change is provided;
- i. All tenant facilities included in the eligible basis under Section 42(d) of any building in the project were provided on a comparable basis without charge to all tenants in the building;
- j. If a low-income unit in the project became vacant during the year, reasonable attempts were made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;
- k. If the income of tenants of a low-income unit in the building increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or

smaller size in the building was or will be rented to tenants having a qualifying income;

- l. An extended low-income housing commitment as described in Section 42(h)(6) was in effect (for buildings subject to Section 7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989), including the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United State Housing Act of 1937;
- m. All low-income units in the project were used on a non-transient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(iii) or single room occupancy units rented on a month-by-month basis under Section 42(i)(3)(B)iv); and
- n. Any additional information that DHCD deems pertinent.

In addition, the Owner must submit completed IRS Forms 8609 [with parts I and II (the top and bottom sections) completed] to DHCD for every building in the project for the first year of the compliance period. For every year of the compliance period thereafter, the Owner must submit Schedule A of Form 8609 for every building in the project. The Owners of all low-income housing projects will also be required to submit to DHCD at least once each year information on tenant income and rent for each low-income unit, and documentation regarding the occupancy characteristics for all units, including DHCD project completion reports and other data collection requests in the form and manner designated by DHCD, in order to illustrate compliance with fair housing requirements.

Review of Certification: DHCD will review the above-described certifications submitted by Owners for compliance with the requirements of Section 42 for all tax credit projects, including those buildings financed by the Rural Housing Services (RHS), formerly the Farmers Home Administration (FMHA), under its Section 515 Program, and buildings of which at least 50% of the aggregate basis (including land and the building) is financed with the proceeds of tax-exempt bonds and administered by MHFA or MDFA.

The submission and review of certifications described above shall be made at least annually covering each year of the compliance period which is equal to 15 taxable years beginning with the first year the tax credit is taken. DHCD reserves the right to continue monitoring for any additional term that the Agreement remains in effect.

### **III. Records Review**

DHCD will conduct a records review of a project's low-income units which have been selected for on-site inspection pursuant to Section IV below.

The records review will include an examination of the annual low-income certifications, the documentation the Owner has received supporting the certifications, and the rent records for the tenants in those units. The Owner must have definitive documentation to support the income certification. For example, in the case of a tenant receiving Section 8 housing assistance payments, a letter from the local housing authority will only be accepted if that statement notes the tax credit

income limit for the tenant's family size in the municipality, states that the tenant's income does not exceed such tax credit income limit and states the effective date of the certification.

In conjunction with the selection of units to be inspected under Section IV below, DHCD will select the records to be reviewed randomly and in a manner that will not give an owner advance notice that tenant records for a particular year will or will not be reviewed. However, DHCD may give an owner reasonable notice that tenant record review will occur so that the owner may assemble the tenant records. The review of tenant records may be undertaken wherever the owner maintains or stores the records (either on-site or off-site).

In addition to the above procedures, DHCD will review the records from the first year of the compliance period for every project in order to establish initial eligibility for the Low-Income Housing Tax Credit.

Buildings financed by the RHS under its Section 515 Program and buildings of which at least 50% of the aggregate basis (taking into account the building and land) is financed with the proceeds of tax-exempt bonds will be excepted from this records review provision if DHCD enters into an agreement with the RHS and/or MHFA or MDFA, providing among other terms and conditions that RHS and/or MHFA or MDFA must provide information concerning the income and rent of the tenants in the building to DHCD. DHCD may assume the accuracy of any such information provided by RHS, MHFA, or MDFA. DHCD shall review such information and determine that the income limitation and rent restriction of Section 42(g) (1) and (2) are met. However, if the information so provided is not sufficient for DHCD to make this determination, DHCD must request the necessary additional information directly from the Owner of the buildings.

The certifications and review under Sections I and II must be made at least annually covering each year of the 15-year compliance period. DHCD retains the right to require such certifications and review for any additional term that a Low-Income Housing Tax Credit Regulatory Agreement between the owner and DHCD (or its successors) remains in effect.

#### **IV. Building Inspection**

DHCD will conduct an on-site inspection of all buildings in a project by the end of the second calendar year following the year the last building in the project is placed in service. The minimum number of units to be inspected will be the greater of twenty percent of the project's low-income units or three low-income units.

Following the initial inspection, DHCD will conduct an on-site inspection of all buildings in a project at least once every three years. The minimum number of units to be inspected will be the greater of twenty percent or the project's low-income units or three low-income units.

DHCD will select the low-income units to be inspected randomly and in a manner that will not give an owner advance notice that a unit will or will not be inspected. However, DHCD may give an owner reasonable notice that an inspection of the building and low-income units will occur so that the owner may notify tenants of the inspection.

DHCD will review any health, safety, or building code violations reports or notices retained by the owner as required in Section I above and will determine:

- a. Whether the buildings and units are suitable for occupancy, taking into account state and local health, safety and building codes (or other habitability standards); or
- b. Whether the buildings and units satisfy, as determined by DHCD, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703).

Regardless of whether DHCD makes its determination under a. or b. above, the project must continue to satisfy applicable state and local health, safety, and building codes. If DHCD becomes aware of any violation of these codes, it must report the violation under Section V below.

A building financed by RHS under its Section 515 program will be excepted from this inspection provision if RHS inspects the building (under 7 CFR part 1930) and the RHS and DHCD enter into a memorandum of understanding, or other similar arrangement, under which RHS agrees to notify DHCD of the inspection results.

DHCD retains the right to perform on-site inspections of the buildings of any project at least through the end of the compliance period and for any additional term that a Low-Income Housing Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants between the owner and DHCD remains in effect.

## **V. Notification of Non-Compliance**

DHCD will provide prompt written notice to the Owner if DHCD does not receive the certifications described above, does not receive, or is not permitted to review the tenant income certifications, supporting documentation, and rent record described above, or discovers by inspection, review, or in some other manner, that the project is not in compliance with Section 42. DHCD will file Form 8823, "Low Income Housing Credit Agencies Report of Noncompliance of Building Disposition", with the IRS no later than 45 days after the end of the correction period and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The correction period, as specified in the noncompliance notice to the Owner, shall not exceed 90 days from the date of the notice to the Owner, unless extended by DHCD for up to six months where DHCD determines that there is good cause for granting an extension. DHCD will retain records of noncompliance or failure to certify in accordance with applicable Treasury regulations. If noncompliance or failure to certify is corrected within three years after the end of the correction period, DHCD will file Form 8823 reporting the correction.

DHCD will report its compliance monitoring activities annually on Form 8610, "Annual Low Income Housing Credit Agencies Report".

**Appendix F: Future Changes to the 2022-2023 Allocation Plan**

## **Appendix F. Future Changes to the 2022-2023 Allocation Plan**

Without limiting the generality of DHCD's power and authority to administer, operate, and manage the allocation of Low Income Housing Tax Credits according to federal law, federal procedures and this Plan, DHCD shall make such determinations and decisions, publish administrative guidelines and rules, require the use of such forms, establish such procedures and otherwise administer, operate, and manage allocations of tax credits in such manner as may be, in DHCD's determination, necessary, desirable, or incident to its responsibilities as the administrator, operator, and manager of the Low Income Housing Tax Credit Program.

The Governor recognizes and acknowledges that DHCD may encounter situations which have not been foreseen or provided for in the Plan and expressly delegates to DHCD the authority to amend the Plan, after the public has had the opportunity to comment through the public hearing process, and to administer, operate, and manage allocations of tax credits in all situations and circumstances, including, without limiting the generality of the foregoing, the power and authority to control and establish procedures for controlling any misuse or abuses of the tax credit allocation system and the power and authority to resolve conflicts, inconsistencies or ambiguities, if any, in this Plan or which may arise in administering, operating, or managing the Low Income Housing Tax Credit Program.

The Governor further expressly delegates to DHCD the ability to amend this Plan to ensure compliance with federal law and regulations as such federal law may be amended and as federal regulations are promulgated governing tax credits.



**Appendix G: Summary of Comments and Suggestions from the  
Public Process**

**Appendix H. The Massachusetts Low Income Housing Tax Credit  
Program Regulations**

## **Appendix H: The Massachusetts Low Income Housing Tax Credit Program Regulations**

### **760 CMR 54.00: MASSACHUSETTS LOW-INCOME HOUSING TAX CREDIT PROGRAM**

- 54.01: Scope, Purpose and Applicability
- 54.02: Definitions
- 54.03: Amount of Credit Authorized
- 54.04: Eligible Projects
- 54.05: Eligible Recipients
- 54.06: Allotment of Credit Among Partners, etc.
- 54.07: Transferability of Credit
- 54.08: Prerequisites to Claiming Credit
- 54.09: Placed in Service Requirement; Time for Claiming Credit
- 54.10: Carryforward of Credit
- 54.11: Limitations on Credit; Ordering of Credit
- 54.12: Recapture
- 54.13: Reporting and Recordkeeping Requirements
- 54.14: Application Process and Administrative Fees
- 54.15: Reference to Federal Credit Rules
- 54.16: Authorization of Department to Take Further Actions

#### **54.01: Scope, Purpose and Applicability**

(1) General. 760 CMR 54.00 explains the calculation of the low-income housing tax credit established by M.G.L. c. 23B, §3, M.G.L. c. 62, §6I and M.G.L. c. 63, §31H (St. 1999, c. 127, §§34, 82, 90). The Department of Housing and Community Development may allocate Massachusetts low-income housing tax credit in the amount set forth in M.G.L. c. 23B, §3, M.G.L. c. 62, §6I and M.G.L. c. 63, §31H (St. 1999, c. 127, §§34, 82, 90) for projects that qualify for the federal low-income housing tax credit under Section 42 of the Internal Revenue Code of 1986, as amended.

(2) Effective Date. 760 CMR 54.00 takes effect upon promulgation and applies to tax years beginning on or after January 1, 2001.

#### **54.02: Definitions**

For purposes of 760 CMR 54.00 et seq., the following terms have the following meanings, unless the context requires otherwise:

**Act**, M.G.L. c. 23B, §3, M.G.L. c. 62, §6I and M.G.L. c. 63, §31H (St. 1999, c. 127, §§34, 82, 90).

**Allocation of Massachusetts Credit**, the award by the Department of the authorized Massachusetts low-income housing tax credit among qualified Massachusetts projects.

**Allotment**, in the case of a qualified Massachusetts project owned by an unincorporated flow through entity, such as a partnership, limited liability company or joint venture, the share or portion of credit allocated to the qualified Massachusetts project that, consistent within and subject to 760 CMR 54.06, may be claimed by a taxpayer who is designated a member or partner of such entity or by a transferee of such member or partner.

**Building Identification Number**, the identification number assigned to each building in a qualified Massachusetts project by the Department.

**Code**, the Internal Revenue Code of 1986, as amended and in effect for the taxable year.

**Commissioner**, the Commissioner of Revenue.

**Compliance Period**, the period of 15 taxable years beginning with the first taxable year during which a qualified Massachusetts project first meets all of the requirements of 760 CMR 54.08.

**Credit Period**, the five-year period during which a qualified Massachusetts project is eligible for the Massachusetts low-income housing tax credit. The credit period begins with the taxable year in which a project meets all of the requirements of 760 CMR 54.08 and ends five years later.

**Department**, the Department of Housing and Community Development.

**Eligibility Statement**, a statement authorized and issued by the Department certifying that a given project is a qualified Massachusetts project and setting forth the annual amount of the Massachusetts low-income housing tax credit allocated to the project. The Department shall only allocate tax credit to qualified Massachusetts projects consisting of one or more buildings that are all placed in service on or after January 1, 2001.

**Federal Carryover Allocation**, federal carryover allocation of a tax credit where a federal low-income housing tax credit is allocated under Section 42 (h)(1)(E) or (F) of the Code prior to the calendar year in which the buildings comprising the project are placed in service.

**Federal Low-Income Housing Tax Credit**, the federal tax credit as provided in Section 42 of the Code.

**Low Income Project**, a qualified low-income housing project, as defined in Section 42 (g)(1) of the Code, which has restricted rents that do not exceed 30% of the applicable imputed income limitation under said Section 42 of the Code, for at least 40% of its units occupied by persons or families having incomes of 60% or less of the median income or for at least 20% of its units occupied by persons or families having incomes of 50% or less of the median income.

**Median Income**, the area median gross income as such term is used in Section 42 of the Code, and which is determined under United States Department of Housing and Urban Development guidelines and adjusted for family size.

**Placed in Service**, this term shall have the same meaning as the term is given under Section 42 of the Code and the federal regulations thereunder.

**Qualified Massachusetts Project**, a low-income project located in the Commonwealth which meets the requirements of M.G.L. c. 23B, §3 M.G.L. c.62 §6I and M.G.L. c. 63, §31H (St. 1999, c. 127, §§34, 82, 90) and whose owner enters into a regulatory agreement.

**Regulatory Agreement**, an agreement between the owner of a qualified Massachusetts project and the Department recorded as an affordable housing restriction under M.G.L. c. 184 with the registry of deeds or the registry district of the land court in the county where the project is located that requires the project to be operated in accordance with the requirements of 760 CMR 54.00,

and M.G.L. c. 23B, §3, M.G.L. c. 62, §6I and M.G.L. c. 63, §31H (St. 1999, c. 127, §§34, 82, 90) for not less than 30 years from the expiration date of the compliance period.

**Taxpayer**, any person, firm, or other entity subject to the personal income tax under the provisions of M.G.L. c. 62, or any corporation subject to an excise under the provisions of M.G.L. c. 63.

#### **54.03: Amount of Credit Authorized**

(1) Authorized Amount. The amount of Massachusetts low-income housing tax credit authorized to be allocated annually equals the sum of:

- (a) \$10,000,000;
- (b) unused Massachusetts low-income housing tax credits, if any, for the preceding calendar years; and
- (c) Massachusetts low-income housing tax credits returned to the department by a Qualified Massachusetts Project.

#### **54.04: Eligible Projects**

(1) Project Eligibility. Qualified Massachusetts Projects for which the Department has issued an eligibility statement are eligible for an allocation of Massachusetts low-income housing tax credit.

(2) Prioritization by the Department. The Department shall amend or supplement its existing qualified allocation plan or its program guidelines, or both, to provide taxpayers guidance on how Massachusetts low-income housing tax credit will be allocated among competing projects. Such guidance shall adhere to the statutory requirements of providing the least amount of Massachusetts low-income housing tax credit necessary to ensure financial feasibility of selected projects while allocating the total available Massachusetts low-income housing tax credit among as many Qualified Massachusetts Projects as fiscally feasible. Subject to these statutory constraints, the Department may, in its discretion, provide guidance that

- (a) requires owners of projects with more than a designated dollar amount of federal credit to fund a portion of project equity from funds attributable to the Massachusetts low-income housing tax credit,
- (b) encourages owners of certain projects to raise equity primarily using the Massachusetts low-income housing tax credit while using a minimal amount of the so-called 9% federal low-income housing tax credit,
- (c) encourages the creation of projects funded through a combination of Massachusetts low-income housing tax credit and the so-called 4% federal low-income housing tax credit allowable to buildings financed with tax-exempt bonds, and
- (d) encourages the creation of any other projects that the Department deems to be consistent with the statutory goal of increasing the overall number of low-income housing units.

#### **54.05: Eligible Recipients**

Any person or entity (of whatever type) with an ownership interest in a Qualified Massachusetts Project is eligible to receive an allocation of Massachusetts low-income housing tax credit with respect to such project.

#### **54.06: Allotment of Credit Among Partners, etc.**

Whenever an owner of a Qualified Massachusetts Project with respect to which Massachusetts low-income housing tax credit has been allocated is an unincorporated flow-through entity, such as a partnership, limited liability company or joint venture, the entity may allot the Massachusetts tax credit available to the entity among persons designated by it as partners or members in such amounts or proportions as they may agree in the organizational documents governing such entity, provided that the owner certifies to the Commissioner the amount of Massachusetts low-income housing tax credit allotted to each member or partner on a form designated by the Commissioner. The allotment of Massachusetts low-income housing tax credit need not follow or be consistent with the allocation, as the word is used in Section 704(b) of the Code, of other partnership items (e.g., income, loss, deduction, or credit, including the federal low-income housing tax credit). Similarly, whenever Massachusetts low-income housing tax credit is allocated with respect to a Qualified Massachusetts Project that is owned through a joint tenancy or similar ownership arrangement, the owners of such project may allot the right to claim the Massachusetts low-income housing tax credit allocated with respect to such project among themselves in such amounts as they agree, without regard to their actual ownership interest in the project, provided that the owners certify to the Commissioner the amount of Massachusetts low-income housing tax credit allotted to each owner on a form designated by the Commissioner.

#### **54.07: Transferability of Credit**

(1) Transferors, Transferees. Any taxpayer with an ownership interest in a Qualified Massachusetts Project with respect to which there has been allocated Massachusetts low-income housing tax credit and any taxpayer to whom the right to claim Massachusetts low-income housing tax credit has been allotted or transferred may transfer the right to claim unclaimed Massachusetts low-income housing tax credit to any other Massachusetts taxpayer without the necessity of transferring any ownership interest in the original project or any interest in the entity which owns the original project. The transferor must transfer all credit attributable to periods after the transfer date agreed upon by the parties. For treatment of carry forward credit, see 760 CMR 54.10.

(2) Transfer Contract Requirements. A taxpayer, owning an interest in a Qualified Massachusetts Project or to whom the right to claim Massachusetts low-income housing tax credit has been allotted or transferred, who transfers his, her or its credit such that credit may be claimed by a taxpayer without ownership in the project and without an interest in the entity that owns the project must enter into a transfer contract with the transferee. The transfer contract must specify the following:

- (a) Building Identification Numbers for all buildings in the project;
- (b) the date each building in the project was placed in service;
- (c) the 15-year compliance period for the project;

- (d) the schedule of years during which the credit may be claimed and the amount of credit previously claimed; and
- (e) the taxpayer or taxpayers that are responsible for paying recapture if recapture should occur.

The transferring party shall attach a copy of this contract to the transfer statement required under 760 CMR 54.13(4).

(3) Transferred Eligibility to Claim Credit. Any taxpayer who is a transferee of the right to claim a Massachusetts low-income housing tax credit with respect to a Qualified Massachusetts Project may, provided all transfer requirements and all other requirements for claiming such credit are met, claim such credit notwithstanding the fact that the credit may initially have been allocated to a taxpayer paying a different income tax (i.e., personal or corporate)

(4) Sale of Credit is Sale of Capital Asset. The sale of Massachusetts low-income housing tax credit will be treated as the sale of a capital asset under the Massachusetts personal income tax or the net income measure of the corporate excise.

(5) Examples. The following examples illustrate the application of 760 CMR 54.07:

- (a) Example 1. If taxpayer X receives an allotment of Massachusetts low-income housing tax credit as a partner in a partnership that owns a Qualified Massachusetts Project, taxpayer X may transfer the Massachusetts low-income housing tax credit allotted to it to taxpayer Y, whether or not taxpayer Y is a partner in the partnership.
- (b) Example 2. Credit is allocated with respect to a project owned by a limited liability company and allotted to individuals who are members in the company. One of the members may sell his or her credit to a corporation, whether or not such corporation is a member in the company.

#### **54.08: Prerequisites to Claiming Credit**

When Massachusetts low-income housing tax credit is allocated with respect to a Qualified Massachusetts Project, such credit may not be claimed by any taxpayer with respect to any building in such project unless and until

- (1) all buildings in such project have been placed in service, and
- (2) the project has met the minimum set-aside and occupancy requirements of Section 42(g) of the Code. Before the end of the first taxable year in which credit is claimed, the taxpayer must record a Regulatory Agreement in a form acceptable to the Department with respect to such project.

#### **54.09: Placed in Service Requirement; Time for Claiming Credit**

(1) Placed in Service Requirement. All buildings in a project must generally be placed in service in the year in which the allocation of Massachusetts low-income housing tax credit is made. Notwithstanding the foregoing sentence:

- (a) with respect to a project that has an allocation of federal low-income housing tax credit, whenever such project qualifies for a federal carryover allocation under Section 42(h)(1)(E) or (F) of the Code and the federal regulations thereunder, such project may continue to be a Qualified Massachusetts Project if the owner of the project enters into a satisfactory carryover allocation agreement with the Department prior to the end of the year in which the allocation of credit is made;
- (b) with respect to a project for which the federal low-income housing tax credit is allowable by reason of Section 42(h)(4) of the Code applicable to buildings financed with tax exempt bonds, such project may continue to be a Qualified Massachusetts Project if, in the judgment of the Department, the project would otherwise meet all of the requirements for a federal carryover allocation under Section 42(h)(1)(E) or (F) of the Code and the federal regulations thereunder and the owner of the project enters into a satisfactory carryover allocation agreement with the Department prior to the end of the year in which the allocation of credit is made; and
- (c) with respect to all projects that do not have an allocation of federal low-income tax credit and for which such credit is not allowable by reason of Section 42(h)(4) of the Code, such project may continue to be a Qualified Massachusetts Project if, in the judgment of the Department, the project would meet the standards and requirements for a federal carryover allocation under Section 42(h)(1)(E) or (F) of the Code and the regulations thereunder, if, at the time of the allocation of the Massachusetts low-income tax credit, the project had, instead, been allocated a federal low-income tax credit, and the owner of the project enters into a satisfactory carryover allocation agreement with the Department prior to the end of the year in which the allocation of the Massachusetts low-income housing tax credit is made.

The Department shall provide a form of Massachusetts carryover allocation agreement for the Massachusetts low-incoming housing tax credit.

(2) Timing of Claiming Credit. Any taxpayer holding the right to claim Massachusetts low-income housing tax credit with respect to a Qualified Massachusetts Project may claim a pro rata portion of the annual amount of Massachusetts low-income housing tax credit allocated with respect to such project for the calendar year in which such project first meets the conditions described in 760 CMR 54.08, with proration based on the portion of such calendar year during which the project meets those conditions. Any amount of annual credit deferred on account of proration may be claimed in the sixth tax year, assuming the project remains qualified.

(3) Early Credit Election. Notwithstanding the generally applicable timing for claiming Massachusetts low-income housing tax credit described in 760 CMR 54.09(2), an owner of a Qualified Massachusetts Project may elect to accelerate the time for claiming the credit. Provided that the project first meets the conditions described in 760 CMR 54.08, an owner of such Qualified Massachusetts Project may file a notice with the Commissioner in a form to be determined by the Commissioner that the owner has elected to accelerate the credit.

(4) Effect of Early Credit Election. When an owner of a Qualified Massachusetts Project makes an early credit election in the first year of the credit period and such project meets the requirements for making such an election, then notwithstanding 760 CMR 54.09(2), any taxpayer



holding the right to claim Massachusetts low-income housing tax credit with respect to such project shall claim the taxpayer's share of the project's entire annual allocation of Massachusetts low-income housing tax credit for the taxable year in which such election is validly made, without proration or adjustment on account of the date during such year on which the project is placed in service or on which such election is made, subject to any other applicable limitations.

(5) Examples. The following examples illustrate the application of 760 CMR 54.09.

- (a) Example 1. Assume \$100,000 of Massachusetts low-income housing tax credit is allocated with respect to a project in 2001. The project is owned by one individual who retains the right to claim such credit. No Massachusetts carryover allocation agreement under 760 CMR.54.09 (1) has been entered into. The individual's tax year coincides with the calendar year. If the project meets the conditions described in 760 CMR 54.08 and is placed in service on October 1, 2001, then the individual holding the right to claim such credit may claim \$25,000 in Massachusetts low-income housing tax credit on his or her Massachusetts tax return for the year 2001 subject to any other applicable limitations. The individual would be expected to claim \$100,000 on his or her Massachusetts tax returns for each of the years 2002, 2003, 2004, and 2005, and to claim \$75,000 on his or her Massachusetts tax return for the year 2006, assuming the project remains qualified and the individual retains the right to claim all of the credit.
- (b) Example 2. The same individual elects to take the early credit option instead of the pro rata approach. The individual may claim \$100,000 in Massachusetts low-income housing tax credit on his or her tax return for 2001, and \$100,000 per year for each of the subsequent four years.
- (c) Example 3. The same individual has a tax year that runs from July 1 to June 30. The individual elects to take the early credit option. The individual takes the \$100,000 credit available on October 1, 2001 in his tax year that ends on June 30, 2002 and \$ 100,000 per year for each of the taxpayer's subsequent four tax years.

#### **54.10: Carryforward of Credit**

- (1) Carryforward Period. Any amount of the credit that exceeds the claimant's tax due may be carried forward to any of the five subsequent taxable years.
- (2) Transfer of Carryforward. A taxpayer who transfers an unclaimed portion of the credit pursuant to 760 CMR 54.07(1) may choose whether or not to include carryforward credit from prior years in the transfer.
- (3) Transferee Treated Like Original Owner. For the purpose of determining the carryforward period, the transferee shall be bound by the same schedule for claiming a credit as the taxpayer originally entitled to the credit as an owner of a qualified Massachusetts project, regardless of how often the credit has been transferred.

#### **54.11: Limitations on Credit; Ordering of Credit**

- (1) Limitations on Credit. The credit may not be applied to increase the maximum amount of credit allowed under M.G.L. c. 63, or to reduce the minimum corporate excise imposed under M.G.L. c. 63.
- (2) Ordering of Credit. The credit may be applied in combination with other credits allowed under M.G.L. c. 63 in any order. Similarly, the credit may be applied in combination with other credits allowed under M.G.L. c. 62 in any order.
- (3) Credit Nonrefundable. The credit is not refundable to the taxpayer. The following text is effective 11/24/2000.

#### **54.12: Recapture**

- (1) Recapture; Disallowance. Whenever an event or circumstance occurs with respect to a Qualified Massachusetts Project that results in any recapture of federal low-income housing tax credit or if, in the judgment of the Department, the project would meet the condition for recapture of federal low-income housing tax credit under Section 42(j) of the Code and the regulations thereunder, if, at the time of the allocation of the Massachusetts low-income tax credit, the project had, instead, been allocated a federal low-income tax credit, then any Massachusetts low-income housing tax credit claimed with respect to the project shall be subject to recapture in the amount described below, subject to the standards and requirements of Section 42(j) of the Code and the regulations thereunder, and any Massachusetts low-income housing tax credit allocated to such project and not yet claimed as of the date of the recapture event shall be disallowed. Notwithstanding any agreement between transferor and transferee, each taxpayer who has claimed any portion of the Massachusetts low-income housing tax credit allocated to the project in question shall be liable for payment of his, her or its respective recapture amount as specified in 760 CMR 54.12(3).
- (2) Recapture Period. Massachusetts low-income housing tax credit allocated with respect to a project is subject to recapture (and disallowance to the extent not yet claimed) at any time during the 15-year compliance period.
- (3) Recapture Fraction.
  - (a) With respect to projects that have an allocation of federal low-income housing tax credits, a fraction in which the numerator is the amount of all federal low-income housing tax credit recaptured with respect to the project and the denominator is the amount of all federal low-income housing tax credit previously claimed with respect to the project.
  - (b) With respect to projects that do not have an allocation of federal low-income housing tax credit, a fraction calculated according to the standards and requirements of Section 42(j) of the Code, as if a federal low-income housing tax credit had been allocated to the project instead of a Massachusetts low-income housing tax credit.
- (4) Amount of Recapture. The amount of Massachusetts low-income housing tax credit to be recaptured from any taxpayer upon the occurrence of a recapture event equals the product of

- (a) the Massachusetts low-income housing tax credit claimed by such taxpayer prior to the recapture event times
- (b) the recapture fraction.

(5) Timing of Recapture. The amount of recapture of the Massachusetts low-income housing tax credit shall be reported and shall be subject to tax in the taxable year during which the recapture event takes place.

(6) Example. The following example illustrates the application of 760 CMR 54.12. Assume, the owner of a Qualified Massachusetts Project is a calendar year taxpayer. The annual credit amount allocated to the project is \$20,000. The project meets the requirements of 760 CMR 54.08 on October 1, 2001. Taxpayer makes an early credit election and takes a \$20,000 credit for tax year 2001. Taxpayer takes a second \$20,000 credit for tax year 2002. On April 1, 2003, the project goes out of compliance and becomes subject to federal recapture or would become subject to federal recapture if federal credits had been awarded instead of state credits. No credit is available to taxpayer for tax years 2003, 2004 and 2005. The \$40,000 credit previously taken by the taxpayer is subject to recapture according to the formula in 760 CMR 54.12(4).

### **54.13: Reporting and Recordkeeping Requirements**

(1) Taxpayer Requirements. In order to claim the credit, a taxpayer must provide to the Commissioner the following:

- (a) eligibility statement as provided in 760 CMR 54.13(2);
- (b) allotment certification, if applicable, as provided in 760 CMR 54.13(3);
- (c) transfer statement, if applicable, as provided in 760 CMR 54.13(4) (with a copy of transfer contract, if applicable, as provided in 760 CMR 54.07(2)); and
- (d) Massachusetts carryover allocation agreement, if applicable, as provided in 760 CMR 54.09(1).

(2) Eligibility Statement. The Department shall adopt a form of eligibility statement to be issued by the Department evidencing a Qualified Massachusetts Project's eligibility for Massachusetts low-income housing tax credit. Each taxpayer claiming any Massachusetts low-income housing tax credit with respect to a project shall file a copy of the eligibility statement with each Massachusetts tax return on which any Massachusetts low-income housing tax credit is claimed.

(3) Allotment Certification. The Commissioner, in consultation with the Department, shall provide a form of allotment certification to be filed by any unincorporated flow-through entity

- (a) that is the owner of a project with respect to which Massachusetts low-income housing tax credit has been allocated or the following text is effective 11/24/2000
- (b) to which the right to claim a Massachusetts low-income housing tax credit has been allotted or transferred. The entity shall file such certification with the Commissioner following the close of the first taxable year in the credit period or the first taxable year the entity holds the right to claim credit, whichever is later. Such certification shall provide the name and federal taxpayer identification number of each taxpayer with an interest in the entity on the date the project met

all of the requirements of 760 CMR 54.08, and shall also indicate the amount of Massachusetts low-income housing tax credit allotted to each such taxpayer. The certification shall also contain such other information as the Commissioner may from time to time require. Each taxpayer claiming any Massachusetts low-income housing tax credit by way of a flow-through entity shall file a copy of such certification with each Massachusetts tax return on which any Massachusetts low-income housing tax credit is claimed.

(4) Transfer Statement. The Commissioner, in consultation with the Department, shall promulgate a form of transfer statement to be filed by any person who transfers the right to claim Massachusetts low-income housing tax credit with respect to a Qualified Massachusetts Project. The transfer statement shall be required in addition to the transfer contract required in 760 CMR 54.07(2).

The transferor shall file a transfer statement with the Commissioner within 30 days after transfer. The transferor shall also provide a copy of such statement to the owner of the project with respect to which the transferred credit was allocated within 30 days after transfer. The transfer statement shall provide the name and federal taxpayer identification number of each taxpayer to whom the filing transferor transferred the right to claim any Massachusetts low-income housing tax credit with respect to the project and shall also indicate the amount of Massachusetts low-income housing tax credit, including any carry forward credit, transferred to each such person or entity. The statement shall also contain such other information as the Commissioner may from time to time require. A copy of the transfer contract, if required under 760 CMR 54.07(2), shall be attached to the transfer statement. Each taxpayer claiming any Massachusetts low-income housing tax credit shall file with each Massachusetts tax return on which any Massachusetts low-income housing tax credit is claimed copies of all transfer statements and transfer contracts necessary to enable the Commissioner to trace the claimed credit to the credit that was initially allocated with respect to the project. Each project owner shall file copies of all transfer statements and transfer contracts received regarding a project with such owner's annual Massachusetts tax or informational return.

(5) Record keeping Requirements. Owners of qualified Massachusetts projects and taxpayers that transfer or claim credit with respect to such projects shall be required to keep all records pertaining to credit until the expiration of the regulatory agreement; if a Massachusetts carryover allocation agreement is entered into with the Department under 760 CMR 54.09(1), the records must include a copy of the Massachusetts carryover allocation agreement and documents relevant thereto.

#### **54.14: Application Process and Administrative Fees**

(1) Application. Project applicants seeking an allocation of Massachusetts low-income housing tax credit shall include a request for such credit allocation in the same application to be filed with the Department through which such proponent requests an allocation of federal low-income housing tax credit. With respect to projects described in 760 CMR 54.09(1) (b), the request for Massachusetts low-income housing tax credit shall be made in the form of a letter to the Department accompanied by:

- (a) a copy of the applicant's submission to the agency providing the tax-exempt bond financing for the project; and
- (b) such additional information as would be included in an application to the Department for a federal low-income housing tax credit allocation. The Department shall issue guidance describing any additional information to be included with credit requests. The Department may require that the applicant provide analyses of alternative funding scenarios that allow the Department to evaluate the comparative efficiency of allocating varying levels of federal and Massachusetts low-income housing tax credit to such proposed project.

(2) Filing Fee. Each application seeking an allocation of Massachusetts low-income housing tax credit shall be accompanied by a filing fee set by the Department which shall be payable to the Commonwealth of Massachusetts.

#### **54.15: Reference to Federal Credit Rules**

Unless otherwise provided in M.G.L. c. 23B, §3, M.G.L. c. 62, §6I and M.G.L. c. 63, §31H (St. 1999, c. 127, §§34, 82, 90) or 760 CMR 54.00 or unless the context clearly requires otherwise, the Massachusetts low-income housing tax credit shall be administered and allocated in accordance with the standards and requirements applicable to the federal low-income housing tax credit as set forth in Section 42 of the Code and the federal regulations adopted there under, and with respect to the administration of the Massachusetts low-income housing tax credit, whenever the word “Secretary” appears in the Code and associated regulations, it shall be taken to mean Director of the Department.

#### **54.16: Authorization of Department to Take Further Actions**

Nothing in 760 CMR 54.00 shall be deemed to limit the authority of the Department to take all actions deemed by the Department in its discretion to be consistent with the authority granted the Department under M.G.L. c. 23B, §3, M.G.L. c.62, §6I and M.G.L. c. 63, §31H (St. 1999, c. 127, §§34, 82, 90).

#### **REGULATORY AUTHORITY**

760 CMR 54.00: M.G.L. c. 23B, §§3, 6; M.G.L. c. 62, §§6I (a), (c) (7), (e), (f) (4), (g); M.G.L. c.63, §§31H (a), (c) (7), (e), (f) (4), (g).

## **Appendix I. Glossary of Terms**

## Appendix I: Glossary of Terms

Tax credit applicants should note that the federal rules governing Low Income Housing Tax Credits are complex. All developers should consult a qualified tax attorney or accountant to determine eligibility for the credit. The terms defined below are not meant to substitute for a reading of Section 42, but are only meant to provide prospective applicants with a general understanding of commonly used terms.

### **4% Credit**

The term “4% credit” refers to the 30% tax credit, which has a present value equal to 30% of the project’s qualified development costs, or approximately 4% per year over a 10-year period. The “4% credit” is available in two situations: 1) Development costs of new building or substantial rehabilitation developed with a federal subsidy, including tax-exempt financing; and 2) Acquisition cost of an existing building, which must also be substantially rehabilitated (the greater of \$6,000 per low-income unit or 20% of the depreciable basis of the building) in order to qualify for the credit for the acquisition cost.

### **9% Credit**

The term “9% credit” refers to the 70% tax credit, which has a present value equal to 70% of the project’s qualified development costs, or approximately 9% per year over a 10-year period. The “9% credit” is available for the development costs of a new building or substantial rehabilitation of an existing building without a federal subsidy.

### **Applicable Fraction**

The smaller of the “unit fraction” or the “floor space fraction” (see Section 42(c) (1) of the Internal Revenue Code. The “unit fraction” is the fraction of qualified low- income units in the building. The “floor space fraction” is the fraction of total floor space contained in the qualified low-income units in the building.

### **Carryover Allocation**

An exception to the general rule that a credit allocation is valid only if the allocation occurs within the calendar year in which the building is placed in service. Under this type of allocation, 1) more than 10% of the project's reasonably anticipated basis (costs) must be incurred by the end of the calendar year in which the allocation is made; and 2) the building(s) in the project must be placed in service by the end of the second calendar year following the year of the allocation. “However, projects which receive reservations in the second half of any calendar year will have six months from the date of allocation (or until the following June 30, if later) to incur more than 10 % of the project’s reasonably anticipated basis as of the end of the second calendar year following allocation”.

**Compliance Monitoring**

DHCD must actively monitor all tax credit projects to determine if they are complying with the various requirements of the tax credit program, which include, but are not limited to, determining whether the rents charged on tax credit units exceed maximum allowable rents and whether the incomes of tenant households at initial occupancy and during subsequent reviews exceed maximum allowable income limits.

**Department of Housing and Community Development**

The Department of Housing and Community Development (DHCD) is the designated tax credit allocating agency for the Commonwealth of Massachusetts. DHCD administers federal community development programs, administers the state's public housing programs, coordinates its anti-poverty efforts, and provides a variety of services to local government officials. The focus of DHCD is to make state and federal funds and technical assistance available to strengthen communities and help them plan new developments, encourage economic development, revitalize older areas, improve local government management, build and manage public housing, stimulate affordable housing through the private sector and respond to the needs of low-income people.

**Eligible Basis**

The sum of the eligible cost elements that are subject to depreciation, such as expenditures for new construction, rehabilitation, building acquisition, and other costs used to determine the cost basis of the building(s) (see IRC Section 42 for a more detailed definition). The eligible basis is increased by 30% if the building(s) in the project is located in a difficult development area or qualified census tract.

**EUR**

Title VI subtitle A of the Cranston-Gonzalez National Affordable Housing Act contains the Low-Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA" or Expiring-Use Restriction ("EUR") program). Contracts under low-interest loan programs of the 1960's & 1970's permitted certain owners to prepay federally assisted mortgages after the twentieth year of the forty-year mortgage term. The statute's basic objectives are to assure that most of the "prepayment" inventory of HUD-assisted housing remains affordable to low-income households and to provide opportunities for tenants to become homeowners

**HOPE VI**

In 1992, Congress created the Urban Revitalization Demonstration Program (otherwise known as HOPE VI) for the purpose of revitalizing severely distressed public housing developments. HOPE VI is funded by the U.S. Department of Housing and Urban Development to provide localities with funds and flexibility to reshape existing public housing neighborhoods.



It can supply up to \$50 million to transform an entire public housing development.

**Internal Revenue Code**

The Low-Income Housing Tax Credit Program (LIHTC) is a housing program contained within Section 42 of the Internal Revenue Code of 1986, as amended, governs tax credits for owners or investors in low income housing projects.

**Massachusetts  
Development Finance  
Agency**

The Massachusetts Development Finance Agency (MDFA) was created by the Massachusetts legislature to expand economic development opportunities. MDFA funds its programs through the sale of taxable and tax-exempt bonds to private investors.

**Massachusetts Housing  
Finance Agency**

The Massachusetts Housing Finance Agency (MHFA) was created by the Massachusetts legislature to expand rental and homeownership opportunities for low- and moderate-income households. MHFA funds its programs through the sale of taxable and tax-exempt bonds to private investors.

**Qualified Basis**

The portion or percentage of the eligible basis that qualifies for the tax credit. A building's qualified basis equals its eligible basis multiplied by its applicable fraction.

**Section 42**

Section 42 of the Internal Revenue Code of 1986, as amended, governs tax credits for owners or investors in low-income housing projects, which has received an allocation under the terms of this plan.

**TDC**

Total Development Costs. Costs incurred for the purchase and/or rehabilitation of existing buildings or new construction. Development costs may include planning, oversight, relocation, demolition, construction, or rehabilitation, reserves and all other costs necessary to develop the affordable housing project.

**Ten Percent (10%) Test**

In order to qualify for a carryover allocation, the developer's basis in the property at the end of the year in which the allocation is received must be more than ten percent of the amount that the project's basis is reasonably expected to be at the end of the second year following the allocation year. Basis consists of the project's depreciable costs and land that is reasonably expected to be part of the project. However, projects which receive reservations in the second half of the calendar year will have six months from the date of allocation to meet the ten percent test.

## **Appendix J. Design Self Evaluations (Accessibility)**

## Appendix J. Design Self Evaluations (Accessibility)

### Part A: Access Code Summary Code Applicability

Sponsors are required to answer the following questions regarding applicability of state, federal, and local accessibility regulations.

1. Are Section 504, Title II of the ADA, or the ABA applicable to the project based on the applicable statutes or sources of funding? Explain.	
2. If the project is existing, show calculations indicating the cost of the work relative to the value of the building or replacement cost (per MAAB's CMR 521 3.3, or Section 504 8.23(a) if applicable).	
3. Describe any variances from MAAB's requirements that are anticipated, and the status of the variance process.	

### Regulatory Requirements:

Provide summary information regarding accessibility in the table below. Include the most stringent applicable requirements of MAAB, the FHA, Section 504, the ADA, and any other local requirements

#### 1. Site Access - Accessible Route

<b>Requirement for Facility:</b> Routes to and from public spaces and parking are required	<b>Proposed:</b>
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#### 2. Accessible Parking

<b>Requirement for Facility:</b>	<b>Proposed: (Indicate total number of spaces provided)</b>
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#### 3. Building Entrances and Accessible Routes Within Buildings

<b>Requirement for Facility:</b>	<b>Proposed:</b>
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**4. Common Areas & Facilities (Offices, laundry rooms, community rooms, etc.)**

<b>Requirement for Facility:</b>	<b>Proposed:</b>
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**5. Group 1 Units (MAAB)**

<b>Requirement for Facility (include units covered by the FHA):</b>	<b>Proposed:</b>
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**6. Group 2 Units (MAAB)**

<b>Requirement for Facility:</b>	<b>Proposed:</b>
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**Part B: Universal Design Checklist  
DHCD Requirements for all developments**

**In addition to the requirements of MAB, FHA, ADA & 504.**

- \* Requirements with an asterisk may be waived for moderate rehab projects.
- \*\* Requirements with two asterisks shall be required only at “Gut” rehab projects.

Feature	DHCD Required		Check if Included	Comment (Explain all items that are not included)
	Rehab	New		

**Exterior**

Provide wayfinding signate at large or challenging sites	Y	Y		
Provide effective exterior lighting at walkways, accessible routes, and exterior spaces, esp. hazards	Y	Y		
Provide handrails at all exterior steps and stairs subject to snow or ice accumulation in order to reduce slipping hazard				

**Common Areas**

Laundry rooms - provide a table for folding accessible to persons with physical disabilities	Y	Y		
Laundry Room Door to have 1/2 height vision panel	Y	Y		
Color contrast between tread and risers on stairs and between floors and walls in corridors, more lighting to facilitate recognition of steps by vision-impaired persons	Y	Y		
Corridors in common areas of Elderly or Assisted Living Projects to have a continuous handrail mounted on one side, 34" AFF	Y	Y		
All washers & dryers to be front loading with front controls, mounted on platforms to reduce bending	Y	Y		
Motion detector light switches at laundry rooms, other common areas	Y	Y		

Use materials and colors such that residents and visitors can easily recognize changes in floor level, use, etc. to assist with wayfinding.	Y	Y		
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### Entrances

Provide exterior lighting at each entry door, switched by photocell/ motion detector.	Y	Y		
Overhead weather protection at entrances	N	Y		
Rough in wiring for power operated doors	Y*	Y		
Max threshold height at exterior doors to be adaptable and able to comply with the requirement for accessible route	Y*	Y		
Provide power operated doors at exterior entries of Elderly or Assisted Living Projects	Y*	Y		
No steps at entrances	N	Y		
Site grading provides accessible route up to first floor level (1:20 slope maximum)	N	N		

### Unit Interiors

Rocker-type electrical switches	Y	Y		
Switches no higher than 48" AFF, Thermostats at 54"	Y*	Y		
Lever hardware on all doors	Y	Y		
Receptacles, phone and cable jacks 18" AFF minimum	Y*	Y		
Max threshold or floor transition height at interior doors to be 1/2"	Y	Y		
Recommend contrasting colors between floor surfaces and trim and between walls and doors to facilitate recognition of steps by vision-impaired persons	Y	Y		
Overhead light fixtures to accommodate lamps to provide minimum 30 footcandles	Y	Y		
Receptacles next to phone jacks for TTY devices	Y*	Y		
If provided, Bi-fold, by-pass, and Pocket doors to have premium hardware, easy-grip handle, and 32" clear when closed	Y*	Y		
All doors leading to habitable rooms to have min. 32" clearance	N	N		
Elec panel within standard reach range & with clear floor space	Y*	Y		

Rough wire all units to allow strobe lights to be installed in every bedroom and living area or provide equipment that can be adapted for wireless installation of strobe lights	Y*	Y		
Additional electrical outlets at bed locations & desks: fourplex outlet for computers, electronic equipment, personal use equipment such as oxygen	N	Y*		
Adjustable height closet rods and shelves	Y	Y		
At double hung windows, balances must be suitable to minimize force required for operation and comply with ADA (5lbf)	Y	Y		
Acoustics: STC 50 at walls/ IIC-50 at floors between units and between units and common areas.	Y**	Y		
Acoustics: Locate bedrooms so that they are not adjacent to common corridors, trash chutes, or other noise sources.	Y**	Y		
Odor Control: Provide for compartmentalization of each residential units per Energy Star standards. (At new and adaptive re-use projects.)	N	Y		
Ventilation: Where conditioned fresh air supply is provided to unit interiors, allow resident control of air flow. (At new and adaptive re- use projects.)	N	Y		
Furnishing: Bedrooms and Living Rooms should have more than one usable furniture configuration. (At new and adaptive re-use projects.)	N	Y		
Furnishing: At multi-level (townhouse) units with no bedroom on the entry floors, provide space to allow a temporary bed or sofa-bed in the living room. (At new and adaptive re-use projects.)	N	Y		

### Baths

All tub/shower control knobs to be single lever handled	Y	Y		
Lever faucet controls at lavatory sinks, not paddle handles	Y	Y		
Provide min. 12" grab bar mounted horizontally in all tub/shower units at wall opposite controls, 48" AFF	Y	Y		

Tubs and showers must have slip resistant floors (conform to ASTM F-462)	N	Y		
Mirrors in baths low enough to reach counter backsplashes	Y	Y		
Provide solid blocking at all water closets and tub/showers for grab bars installation	Y	Y		
Handheld showers at short wall of all baths, adjustable height mounting.	N	N		
Lighting: Provide non-glare dimmable task lighting at vanities.	Y	Y		

### **Kitchens**

Min. clear floor space between cabinets and appliances 48"	N	Y		
Loop handles on cabinet doors and drawers	Y	Y		
Lever faucet controls at kitchen sinks	Y	Y		
Contrast colors at border treatment of countertop vs cabinets to facilitate recognition of edge of counter by vision impaired persons	Y	Y		
Adjustable height shelves in wall cabinets	Y	Y		
Controls on appliances mounted to avoid reaching over burners of Elderly or Assisted Living Projects	Y	Y		
Range hoods wired to remote switch near the range in an accessible location of Elderly or Assisted Living Projects	Y	Y		
Pull-out shelves in base cabinets and pantry of Elderly or Assisted Living Projects	Y	Y		
Lighting: Provide non-glare dimmable task lighting at countertops.	Y	Y		



## Part C: Visitability

Visitability of residential units will be considered in project evaluation and scoring. The information below must be provided by the development team in order to determine the degree of visitability.

### 1. Definition

Visitable Units shall have, at minimum, all of the following features:

1. Units shall be on a route without steps from a public way. (Please note that this is not the same as an “accessible route” as defined in 521 CMR or the ADA.)
2. All doors on the above route, including the unit entry door, shall be 36” wide (32” minimum clear width).
3. All unit interior doors (except closet doors) on the entry level shall be 36” wide (32” minimum clear width).
4. On the unit entry level, there shall be a clear path to (a) a full or half bathroom; and (b) the living room and dining area of the unit. Such a full or half bathroom shall provide maneuverability clearances including access to fixtures in accordance with either (a) the Fair Housing Act Design Manual or (b) Group 1 bathrooms as defined by 521 CMR.

### 2. New Construction Projects and Adaptive Reuse Renovation Projects

DHCD has established a requirement that in new construction and adaptive re-use projects, all units in elevated buildings and all ground floor units shall fulfill the requirements of the above definition of a Visitable Unit. This requirement includes units with more than one story (“townhouse units”).

### 3. Renovation of Existing Residential Projects

DHCD has established the goal of providing Visitable Units in existing renovation projects wherever feasible. Sponsors are encouraged to make as many units as possible meet the definition above of a Visitable Unit.

At present, how many units in the project are visitable? \_\_\_\_\_

Upon completion of the renovations, how many units in the project will be visitable? \_\_\_\_\_

For units that will not be visitable, please describe the problems preventing visitability, as well as an estimate of what the cost impact would be of resolving the problem in order for the units to be made visitable. In cases of technological or space infeasibility, please explain.

Requirement	Description of Problem	Cost Impact/Infeasibility
1. Units shall be on a route without steps from a public way		
2. Doors on route shall be 36" wide with a zero-step entrance.		
3. All unit interior doors on the entry level shall be 36" wide.		
4. Clear paths to an entry level bathroom and the living/dining room; bathrooms. Bathroom to meet Fair housing or Group 1 requirements.		

### DHCD Requirements for CBH Units

The Community Based Housing (CBH) Program provides funding to non-profit and for-profit developers to build housing for people with disabilities – especially the development and redevelopment of integrated housing for people with disabilities who currently live unnecessarily in institutions or nursing facilities or are at risk of institutionalization. The requirements of the CBH program that extend beyond the legal minimums for typical accessible units reflect the unique (but not uncommon) needs of this population. These include a greater reliance on larger powered wheelchairs with larger turning diameters, the need for more space for medical equipment, and the need to minimize barriers at doors.

The goals of the CBH program include:

- **Integration:** Housing for people with disabilities should be designed to allow people with disabilities to integrate into the community as fully as possible. The emphasis is on the development of scattered site units within developments rather than clustered or segregated housing.
- **Maximum Control:** People with disabilities should have the maximum control possible in their housing choices and management. Having and meeting the obligations of a lease or a mortgage in their own name, with or without assistance, is the goal for most people with disabilities.
- **Accessibility:** The Commonwealth seeks to promote maximum visitability in all publicly funded housing. This will better ensure that people with disabilities have access to integrated housing in all communities.

Projects funded with CBH funds shall comply with all applicable federal and state access requirements in addition to these CBH requirements. In determining which projects will receive

funds from the limited pool of CBH funds, the program will prioritize projects that incorporate aspects of visitability and universal design for units. Although not required by federal and state accessible design standards, these universal design components make communities more usable for the residents whom CBH funding supports. The Commonwealth seeks to promote maximum universal design and visitability to ensure that people of varying ages and abilities have access to integrated housing and that they will be able to age in place.

Every effort should be made to incorporate items on the Universal Design checklist into CBH units. While there may be extenuating reasons that some UD features are not feasible across all units, they should all be incorporated into CBH units (unless superseded by a more stringent requirement).

Please also note that 521 CMR 24.2 requires that “Ramps shall have the least possible slope.” This is particularly important for the CBH population – a 1:12 ramp slope should be considered only when there is no alternative for a ramp of lesser slope, or more preferably, a sloped walkway with a slope that does not exceed 1:20.

All CBH units must meet 521 CMR Standards for Group 2A Units. (While there are exceptions in 521 CMR that allow lifts in townhouse units to make them accessible, CBH units should be flat units all on one level.) In addition to those requirements and the checklist below, there are further considerations that developers ought to consider in designing CBH units. First, residents in CBH units need additional space for a variety of uses, including medical supplies, transfer lifts, extra mobility devices, and people involved in personal care. As a rule of thumb, DHCD recommends that CBH units be approximately 20% larger in floor area than the minimum sizes noted in DHCD’s Construction/Rehabilitation Guidelines.

Another important consideration in unit design is providing layouts that minimize sharp turns and obstructions. An ambulatory person can generally negotiate a series of 90-degree turns unconsciously (see Figure 1). For a person with mobility impairments, these types of turns can present a series of obstacles. Whenever possible, units should be designed to eliminate these conditions. Pocket doors are often a viable alternative as they require less clearance than conventional swinging doors.

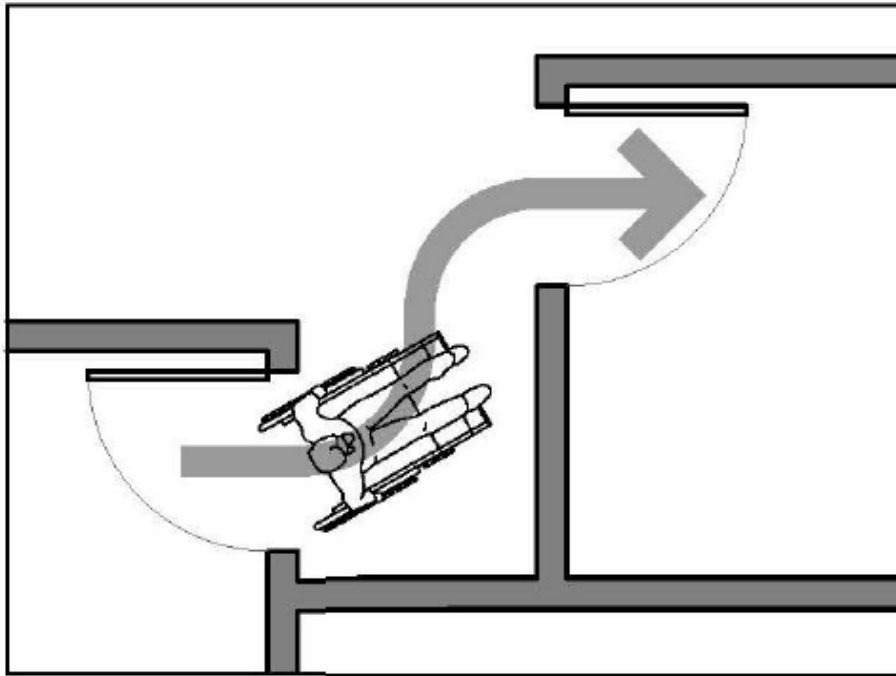


Figure 1

Configurations such as the one shown that require a series of 90 degree turns, while compliant with accessibility regulations, are not recommended and should be avoided if possible.

For example, refer to the sample unit layout below (Figure 2). Entry into the unit is unobstructed and there are few turns required. The living/dining area is open to the kitchen with no walls. As an additional feature, the bathroom door could be replaced with a pocket door (with appropriate hardware) to further reduce obstructions. Showing furnished floor plans is very helpful in illustrating how the space can be used.

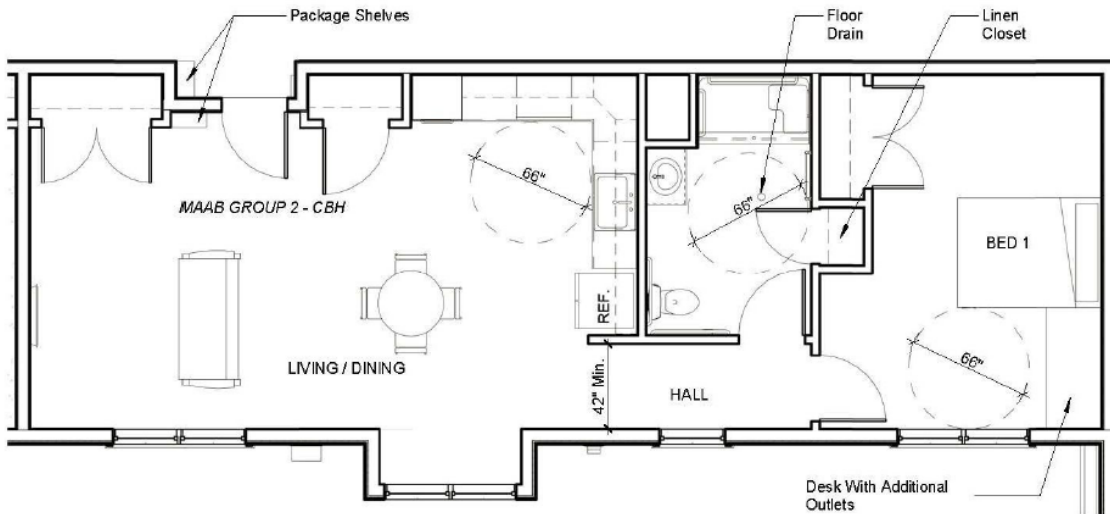


Figure 2

For CBH units the following additional requirements apply.

\*Requirements with an asterisk may be waived for moderate rehab projects.

Feature	DHCD Required		Check if Included	Comment (Explain all items that are not included)
	Rehab	New		

**Exterior**

Provide one accessible parking space for each CBH unit (if parking is provided for other units)	Y	Y		
Minimum one van accessible space	Y	Y		
If a common exterior patio is provided, provide shade.	Y	Y		
If covered parking is available, provide direct covered access from parking to CBH units.	Y	Y		

**Common Entrances**

All building entrances on accessible routes	N	Y		
Automatic door openers at building entrances on accessible routes	Y	Y		
All doorbells and intercoms must be accessible	Y	Y		

**Common Areas**

Provide electrical power to allow for future installation of automatic door openers at common interior spaces such as community rooms and laundry rooms without modification of ceilings or walls.	Y	Y		
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**CBH Unit Interiors**

Provide electrical power to allow for future installation of automatic door openers at unit entries without modification of ceilings or walls.	Y	Y		
Shelf for packages at inside and outside of all unit entrances. Interior shelf can be provided by furniture if not interfering with the zone of door access. Minimum size of shelf shall be 8" x 12"	Y	Y		
42" minimum clear width in hallways				

Space to allow wheelchair approaches at both sides of bed (Queen size in master, twin in secondary bedrooms): 42" on one side, 66" at the other	Y*	Y		
Wide, shallow closets (depth 24" max) with fully opening swing doors (min 90 deg opening, single or pairs) and of width to fully expose closet interior to access	Y	Y		
Flush transition to exterior balconies, patios or decks. Minimum depth of exterior space shall be 66"	Y	Y		
Intercom systems usable by vision or hearing impaired persons	Y	Y		
Flooring: hard surfaces, no carpet	Y	Y		
For rehab Projects, electrical outlets for assistive devices shall be provided throughout to meet current electrical code for new construction	Y	Y		
Additional electrical outlets at bed locations & desks: fourplex outlet for computers, electronic equipment, personal use equipment such as oxygen.	Y	Y		
Air conditioning shall be provided by sponsor, with controls within the zone of reach and compliant with applicable requirements. No window-mounted A/C units.	Y	Y		

### Baths

66" turning diameter in bathrooms	Y*	Y		
Curbless shower with 48"x60" wide parallel clear area in front of shower. Provide positive drainage of floor surfaces outside of the shower to either the shower drain or a secondary floor drain.	Y	Y		
Grab bars at all toilets, showers and tubs	Y	Y		
Lavatory sinks shall not have vanity cabinets in 30" wide knee space.	Y	Y		
Medicine cabinet shall be located within accessible reach range without reaching across the sink.		Y		

### Kitchens

66" turning diameter in kitchen	Y*	Y		
Side by side refrigerator/freezer	Y	Y		

Cabinets with sliding shelves and 'lazy susan' corner cabinets	Y	Y		
Wall cabinets shall have bottom shelf at 48" AFF (Except where greater clearance is required at ranges and at sinks.)	Y	Y		

## **Appendix K. Design Self Evaluation (Green Building)**



## Appendix K. Design Self Evaluation (Green Building)

In order to enable DHCD to evaluate the sustainable design provisions of each project, sponsors are to provide summary information regarding green building techniques and sustainable design using the following checklist.

Feature	Verification Requirement	Comment (explain all items that are not included)
<b>Location &amp; Neighborhood Fabric:</b>		
<p><b>1. Sensitive Site Protection:</b> Do not locate new projects, including buildings, built structures, roads or parking areas, on portions of sites that meet any of the following provisions:</p> <ul style="list-style-type: none"> <li>A. Land within 100 feet of wetlands, including isolated wetlands or streams. Maintain or establish riparian buffer using native vegetation where possible.</li> <li>B. Land that is specifically identified as an existing habitat for any species on federal or state threatened or endangered lists.</li> <li>C. Land that is within the Special Flood Hazard Areas (SFHA) as identified by FEMA on the Flood Insurance Rate Map.</li> </ul>	Site Plan	
<p><b>2. Connections to Existing Development and Infrastructure</b> Locate the project on a site with access to existing roads, water, sewers and other infrastructure within or contiguous to (having at least 25% of the perimeter bordering) existing development. Connect the project to the pedestrian grid.</p>	Site Plan	
<p><b>3. Compact Development</b> At a minimum, build to the residential density (dwelling units/acre) of the census block group in which your project is located.</p>	Provide census info	
<b>Site Design:</b>		
<p><b>1. Environmental Remediation</b> Conduct an ASTM Preliminary Environmental Site Assessment to determine whether any hazardous materials are present on-site; mitigate any found.</p>	Provide ASTM PSA	
<p><b>2. Erosion and Sedimentation Control</b> Implement EPA's Best Management Practices for Construction Site Stormwater Runoff Control, or local requirements, whichever is more stringent. (Except for infill sites with buildable area smaller than one acre)</p>	Include in outline specification	

<p><b>3. Landscaping</b> If providing plantings, all should be native or adapted to the region, appropriate to the site's soil and micro-climate, and exclude invasive species. Reseed or xeriscape all disturbed areas.</p>	Provide plan species on Site Plan	
<p><b>4. Efficient Irrigation and Water Reuse</b> If irrigation is used, install an efficient irrigation or water reuse system.</p>	Include in outline specification	
<p><b>5. Stormwater</b> Install systems for the recharge of roof rainwater runoff into the groundwater. This may include downspouts to pervious landscape surfaces ample for percolation, or acceptable slow stormwater release into storm drain.</p>	Include in outline specification	
<b>Building Design:</b>		
<p><b>1. Water-Conserving Fixtures</b> Install water-conserving fixtures in all units and any common facilities that meet current EPA WaterSense criteria, at a minimum.</p>	Include in outline specification	
<p><b>2. Sizing of Heating and Cooling</b> Do not oversize heating and cooling equipment.</p>	Include in outline specification	
<p><b>3. Install Energy Star labeled appliances</b> Install only Energy Star labeled appliances (refrigerators, dishwashers, clothes washers, clothes dryers)</p>	Include in outline specification	
<p><b>4. Lighting</b> Provide high-efficacy lighting (LED or fluorescent), controls, sensors, and other characteristics for all permanently installed lighting fixtures in project dwelling units, common spaces and exterior. Common area lighting to have occupancy sensors or automatic bi-level controls.</p>	Include in outline specification	
<p><b>5. Paints and Primers</b> All interior paints and primers must have No-VOC levels.</p>	Include in outline specification	
<p><b>6. Adhesives and Sealants</b> All adhesives and sealants (including caulks) must have VOC levels, in grams per liter, less than or equal to the thresholds established by the South Coast Air Quality Management District Rule 1168.</p>	Include in outline specification	
<p><b>7. Composite Wood Products</b> Composite Wood Products that Emit Low/No Formaldehyde are acceptable. All composite wood products must be certified as compliant with California 93120 Phase 2</p>	Include in outline specification	
<p><b>8. Mold resistant wallboard</b> Install non-paper-faced mold-resistant wallboard or cement board at areas susceptible to moisture, including kitchens, bathrooms, basements, and laundry rooms. Install cement board or fiber cement board at tub/shower enclosures.</p>	Include in outline specification	

<p><b>9. Mold Prevention</b> Mold Prevention: Surfaces - Use materials that have durable, cleanable surfaces throughout bathrooms, tub/shower enclosures, kitchens and laundry rooms. Materials in these rooms should not be prone to deterioration due to moisture intrusion or encourage the growth of mold.</p>	<p>Include in outline specification</p>	
<p><b>10. FSC Wood</b> Install FSC Certified wood for at least 25% of total wood used.</p>	<p>Include in outline specification</p>	
<p><b>11. Demolition Recycling</b> Specify that demolition procedures recycle at least 25% of all removed materials by volume, including site materials, appliances, structure, and finishes.</p>	<p>Include in outline specification</p>	
<p><b>12. Construction Waste</b> Specify that construction procedures use materials efficiently, and that at least 75% of construction waste be recycled. Recycle all cardboard and foam packaging materials.</p>	<p>Include in outline specification</p>	
<p><b>13. Ventilation</b> Comply with current State building code and standards listed in DHCD Design Requirements</p>	<p>Include in outline specification</p>	
<p><b>14. Clothes Dryer Exhaust</b> Clothes dryers must be exhausted directly to the outdoors using rigid-type ductwork (except for condensing dryers, which must be plumbed to a drain).</p>	<p>Include in outline specification</p>	
<p><b>15. Water Drainage</b> (For all New Construction projects and those Rehab projects that include replacing roofing, flashing, housewrap/WRB) Provide drainage of water away from walls, windows and roofs.</p>	<p>Include in outline specification</p>	
<p><b>16. Water Heaters</b> Provide adequate drainage for water heaters including floor drains or catch pans with plumbed drain pipes.</p>	<p>Include in outline specification</p>	
<p><b>17. Garage Isolation</b> Provide a continuous air barrier including airtight seals at all penetrations between the conditioned space and any garage space to prevent the migration of any contaminants into the living space. Visually inspect common walls and ceilings between attached garages and living spaces to ensure that they are air-sealed before insulation is installed.</p>	<p>Include in outline specification</p>	
<p><b>18. Integrated Pest Management</b> Seal all wall, floor, and joint penetrations with low-VOC caulking or other appropriate nontoxic sealing methods to prevent pest entry. Provide metal rodent/roach shields behind kitchen cabinets.</p>	<p>Include in outline specification</p>	

<p><b>19. Active Design: Promoting Physical Activity Within the Building</b>  Situuate at least one building stairway per the criterion to encourage use  OR  Emphasize at least one strategy inside the building designed to increase frequency and duration of physical activity.</p>	<p>Include in outline specification</p>	
<p><b>20. Lead Hazards in Pre-1978 Buildings</b>  Conduct lead risk assessment or inspection to identify lead hazards, then control for these per EPA or state/local laws and requirements</p>	<p>Include in outline specification</p>	
<p><b>21. Construction Ventilation</b>  Ventilate new or renovated wood construction fully after exposure to water so that wood dries completely (10 days). Also ventilate the interior spaces after substantial completion and before occupancy to dry construction and remove any accumulated VOCs.</p>	<p>Include in outline specification</p>	
<p><b><i>Building Operations &amp; Maintenance</i></b></p>		
<p><b>1. Building Operations &amp; Maintenance (O&amp;M) Manual and Plan</b>  (For all multifamily projects) Develop a manual with thorough building operations and maintenance guidance and an accompanying building plan.</p>	<p>Include in outline specification</p>	
<p><b>2. Emergency Management Manual</b>  Provide a manual on emergency operations targeted toward management companies and other operations and maintenance personnel. The manual should address responses to various types of emergencies, leading with those that have the greatest probability of negatively affecting the project.</p>	<p>Sponsor is required to have property management prepare this.</p>	
<p><b>3. Resident Manual</b>  Provide a guide for homeowners and renters that explains the intent, benefits, use and maintenance of their home's green features and practices, including recycling procedures. The Resident Manual should encourage green and healthy activities.</p>	<p>Sponsor is required to have property management prepare this.</p>	
<p><b>4. Resident and Property Staff Orientation</b>  Provide a comprehensive walk-through and orientation for all property manager(s) and buildings operations staff. Use the appropriate manuals as the base of the curriculum, and review the project's green features, operations and maintenance procedures, and emergency protocols.</p>	<p>Include requirement in outline specification</p>	

<p><b>5. Recycling Operations</b>          Provide designated spaces for recycling containers for use by residents. Include recycling instructions to resident households. Provide management-monitored recycling program and weekly collections (where supported by municipal or contracted waste removal services.)</p>	<p>Indicate space on floor plan(s).          Include in management plan.</p>	
<p><b>6. Commissioning</b>          Have all centralized building systems inspected by a qualified independent commissioning agent immediately after construction, including verification that the systems achieve the efficiencies specified.</p>	<p>Include requirement in outline specification</p>	

## **Appendix L. Design Self Evaluation (Senior Housing)**

## Appendix L. Design Self Evaluation (Senior Housing)

### Recommended DHCD Requirements for Senior Housing Developments

For senior housing developments, the following additional requirements apply.

\*Requirements with an asterisk may be waived for moderate rehab projects

Feature	DHCD Req'd (R) or Suggested (S)		Check if Included	Comment (Explain all items that are not included)
	Rehab	New		

#### *Exterior*

Primary entry to the building without stairs and doorway with a flush threshold (or minimal beveled door transition)	R*	R		
Continuous pathway between home, transit, and frequently used services that does not require shortcuts through alleys or landscaping.	S	S		

#### *Common Areas*

Video intercom system with push button screen (aka installed wall-phone) for ease of use by seniors- useful for seniors with arthritis or other challenges that make it hard to use a touchscreen.	R	R		
Resident services office(s) near the front lobby to support staffing of 1 Resident Service Coordinator for every 100 residents, but no less than one. Office(s) fully enclosed for privacy and at least 250 sf so the resident and one family member or support person can meet with the RSC.	R*	R		
Private office for resident and health care professional to meet.	R*	R		
Multi-purpose (400 sf minimum) with no less than 10 sf/resident; stackable furniture, storage, good lighting, and age-friendly acoustics; located near front lobby with partially transparent walls so activities are visible to encourage participation.	R*	R		
Given frailty and health needs of seniors, all senior elevator buildings must provide at least two elevators. Size at least one of the elevators to accommodate a 24" x 84" gurney.	R*	R		
Central air conditioning throughout the building (including apartments). Use a system that supports maximum heating/cooling flexibility during transition seasons.	R*	R		
Back-up generator to ensure elevator access, AC and refrigeration (for medications) during power outages.	R	R		
Overhead hallway light fixtures to accommodate lamps to providing minimum 30 footcandles at lighted surfaces; fixtures that cast a diffuse light (reflected illumination on the wall or ceiling via a shade, not direct light).	R	R		

<u>Do not</u> include occupancy sensors in common areas - dark, unoccupied rooms are uninviting to residents with low vision, and disorienting to residents with dementia.	R	R		
For ceilings and other hard surfaces, use materials that dampen background noise (like synthetic tiles, melamine foams, fiberglass, wood, and plastic).	R	R		
Well-lit signs with large lettering with building information for easy navigation.	R	R		
Smooth, hard, durable flooring material to reduce tripping and support residents who shuffle feet. Limit carpet to small areas and select easy to clean, short pile carpets.	R	R		
Unique color scheme of each floor can aid in way-finding	R	R		
Shelf for packages at all exterior unit entrances.	R	R		
Incorporate active design solutions to encourage walking such as an open, inviting stair near the elevator with low-rise steps and fewer steps between landings that turn direction at each landing to lessen the distance of a fall.	S	S		
An activities board (preferably electronic).	S	S		
Additional flexible program spaces to support social engagement and wellness (e.g., fitness classes, group meals).	S	S		
Storage for mobility devices in activity areas.	S	S		

### ***Entrances***

Lobby to support social connections; no less than 100 square feet, and no less than 5 square feet per resident; age-friendly seating (firm seat cushions 18'' high and 18'' deep, with arms, backs and washable fabric).	R*	R		
Waiting area with seating located in line of sight to exterior resident pick-up area.	S	S		
Front desk to support staff (paid or volunteers).	S	S		

### ***In All Unit Interiors***

Awning windows with easy-use crank hardware (except for projects where double hung windows are required for historic approvals).	R	R		
Smooth, hard, durable flooring materials to reduce tripping and support residents who shuffle feet. Limit carpet to small areas and select easy to clean, short pile carpet.	R	R		
Space to allow wheelchair or walker approach on side of bed closest to bedroom door.	R	R		
42'' clear width in hallways	R*	R		
Open floor plans, wall cut outs, or glazing in doors allow caregivers to maintain a visual connection with residents who may need assistance.	S	S		
Shelf for packages inside unit entry.	S	S		
Storage for mobility devices	S	S		



***In All Baths***

66” turning diameter in baths.	R*	R		
Wall-hung sink and/or cabinetry with a counter height that will accommodate seated residents.	R	R		
Removable base cabinet at sink or provide recessed area for knee space.	R	R		
Showers in all apartments (no tubs) with curbless entry and no less than 36” X 60” to accommodate resident plus caregiver and mobility device.	R	R		

***In All Kitchens***

66” turning diameter in kitchens	R*	R		
Provide a separate cook top and wall oven. Locate wall ovens at counter height with side-mounted hinges for easy transfer from oven to counter.	R*	R		
Side by side refrigerator/freezer or freezer on the bottom.	R	R		
Cabinets with siding shelves and “lazy Susan” corner cabinets.	R	R		
Removable base cabinets under the kitchen sink, cook top and a portion of the workspaces to provide knee space for residents using wheelchairs.	R	R		
Upper cabinets should be mounted approx. 13” above the countertop for ease of reach (maximum high reach is 63”).	R	R		
Electric stoves for easy and flexible decommissioning for residents with dementia.	R	R		

***Technology***

Simple to understand HVAC controls in apartments with large screen for easy reading.	R	R		
Building should be “Wi-Fi ready” with infrastructure in place for easy utilization of new technology as it emerges.	R	R		
Use CAT 6 wiring throughout the building (common areas and apartments) which should be compatible with most emerging assistive technology and will give residents the option to purchase their own router for personal use.	R	R		
Provide adequate space for wiring in the MDF/IDF cable racks on each floor to accommodate current and future router needs for staff, residents, security and public Wi-Fi service in lobby, program spaces and hallways.	R	R		
Number and location of hallway routers strong enough for staff use of remote technology to manage tenant records, work orders, etc. when in an apartment and provide a seamless connection from common spaces to apartments for assistive technology. (Note- does not include a requirement to provide residents open access to building Wi-Fi in their apartments.)	R	R		

Comprehensive cell phone service in the lobby, program spaces and hallways that has the capability of transmitting a signal in an energy efficient envelope (i.e., multi-paned windows). Older buildings may require a repeater system to transmit a signal.	R	R		
Wireless door locks with fob. Remote unlocking allows staff to easily assist residents and could be used by staff as a wellness check feature to alert staff when a resident has not left their apartment for an extended period.	S	S		
Common voice activated technology system in units that provide information related to building programming to residents.	S	S		

## **Appendix M. DHCD's Design Requirements 2022-2023**

# Appendix M. DHCD’s Design Requirements 2022-2023

## MASSACHUSETTS DHCD MULTIFAMILY

### Design Requirements

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## **Introduction**

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The following Design Requirements are intended to promote the construction of affordable multifamily residential dwellings of high quality, which are cost-effective to build and operate, use reliable materials and systems, and support the activities of renters and buyers.

Design Requirements are minimum requirements for the design and construction of affordable multifamily residences which architects and developers must incorporate regardless of the specific conditions of the project in the case of new construction. The Design Requirements indicate where criteria apply to New Construction (NC), Adaptive Reuse (AR), or Renovation/Rehab (RR). Architects and developers must adhere to these requirements. However, the actual application of these requirements may differ from project to project based on the specific conditions of the project.

Any proposed deviations from the Design Requirements must be submitted in writing for DHCD's review prior to any application for DHCD funding. Unless DHCD expressly approves any changes, project designs must adhere to all Design Requirements.

Please refer to the body of the 2022-2023 Qualified Allocation Plan for specific information on design requirements, including Section XII on the Fundamental Project Characteristics and Special Project Characteristics, and fill in the three required Design Self-Evaluations included in Appendices "I", "J", and "K".

## **1. Compliance With Codes and Standards**

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Projects must comply with the applicable provisions of current issuances of design and construction requirements of federal, state, and local codes and regulations, including but not limited to the following list. Where there is conflict between applicable standards, the more stringent requirement should be applied.

### **A. Federal**

- Federal Fair Housing Amendments Act
- Section 504 of the Federal Rehabilitation Act
- Uniform Federal Accessibility Standards
- Americans With Disabilities Act
- U.S. Department of Energy, Energy Star
- Federal HUD Section 8 Housing Quality Standards
- Federal Environmental Protection Agency Regulations
- Clean Air and Water Acts
- EPA Watersense
- 92.251 Property Standards

### **B. Massachusetts**

- MA State Building Code and Related Codes
  - Fuel Gas and Plumbing
  - National Electrical Code
  - MA Fire Regulations/National Fire Protection Association
  - MA Elevator Regulations
  - MA Architectural Access Board Regulations
  - MA Stretch Code and/or applicable IECC
  - MA Department of Public Health/State Sanitary Code
- Department of Environmental Protection
- State HOME, HSF, FCF, HTF, AHTF, CBH, CIPF, CATNHP and LIHTC Programs

### **C. Local (City or Town)**

- Municipal Zoning Ordinances
- Local Historical Regulations and Restrictions
- Local Licensing Requirements
- Other regulatory requirements and guidelines from municipal agencies and departments

## **2. Design Requirements**

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This section sets forth the minimum design requirements for design and construction. Architects and developers must incorporate these requirements into the design and construction of affordable multifamily residences regardless of the specific conditions of the project. Developers and

architects must provide DHCD with written requests if they wish to deviate from these design requirements as described in the Introduction above.

Developers and architects should refer to Appendix K, Senior Design Guidelines, for additional design requirements that apply to all senior housing projects.

**A. Dwelling Unit Sizes**

- Unit square footage is measured from the inside face of the unit’s walls and includes usable storage space, stairwells, and hallways inside the unit, as well as space occupied by interior walls within the unit. Fifty percent of the area under sloped ceilings with greater than 5'-0" clearance and less than 7'-6" clearance should be included in the unit square footage. (NC) + (AR) units must not be more than 10% greater than sizes noted below (except in the case of multi-level units with internal staircase(s)). If units are smaller than sizes noted below, unit furnishing plans must be submitted in addition to plans that are required for funding submission.

SRO (SPO)	150-240 square feet (depending upon provision of bath and kitchen)
Studio	500 square feet
One bedroom	600 square feet
Two-bedroom	800 square feet
Three-bedroom	950 square feet
Four-bedroom	1,200 square feet

- Layout of buildings and units should optimize the use of space, provide spacious furnishable main living areas, and provide adequate storage (minimum storage defined below under “closets”).
- Circulation spaces should be designed efficiently and kept to a minimum.
- Bedrooms in new construction must have operable window(s) on exterior elevations (exception: windows on high rise buildings are not required to be operable).

**B. Dwelling Unit Major Room Dimensions**

This section sets forth the minimum design requirements for major room sizes.

**(NC) and (AR) If (RR) units are less than these standards, they will be reviewed based on reasonableness of furnished plans**

**Primary Bedroom**

- 120 square feet minimum (12' x 10' clear dimension, not including closet)
- Must accommodate one queen bed, dresser, and two nightstands

**Secondary Bedroom**

- 100 square feet minimum (10' x 10' clear dimension, not including closet)
- Must accommodate two twin beds or a bunk bed, dresser(s)

### **Living Room Area**

- 150 square feet minimum (with 12' clear minimum x 10' clear minimum)
- Must accommodate a six-foot couch, two chairs, coffee table, side table(s) and a place for a television

### **Dining Room Area**

- 100 square feet minimum (10' x 10' clear dimension)
- Must accommodate an appropriately sized dining table and chairs (dining table should be indicated on unit plans)

### **Living/Dining Area**

- 200 square feet minimum (12' least dimension). Dining room may overlap with the living room.

### **Closets**

- Closets in bedrooms shall be 2'-0" clear deep and eight square feet minimum
- An entry closet shall be provided and be six square feet minimum
- A linen closet shall be provided and be four square feet minimum

## **C. Bathrooms**

- Adequate storage shall be provided for bathrooms **(NC) and (AR)**
- One full bathroom shall be provided in zero-, one-, or two-bedroom units **(NC), (AR) + (RR)**
- One full bathroom and one half-bathroom are required in three-bedroom units **(NC), (AR) + (RR)**
- Two full bathrooms are required in four-bedroom units. A shower stall may be substituted for one bathtub **(NC), (AR) + (RR)**
- Vanities should have KCMA Certified all-wood severe use (no MDF or particle board) or similarly durable water-resistant cabinet construction. All full bathrooms shall receive two 24" towel bars, robe hook, shower curtain rod, toilet paper holder, mirror-front medicine cabinet with adequate blocking as required by manufacturer. Provide dimmable non-glare light fixture at vanities. **(NC), (AR) + (RR)**
- All half-bathrooms shall have two towel bars, robe hooks, toilet paper holder, and wall mirror with adequate blocking as required by manufacturer. **(NC), (AR) + (RR)**
- Bathrooms must be mechanically ventilated in accordance with current ASHRAE standards. **(NC), (AR) + (RR)**
- All GWB in bathrooms must be non-paper faced. **(NC), (AR) + (RR)**
- Wall and ceiling paint must be formulated for high humidity locations and include mildewcide. **(NC), (AR) + (RR)**

## **D. Kitchens**

- All kitchen appliances shall be Energy Star rated. **(NC), (AR) + (RR)**
- Ranges and range hoods shall be 24" or 30" width in studio and one-bedroom units, and 30" in two-, three- and four-bedroom units. Where the range abuts a side wall,



there must be heat resistant, easily cleaned back material to provide protection against heat and grease. **(NC), (AR) + (RR)**

- Range hoods shall be vented to the outdoors or may be recirculating type only if other kitchen exhaust ventilation is provided in accordance with current ASHRAE standards. **(NC), (AR) + (RR)**
- All range hoods shall be equipped with residential range hood fire suppression device **(NC), (AR) + (RR)**
- Garbage disposals where provided shall be 1/2 HP minimum **(NC), (AR) + (RR)**
- Refrigerators shall have a separate freezer door and be 12 cubic feet minimum in studio and one-bedroom units and 18 cubic feet minimum in two- and three-bedroom units **(NC), (AR) + (RR)**
- Minimum counter space shall be eight linear feet with 38 square feet of shelf space minimum. Minimum length of countertop does not include the space occupied by the sink, stove, and refrigerator. **(NC), (AR)**
- Three- and four-bedroom units shall have an additional two linear feet of counter space and additional eight square feet of shelf space. Counter length measurement at corners only includes one overlap to the corner, no double counting. **(NC), (AR)**
- Any medium-density fiberboard (MDF) used in countertops shall be for formaldehyde free. **(NC), (AR) + (RR)**
- A dishwasher is required in three- and four-bedroom units **(NC), (AR)**
- Cabinets shall comply with KCMA Certified all-wood severe use (no MDF or particle board) at sink base cabinet **(NC), (AR) + (RR)**
- Kitchen sink interior dimensions shall be 22" x 24" x 6.5" minimum, stainless steel, accommodating a single handle faucet with spray attachment **(NC), (AR) + (RR)**
- All GWB in kitchens must be non-paper faced or skim coat plaster **(NC), (AR) + (RR)**
- Wall and ceiling paint must be formulated for high humidity locations.
- Provide dimmable non-glare light fixture at countertops **(NC), (AR)**

#### **E. Electrical Design**

- Switched ceiling-mounted lighting fixtures are required in building common areas, entry foyers and unit hallways, stairwells, kitchens (including suitable lighting at sink), dining areas, bathroom ceilings and over mirror, walk-in closets, and basements. Either an overhead fixture or switched outlet is allowable in bedrooms. **(NC), (AR) + (RR)**
- Interior common area lighting to have code compliance automatic bi-level lighting control triggered by occupancy sensors. (Occupancy sensor control not required for senior housing or housing for residents with dementia.) **(NC), (AR) + (RR)**
- Provide appropriate technology for current telephone, data, and television systems. **(NC), (AR) + (RR)**
- Appropriate resident-controlled building visual monitoring/entry system that maintains security and safety of residents must be provided. **(NC), (AR)**
- Appropriate emergency call system is mandatory in all senior developments. **(NC), (AR) + (RR)**. See Appendix K for Senior Housing Technology requirements.

- When appropriate to siting of structure(s) and building characteristics, provide conduit or chase for future installation of rooftop solar systems. For new and adaptive reuse flat roofed structures, potential future locations for solar systems shall be identified and roof structure shall be designed to support future loading. **(NC), (AR)**

**F. Mechanical, Plumbing, Miscellaneous Building Systems Design**

- Mechanical and plumbing systems, equipment, fixtures, etc., must be of a proven technology, demonstrably durable, and easily maintained. **(NC), (AR)**
- Air conditioning must be provided in all newly-constructed developments. **(NC), (AR)**
- On projects with window/thru-wall AC units, provide appropriately sized dedicated outlet and protective winter cover to minimize unwanted air infiltration. **(NC), (AR) + (RR)**
- Existing buildings must be tested for unhealthy levels of radon, and retrofit with remediation systems as required to meet all applicable requirements. At a minimum, in new construction, properly designed passive systems with provisions for supplementing system with active ventilation must be provided. **(NC), (AR) + (RR)**
- All buildings undergoing Level 2 or 3 Alterations shall install automatic fire sprinkler systems. To minimize opportunities for unintentional activation of system, all sprinkler heads shall be recessed with covers. **(NC), (AR) + (RR)**
- All buildings undergoing Level 2 or 3 Alterations shall install new or upgrade existing fire detection and alarm systems to meet current code.
- Beyond MAAB and Elevator Code requirements for provision of an elevator in new multifamily buildings, all new buildings with three or more stories and with 40 or more residential units above entry level must provide two elevators. **(NC), (AR)** In senior developments, provisions for operating at least one of the elevators during significant power outages must be provided and must be sized for stretcher. **(NC), (AR) + (RR)** **All Senior developments of more than one store to have at least one elevator.**
- All in-unit water heaters and washing machines must be equipped with catch pans and a system for draining the pan and/or shutting off water supply upon sensing water in pan. **(NC), (AR) + (RR)**
- See self-evaluation for mechanical equipment commissioning requirements. **(NC), (AR) + (RR)**

**G. Neighborhood Context**

- It is a primary requirement that the design of all housing developments enhance existing neighborhoods. **(NC), (AR) + (RR)**
- Developers should reinforce the connectivity to existing publicly accessible or community-based open space, public transit and other basic community resources that are within walking distance of any proposed development. **(NC), (AR) + (RR)**

## **H. On-Site Open Space**

- Particularly if there are no nearby public open spaces, it is important that development proposals include fully accessible (meeting at a minimum, MAAB requirements) open space for individuals, families, and children who occupy the building(s). All exterior dwelling entrances shall include weather-protected entries such as canopies, covered porches or well-lit, observable recessed alcoves. **(NC), (AR) + (RR)**
- Prioritize passive and active outdoor amenity space such as shaded seating areas, play areas, and community gardens. **(NC)**

## **I. Placement and Orientation of Buildings on Sites**

- Building siting should accommodate safe and well-defined pedestrian and vehicular access to the site and provide for ongoing operations, including site maintenance, snow storage, and trash/recycling management areas. **(NC)**
- When appropriate to the context, buildings should be placed on the site giving consideration to optimum solar orientation and wind direction for natural ventilation and wind buffering. Methods for providing summer shading for south-facing and west walls and the implementation of photovoltaic and/or solar hot water systems on the roof should be considered. **(NC)**

## **J. Parking**

- For any project with 10- or more parking spaces, at least 20% of spaces must be EV Ready as defined by the Mass Building Energy Code, including transformer sizing for future load.
- The zoning requirements for off-street parking should be achieved with parking layouts designed to minimize area of impervious pavement. **(NC), (AR) + (RR)**
- Parking areas should be buffered from adjacent properties and the public realm with landscaping or other suitable means. **(NC), (AR) + (RR)**
- Appropriate number of secure bicycle storage and visitor parking spaces must be provided. At a minimum, for building residents, one bike storage space per one housing unit must be provided (local requirements may exceed this minimum). **(NC), (AR)** Secure bicycle storage is storage that is inside the building, or covered from the elements and includes video surveillance if surveillance is provided for the project. **(NC), (AR)**

## **K. Landscaping**

- A landscaping plan must be provided showing proposed fencing, planting beds, trees, and shrubs, retained and removed play area, lighting, seating, and all features adding to the functional and aesthetic quality of the site. **(NC), (AR) + (RR)**
- New plantings must be native, low maintenance, drought tolerant and non-invasive. **(NC), (AR) + (RR)**

- Drip irrigation systems should be used if irrigation is required. Seek out rainwater harvesting and separate water meter options for any irrigation needs. **(NC), (AR) + (RR)**
- Minimize lawn areas that require irrigation or lawn maintenance. **(NC), (AR) + (RR)**
- **All exterior pedestrian walkways to be cement concrete. Biluminous concrete walkways not allowed. (NC), (AR) + (RR)**

**L. Miscellaneous Requirements**

- Projects must include provisions for secure package delivery and storage systems. **(NC), (AR) + (RR)**
- All developers must submit a schedule for implementation of a Smoke-Free Housing Policy that will be implemented in DHCD-funded projects no later than January 1, 2020. **(NC), (AR) + (RR)**
- Only no-VOC paints are permitted. **(NC), (AR) + (RR)**
- Window guards and/or other means to protect children must be provided in all family developments and senior developments where child care may take place. **(NC), (AR) + (RR)**
- Only no or very low VOC carpet adhesives or installation with tack strips are permitted. **(NC), (AR) + (RR)**
- Only carpet designed to eliminate off-gassing is permitted. **(NC), (AR) + (RR)**
- Products made with formaldehyde or urea-formaldehyde binders should be avoided. **(NC), (AR) + (RR)**
- All new interior doors (except closet doors) must be solid-core doors. **(NC), (AR) + (RR)**
- Fill in three required Design Self-Evaluations included in Appendices “I”, “J”, and “K”.

**Appendix N. Executive Order 592: Advancing Workforce  
Diversity, Inclusion, Equal Opportunity, Non-  
Discrimination, and Affirmative Action**

## **Appendix N. Executive Order 592: Advancing Workforce Diversity, Inclusion, Equal Opportunity, Non-Discrimination, and Affirmative Action**

**DATE:** 10/22/2020  
**ISSUER:** Governor Charlie Baker  
**MASS REGISTER** No. 1430  
**REVOKING AND SUPERSEDING:** Executive Order 526

WHEREAS, the Constitution of the Commonwealth of Massachusetts is based on a belief in freedom and equality for all individuals and the duty of Government to safeguard and foster these rights;

WHEREAS, the Executive Branch of the Commonwealth of Massachusetts recognizes the importance of non-discrimination, diversity, workforce inclusion, and equal opportunity in all aspects of state employment and its programs, policies, and activities;

WHEREAS, the Executive Branch has an obligation to lead by example and to support a culture of inclusion that values and promotes diversity and equal opportunity for all persons;

WHEREAS, creating greater accountability and shared responsibility for achieving diversity and inclusion goals at all levels of the Executive Branch will promote steady and sustainable progress;

WHEREAS, effective strategic diversity management practices enhance employee productivity, nurture the development of employees at all levels, and strengthen the Commonwealth's ability to deliver excellent customer service to an array of diverse residents, businesses, and other stakeholders;

WHEREAS, the Executive Branch of the Commonwealth holds its employees to the requirements of state and federal non-discrimination laws and to the standards established by the Commonwealth's policies, in order to maintain a workplace free from discrimination;

WHEREAS, while acknowledging the many efforts and accomplishments of the past, the Commonwealth can and must do more to ensure that non-discrimination, diversity, and equal opportunity are safeguarded, promoted, and reflected in state workplaces, programs, services, policies, activities, decisions, and contracts;

NOW, THEREFORE, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Part 2, c. 2, §I, Art. I, do hereby revoke Executive Order No. 526 and order as follows:

**Section 1.** This Executive Order shall apply to all state agencies in the Executive Branch, as defined below. As used in this Order, the following words shall have the following meanings:

“Discrimination”,

1. Conduct in violation of state or federal non-discrimination laws;
2. Unfair treatment because of an individual’s membership in a protected class under state or federal non-discrimination law; or
3. Unfavorable treatment of an individual as compared to others similarly situated with respect to the terms, conditions, or privileges of employment because the individual is a member of a class protected by law. Discrimination may involve, but is not limited to:
  - a. Harassment, by creating, or allowing to exist, an environment hostile to an individual’s membership in a protected class;
  - b. Failing to provide a reasonable accommodation to an individual’s disability; or
  - c. Pursuing a practice or policy, which, while it appears neutral on its face, has a disproportionate and unfavorable impact on individuals who are members of a protected class.

“State agencies”, all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established.

**Section 2.** Non-discrimination, diversity, and equal opportunity shall be the policy of the Executive Branch of the Commonwealth of Massachusetts in all aspects of state employment, programs, services, policies, activities, and decisions. Each executive officer and agency head serving under the Governor and all state employees shall take immediate, affirmative steps to ensure compliance with this policy and with applicable state and federal laws in connection with both the internal operations of state government as well as external relations with the public, including those persons and organizations doing business with the Commonwealth. Each agency, in discharging its duties, shall consider the likely effects that its programs, services, policies, activities, and decisions will have on achieving non-discrimination, diversity, and equal opportunity.

**Section 3.** All state agencies shall develop and implement affirmative action and diversity plans to identify and eliminate barriers in the workplace which are discriminatory in intent or effect; remedy the effects of past discriminatory practices; identify, recruit, hire, develop, promote, and retain employees who are members of under-represented groups; and ensure diversity and equal opportunity in all facets, terms, and conditions of state employment. Such plans shall set forth specific goals and timetables for achievement of these goals, shall comply with all applicable state and federal laws, and shall be updated, at a minimum, every two years.

**Section 4.** All programs, policies, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, genetics, pregnancy or pregnancy-related condition, religion, creed, ancestry, national origin, disability, veteran’s status (including Vietnam-era veterans), or background. Equal opportunity and diversity shall be protected and affirmatively promoted in all state, state-assisted,

and state-regulated programs, policies, activities, and services. Non-compliance shall subject violators to such disciplinary or remedial actions as permitted by law. This provision applies, but is not limited to, the use and operation of facilities owned, leased, funded, or subject to control by the Commonwealth; the sale, lease, rental, financing, construction, or development of housing; state-licensed or chartered health care facilities, educational institutions, and businesses; education, counseling, and training programs; and public schools.

**Section 5.** All Executive Branch contracts entered into after the effective date of this Order shall contain provisions prohibiting contractors and subcontractors from engaging in discriminatory employment practices, either by intent or effect; requiring contractors to certify that they are in compliance with all applicable state and federal laws, rules, and regulations governing fair labor and employment practices; and requiring contractors to commit to purchasing supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons, veterans (including Vietnam-era veterans), persons with disabilities, or lesbian, gay, bisexual, or transgender persons. Such provisions shall be drafted in consultation with the Office of the Comptroller, the Office of Diversity and Equal Opportunity (“ODEO”), and the Operational Services Division, which shall develop and implement uniform language to be incorporated into all Executive Branch contracts. The provisions shall be enforced through the contracting agency, the Operational Services Division, and/or the Massachusetts Commission Against Discrimination (“MCAD”). Any breach shall be regarded as a material breach of the contract that may subject the contractor to sanctions up to and including termination of the contract.

**Section 6.** All state agencies shall exclude from any forms requesting information any item or inquiry expressing or soliciting specifications as to race, color, creed, religion, national origin, ethnicity, gender, age, sexual orientation, gender identity or expression, genetics, pregnancy or pregnancy-related condition, or disability, unless the item or inquiry is expressly required by statute or is deemed by the MCAD, the Massachusetts Office on Disability, the Human Resources Division, or the ODEO to be a bona fide qualification or otherwise required in good faith for a proper purpose. State agencies shall protect the security and confidentiality of any such personal information in their possession.

**Section 7.** The Office of Diversity and Equal Opportunity (“ODEO”), as established within the Human Resources Division of the Executive Office for Administration and Finance, shall be responsible for ensuring compliance with this Executive Order and with all applicable state and federal laws. ODEO shall have a Chief Diversity Officer (the “CDO”), who shall be selected by and serve at the pleasure of the Governor. The CDO shall report operationally to the Commonwealth’s Chief Human Resources Officer with direct access to the Governor and shall submit periodic written reports to the Governor. The CDO shall have the authority to:

- Develop strategic goals for diversity and inclusion for the Executive Branch, aligned with the administration’s overall diversity vision;
- Oversee compliance with applicable state and federal non-discrimination laws;



- Ensure a strategic approach to acquiring and developing a diverse workforce that meets the needs of the diverse constituents of the Commonwealth through collaboration with key stakeholders;
- Ensure that diversity is reflected in all levels of state government;
- Establish guidelines for agency affirmative action and diversity plans (“plans”);
- Review all such plans and either approve, return for amendment, or reject them;
- Establish periodic reporting requirements for agencies concerning the implementation of their plans and all actions taken to ensure compliance with this Executive Order and applicable state and federal laws;
- Provide assistance to agencies in achieving compliance with their plans and with applicable state and federal laws;
- Monitor and assess the status of agency compliance and receive such information deemed appropriate for purposes of monitoring compliance;
- Investigate instances of non-compliance with plan submission and reporting requirements and, where appropriate, determine and impose remedial courses of action, including the suspension of a non-compliant agency’s authority to post a new position or the imposition of a freeze on all personnel requisitions and appointment forms submitted by any non-compliant agency to the Chief Human Resources Officer;
- Oversee and resolve appeals of denied employee reasonable accommodation requests; and
- Manage Secretariat Diversity Directors to ensure impactful plans are being executed to foster an engaged and diverse workforce.

**Section 8.** The CDO shall provide support and guidance to each Secretary and agency head in the appointment of skilled and qualified Diversity Directors and Diversity Officers. Each Secretariat shall appoint a Diversity Director who shall have a direct reporting relationship to the Secretary and to the CDO. Several Diversity Officers shall be appointed by each Secretary to assist each Diversity Director in executing the duties under this Executive Order. Each Diversity Officer shall report to their agency head and provide civil rights, equal opportunity, affirmative action, and diversity and inclusion services and shall coordinate these services through their respective Secretariats and agencies in compliance with the requirements of this Executive Order and applicable state and federal laws. The responsibilities of the Diversity Directors and Diversity Officers shall include, but not be limited to:

- Providing strategic and expert leadership on civil rights, affirmative action, and diversity and inclusion matters;

- Monitoring compliance with applicable state and federal laws at Secretariat and agency levels;
- Providing effective leadership in the development, implementation, and monitoring of plans for their Secretariat or agency;
- Preparing periodic reports which identify accomplishments and detail progress towards affirmative action and diversity goals;
- Collaborating with the Investigations Center of Expertise on discrimination complaints, as established in Section 11, below;
- Managing relationships with key stakeholders to ensure the principles of equal opportunity, affirmative action, and diversity and inclusion are demonstrated in every facet of employment, with a keen focus on hiring and promotions;
- Collaborating with Secretaries, agency heads, Executive Directors, Chiefs of Staff, Chief Financial Officers, Secretariat Human Resources Officers, and Human Resources Business Partners on the allocation of resources to carry out the mandates of this Executive Order; and
- Coordinating and overseeing the reasonable accommodations process.

**Section 9.** The Massachusetts Office on Disability (“MOD”), through its Director, shall be responsible for advising, overseeing and coordinating compliance with state and federal laws protecting the rights of persons with disabilities, including but not limited to the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§12131-12134; Section 504 (“504”) of the Rehabilitation Act of 1973, 29 U.S.C. §794; Article CXIV of the Massachusetts Constitution; and Chapter 6, §§185-87; Chapter 93, §103; Chapter 151B; and Chapter 272, §§92, 98, and 98A of the Massachusetts General Laws. MOD shall serve as the Executive Branch’s designated ADA and Rehabilitation Act Coordinator, and shall provide information, training, and technical assistance and promulgate guidelines reflecting best practices, policies, and procedures concerning persons with disabilities. Each agency shall appoint an ADA/504 Coordinator who shall report directly to the agency head and work with MOD concerning issues involving persons with disabilities. Notification of such appointment shall be made to MOD’s Director. MOD’s Director shall partner with the CDO to ensure that each ADA/504 Coordinator has authority to access all material agency files.

**Section 10.** Pursuant to guidelines established by ODEO and MOD, all agency heads, managers, supervisors, and employees shall attend mandatory diversity training within six months of hire.

**Section 11.** There shall be established within the Human Resources Division of the Executive Office for Administration and Finance an Investigations Center of Expertise, which shall comprise a centralized investigations unit and corresponding investigations process for employees of the Commonwealth who allege violations of the Commonwealth’s policies prohibiting discrimination.

**Section 12.** No person shall be retaliated against for filing a complaint or claim related to an allegation of discrimination or for participating in an investigation or any other proceeding related to such complaint or claim.

**Section 13.** ODEO and MOD shall promulgate guidelines establishing a complaint resolution process for reasonable accommodation requests. In instances where the applicable process does not resolve the complaint to the satisfaction of the complainant, the complainant may file a complaint with the MCAD.

**Section 14.** In performing their responsibilities under this Order, ODEO, MOD, the MCAD, and the Human Resources Division shall have the full cooperation of all state agencies, including compliance with all requests for information.

**Section 15.** ODEO shall collaborate with the Governor's Office of Access and Opportunity, as established in Executive Order 559, on projects that are mutually beneficial to supporting the Governor's vision on diversity and inclusion.

**Section 16.** Nothing in this Executive Order shall be construed to preclude or otherwise limit the continuation or implementation of any lawful affirmative action programs or other programs that support the objectives of this Executive Order.

**Section 17.** This Executive Order shall take effect immediately and shall continue in effect until amended, superseded, or revoked by subsequent Executive Order.

Given at the Executive Chamber in Boston this 23rd day of October in the year of our Lord two thousand twenty and of the Independence of the United States of America two hundred forty-four.

**Appendix O. Executive Order 594 (Leading by Example) and  
Executive Order 596 (Establishing the Commission on  
Clean Heat)**

## **Appendix O. Executive Order 594 (Leading by Example) and Executive Order 596 (Establishing the Commission on Clean Heat)**

**DATE:** 4/22/2021

**ISSUER:** Governor Charlie Baker

**MASS REGISTER** No. 1443

**REVOKING AND SUPERSEDING:** Executive Order 484

WHEREAS, climate change is one of the most critical issues of our time and its potential impacts present a serious threat to the Commonwealth's residents, communities, and economy;

WHEREAS, according to a 2018 report from the Intergovernmental Panel on Climate Change (IPCC), global greenhouse gas emissions must decline by about 45 percent from 2010 levels by 2030 and reach net zero around 2050 to keep global temperatures from rising more than 1.5 degrees Celsius;

WHEREAS, the Commonwealth has taken a leadership role by establishing a net zero greenhouse gas emissions limit in 2050;

WHEREAS, efforts to reduce emissions and prepare for the impacts of climate change will require all elements of the public and private sectors to work collaboratively toward a common goal;

WHEREAS, Massachusetts state government manages more than 80 million square feet of buildings across hundreds of facilities, over 539,000 acres of open space, 36,000 miles of roads and highways, and more than 7,500 light, medium and heavy-duty vehicles and equipment;

WHEREAS, on an annual basis, Massachusetts state government emits more than 870,000 tons of greenhouse gas emissions from the consumption of more than 1 billion kWh of electricity, 80 million therms of natural gas, 4 million gallons of fuel oil, and 8 million gallons of gasoline and diesel for vehicles, while spending more than \$200 million on energy bills;

WHEREAS, environmental and health impacts from state government operations also include, but are not limited to, the generation of solid waste, the consumption of water, the management of hazardous chemicals, and air quality impacts from the burning of fossil fuels;

WHEREAS, many state facilities are located in communities with Environmental Justice populations, as defined by the Executive Office of Energy and Environmental Affairs' 2017 Environmental Justice Policy, where residents often have evidence of higher than average rates of environmentally-related health outcomes, including but not limited to childhood asthma, low birth weight, childhood lead poisoning, and heart disease morbidity;

WHEREAS, many Massachusetts state facilities include critical infrastructure and provide critical services that must be maintained during periods of energy outages;

WHEREAS, in conformance with the previous Leading by Example Executive Order No. 484, promulgated in 2007, that established emission reduction and clean energy goals for state agencies through 2020, Massachusetts state agencies have successfully deployed a range of clean energy and sustainable strategies that have resulted in the installation of more than 65 megawatts of onsite renewable energy, the construction of more than 90 high-performance buildings, and the implementation of efficiency measures in tens of millions of square feet of state buildings;

WHEREAS, the Massachusetts Integrated State Hazard Mitigation and Climate Adaptation Plan directs the Commonwealth to continue to prioritize investments in clean energy resiliency infrastructure projects at state facilities;

WHEREAS, notwithstanding previous progress made by state government, the acceleration of climate change impacts, aggressive new statewide emissions goals established by Chapter 8 of the Acts of 2021, “An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy,” and the availability of new technological solutions requires a transformational change in the way state government addresses its own environmental impacts;

WHEREAS, establishing leading short and long-term emissions reduction goals and other related requirements specifically tied to state government operations will accelerate the transition to low and zero carbon fuels across state facilities, ultimately supporting widespread adoption of similar efforts across all other sectors in the Commonwealth; and

WHEREAS, the broad adoption by state government of clean energy and innovative technologies and strategies will reduce energy consumption, decrease greenhouse gas emissions, lower energy costs for the Commonwealth and taxpayers, and provide resilient infrastructure, all while supporting the clean energy and innovation sectors in Massachusetts;

NOW, THEREFORE, I, CHARLES D. BAKER, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Part 2, c. 2, §I, Art. I, do hereby order as follows:

## **Section 1. Introduction and Overview**

### **A. Objectives**

In support of the statewide goal of achieving net zero greenhouse gas (GHG) emissions in 2050, in fulfilment of the requirements of Executive Order No. 569, which calls on state government to “expand upon existing strategies for the Commonwealth to lead by example in making new, additional reductions in greenhouse gas emissions,” and in conformance with the Massachusetts State Hazard Mitigation and Climate Adaptation Plan, which outlines strategies necessary to prepare for the impacts of climate change, this Executive Order establishes policies, programs, and strategies to substantially reduce GHG emissions from state government operations and enhance resiliency at state owned and managed buildings, facilities, campuses, and fleets.

These goals will be achieved by advancing high performance buildings for new construction; expanding energy efficiency and decarbonizing fuels in existing buildings; acquiring fuel efficient and zero emission vehicles and continuing the deployment of new renewable energy.

All agencies shall collectively work to:

- Meet GHG emissions targets by substantially reducing or eliminating emissions from onsite combustion of fossil fuels in buildings and vehicles;
- Expand and intensify energy efficiency efforts;
- Ensure that new construction and substantial renovations meet the highest performance standards practicable;
- Prioritize strategic electrification of buildings, central plants, and vehicles, and/or use of zero-carbon fuels;
- Increase the amount of renewable and clean energy on the grid by increasing onsite renewable energy generation, the procurement of renewable energy supply, and continued development of clean energy resources;
- Expand the deployment and use of energy storage and other strategies to minimize peak demand; and
- Ensure that state facilities are designed and managed to withstand the impacts of a changing climate while continuing to provide critical services.

## **B. Leading by Example Policy**

All agencies shall assess and implement strategies to mitigate greenhouse gas emissions and other environmental impacts when planning for and executing projects related to the design, construction, operations, and maintenance of state facilities, and the procurement of goods and services, including vehicles. In all planning and deployment activities related to the implementation of this order, agencies shall prioritize efforts at facilities located in Environmental Justice populations as designated by the Secretary of the Executive Office of Energy and

Environmental Affairs in accordance with law, when key fiscal, physical, and environmental factors are fundamentally equivalent.

The Department of Energy Resources (DOER) Leading by Example Program (LBE) shall work collaboratively across state government to develop and employ appropriate strategies and programs to provide for the accomplishment of all of the provisions of this Executive Order. All agencies covered by this Executive Order shall provide their full cooperation to LBE and make every effort to support initiatives at their own facilities and collaborate with other agencies to support emissions reduction progress within state government.

## **C. Applicability**

This Order and all provisions herein shall apply to all executive branch agencies and all public institutions of higher education. For purposes of this Executive Order, the term “agency” or “agencies” means all executive offices, boards, commissions, departments, divisions, councils,

bureaus, offices, and other state agencies within the Executive Department, now existing and hereafter established.

## **Section 2. Executive Order Targets**

In support of statewide clean energy and emissions reduction goals, Massachusetts state government will strive to substantially reduce and eliminate emissions from the onsite combustion of fossil fuels across its buildings and fleets.

The following targets are designed to drive progress toward meeting the statewide 2050 net zero emissions limit. By the end of Fiscal Year 2029, LBE, in collaboration with the LBE Council, established in Section 9A, shall revisit these targets and assess whether a new or revised Leading by Example Executive Order is appropriate for setting additional targets or objectives prior to 2050.

Agencies as a whole, and to the greatest extent feasible, individually, shall meet or exceed the following fiscal year targets where applicable:

1. Reduce emissions from a 2004 baseline associated with the burning of onsite fossil fuels at buildings and in vehicles:
  - o 20% in 2025
  - o 35% in 2030
  - o 60% in 2040
  - o 95% in 2050
2. Acquire vehicles such that the total state fleet consists of:
  - o 5% zero emission vehicles in 2025
  - o 20% zero emission vehicles in 2030
  - o 75% zero emission vehicles in 2040
  - o 100% zero emission vehicles in 2050
3. Reduce non-vehicle, petroleum-based oil consumption used to satisfy thermal loads for building and non-building uses from a 2004 baseline at state-owned facilities:
  - o 90% in 2025
  - o 95% in 2030
4. Reduce overall site energy use intensity (EUI), defined as weather-normalized Btu per square foot, from a 2004 baseline at state owned buildings:
  - o 20% in 2025
  - o 25% in 2030



5. Increase the total number of electric vehicle charging stations on state properties to:
  - o 350 in 2025
  - o 500 in 2030

### **Section 3. Massachusetts LEED Plus 2.0 Standard for New Construction**

For all new construction of buildings for use by state agencies or on state lands that have not yet initiated a study as of July 1, 2021, the Division of Capital Asset Management and Maintenance (DCAMM) and any other agency covered by this Order shall ensure that all projects adhere to the following standards:

1. Meet the following requirements:
  - a. Certify buildings to the Silver Level or higher of the most recent version of the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Standard
  - b. Reduce proposed building EUI by at least 20% lower than an equivalent building that meets the Massachusetts Energy Code. When calculating building EUI baselines, agencies shall use American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE) Appendix G 2013 and all amendments in the current Massachusetts Building Energy Code. Required EUI reductions shall be achieved by prioritizing:
    - o Improved envelope performance
    - o Reduced air infiltration
    - o Ventilation heat recovery
    - o External shading and reduction in solar heat gains
2. Use only efficient electric or renewable thermal technologies as defined in Leading by Example Guidelines (LBE Guidelines), issued pursuant to this Executive Order, for all space heating and cooling.
3. Use only efficient electric or renewable thermal technologies as defined in LBE Guidelines for service water heating to the greatest extent possible.
4. Establish and design to an EUI target that meets or exceeds best-in-class EUI for newly-constructed buildings by type and climate zone.
5. Maximize installation of onsite renewable energy and, when not possible, ensure that the project is solar-ready as defined by the Massachusetts Building Energy Code. Extent of solar readiness should exceed minimum code requirements as much as possible.
6. Incorporate long-term climate resiliency into design and siting decisions.
7. For all new or fully reconstructed parking areas, install at least one electric vehicle supply equipment (EVSE) charging port in parking areas up to 25 spaces and at least two EVSE

charging ports in parking areas greater than 25 spaces. In parking areas with more than 10 spaces, at least 20% of the spaces must be “EV Ready” as defined by the latest edition of the Massachusetts Building Energy Code. EVSE spaces may be included in EV Ready space requirements.

These requirements shall also apply to substantial renovations when such projects are deemed similar to new construction as defined in LBE Guidelines.

All building projects under 20,000 square feet shall meet the requirements set forth above, excluding the Paragraph 1 LEED or Passive House certification requirements. Such projects shall strive to meet the certification requirements set forth in Paragraph 1 above whenever possible.

This following paragraph shall apply to all new construction of buildings and substantial renovations, as described above, that are subject to the Specialized Stretch Energy Code authorized by Section 31 of Chapter 8 of the Acts of 2021. All such construction and renovation projects that initiate a study later than 6 months following DOER’s promulgation of the Specialized Stretch Energy Code shall comply with the Specialized Stretch Energy Code (as amended from time to time) in place of all requirements set forth in paragraph 1b of this Section 3.

Additionally, to maximize the potential GHG emissions reductions, all new construction and substantial renovations, where possible and cost-effective, shall:

- Strive to achieve zero net energy, where sufficient renewable energy is generated onsite to offset the building’s annualized energy consumption;
- Implement energy storage wherever possible, especially when paired with onsite renewables;
- Prioritize sites that provide access to public transportation and alternative modes of transportation; and
- Evaluate and implement strategies to reduce embodied carbon contained in building materials.

The Commissioner of DCAMM or their counterpart in appropriate agencies may grant exemptions to one or more specific requirements of this section if such requirements are determined to be inconsistent with other state priorities.

DCAMM and LBE shall jointly and collaboratively develop specific guidelines to aid in implementing the requirements of this section, including, but not limited to, the process for issuing an exemption.

#### **Section 4. Existing Buildings**

All agencies shall take the targets enumerated in this Order into account when planning for, designing, and deploying projects that affect energy use. These efforts shall prioritize:

1. Substantial reduction or elimination of emissions from onsite fossil fuels;

2. Optimized building performance through efficient operations;
3. Participation in all available energy efficiency and clean energy incentive and rebate programs;
4. Regular monitoring of building energy performance;
5. Installation of highest efficiency equipment; and
6. Incorporation of energy performance into leasing decisions.

**A. Planning**

Agencies shall ensure that GHG reductions, energy efficiency, renewable and clean energy, and emissions reduction strategies are incorporated into their equipment replacement and capital and master planning efforts in support of the goals of this Order. DCAMM shall conduct an energy consumption and emissions analysis of the largest state facilities comprising at least 50% of total state government emissions every five years, with similar analyses conducted for the remainder of the state portfolio every ten years. Such analyses will be used to identify opportunities for emissions reduction projects.

DCAMM, LBE, and all agencies shall work collaboratively to support these efforts and shall utilize all available energy data to develop plans, prioritize efforts, and track progress.

**B. Renovations and Comprehensive Energy Projects**

All comprehensive energy projects, including those that address district energy systems, and building renovations where electrical, heating, ventilation, or air conditioning infrastructure are included in the project scope, must:

1. Include as a design option an alternative to fossil fuels for thermal energy that includes low- or zero-carbon fuels or alternative electricity technologies that meet the minimum performance specifications as defined in LBE guidance and implement said option where technically and fiscally feasible;
2. When such options are not practicable, projects shall ensure that steps are taken to develop and incorporate plans to facilitate the future transition to low- or zero- carbon fuels;
3. Evaluate building envelope upgrades and implement said upgrades where technically and fiscally feasible;
4. Establish and adhere to a low target EUI for overall building or site performance;
5. Where appropriate, design and install renewable energy and energy storage, while building the infrastructure necessary to support future renewable energy and storage installations; and

6. Maximize resilient design to protect critical infrastructure and continued operation when modeled for long-term climate impacts.

### **C. Operations**

In collaboration with LBE and DCAMM, agencies shall support efforts to track the energy performance of existing buildings or sites and take concrete steps to reduce building energy use through operational efficiencies. DCAMM and its Massachusetts Facilities Management Association (MAFMA) will provide regular training and professional development for agencies' facilities personnel regarding energy and water efficiency, emissions reduction, and related topics.

### **D. Heating Oil**

All agencies still utilizing heating oil as of July 1, 2021, shall ensure that any heating oil product purchased shall consist of at least 10% biofuels (i.e., B10). Said biofuels must meet the minimum fuel content specifications outlined in LBE guidance. Agencies shall work with LBE to identify opportunities to increase biofuel consumption to as high a level as is practicable. Agencies may be exempt from this requirement if biofuels are not readily available or are cost prohibitive, or if a specific performance constraint is identified.

### **E. Leasing**

DCAMM and other agencies responsible for leasing space shall evaluate such space for agency use by including the following elements in the selection criteria:

- Compliance with or exceeding current building energy codes;
- Meeting environmental criteria and receiving applicable environmental certifications;
- Compliance with municipal energy disclosure ordinances;
- Compliance with state recycling requirements;
- Access to electric vehicle charging stations;
- Siting near public transportation and accessibility for pedestrians and cyclists; and
- Other elements that contribute to reduced GHG emissions and/or reduced environmental impacts.

When disposing of state assets for lease or sale, DCAMM and other relevant agencies shall take into account the GHG emissions of future use and consider applying the standards of this Order to said dispositions as applicable.

## **Section 5. Vehicle Efficiency and Fossil Fuel Reduction**

Unless otherwise specified, the requirements of Section 5 apply to all vehicles owned or leased and operated by agencies subject to this Order, as well as to all non-revenue vehicles under the jurisdiction of the Massachusetts Bay Transportation Authority. Marked and unmarked police cruisers are exempt from the requirements of Sections 5, but public safety agencies are encouraged to meet these requirements where such vehicles meet operational needs.

### **A. Electric Vehicle Acquisitions**

Agencies shall comply with zero emission vehicles (ZEV) acquisition requirements below when such vehicles are readily available, can meet agency needs, and the incremental costs associated with total cost of ownership are not excessive. When ZEV acquisitions are deemed not feasible, agencies shall select the most efficient vehicles available for their operational needs.

Starting in fiscal year 2023, all acquisitions of vehicles with a Gross Vehicle Weight Rating (GVWR) of 8,500 pounds or less must be ZEVs, as defined by LBE Guidelines. Starting in fiscal year 2025, all acquisitions of vehicles with a GVWR of 14,000 pounds or less, must be ZEVs. Starting in fiscal year 2030, all acquisitions of vehicles with a GVWR of more than 14,000 pounds must be ZEVs. Agencies shall strive to support the goals enumerated in this Order as quickly and to the greatest extent possible.

In meeting the zero emission vehicle targets in Section 2, fleets subject to this section shall prioritize the acquisition of ZEVs without any internal combustion engines, including, but not limited to, battery electric vehicles and fuel cell vehicles.

### **B. Fuel Efficiency Standard & Green Fleet Committee**

The Operational Services Division (OSD), DOER, and MassDEP shall oversee implementation of the Fuel Efficiency Standard (FES), which applies to the light duty state fleet. OSD and LBE shall co-chair the Green Fleet Committee, as established by the FES, that shall include representatives of MassDEP and other agencies as applicable, and whose responsibility will be to regularly review the FES and continually develop new and more appropriate requirements. All agencies subject to the requirements of the FES shall comply with the miles per gallon requirements and alternative fuel vehicle requirements on an annual basis. When compliance is not possible, agencies shall agree to implement alternative compliance strategies established by the Green Fleet Committee.

OSD, in collaboration with the Green Fleet Committee, shall also develop and/or enforce fleet acquisition and management policies that support the goals of this Order. Agencies shall comply with policies that outline procedures necessary to reduce vehicle fossil fuel use to the greatest extent feasible. These policies shall address the following:

1. Acquiring zero emission vehicles;
2. Acquiring new vehicles that are sized appropriately for the intended agency task(s);
3. Acquiring the most fuel-efficient vehicle models that serve agency needs;

4. Conducting fleet optimization evaluations that incorporate vehicle utilization and total cost of ownership to identify vehicles for removal or replacement;
5. Identifying opportunities to reduce vehicle miles traveled among state-owned vehicles; and
6. Educating employees on efficient driving practices that help to increase fuel economy.

### **C. Electric Vehicle Supply Equipment**

Agencies shall also support the installation of EVSE, commonly known as electric vehicle charging stations, at state facilities for state vehicles, employee-owned vehicles, and those driven by the public, where such installations are appropriate and applicable. Agencies shall work with all appropriate funding, contracting and oversight agencies to identify locations and strategies for deployment of EVSE. Agencies shall ensure that EVSE stations are considered and prioritized during relevant construction.

### **D. Biodiesel**

All agencies that purchase and store diesel fuel at their own facilities as of July 1, 2021, shall ensure that any diesel fuel purchased for use in motor vehicles owned and operated by Commonwealth agencies shall consist of at least 5% biofuels (i.e., B5). Said biofuels must meet the minimum fuel content specifications outlined in LBE guidance. Agencies shall work with LBE to identify opportunities to increase the biodiesel portion of vehicle fuel consumed to as high a level as is practicable. Agencies may be exempt from this requirement if said biodiesel is not readily available or is cost-prohibitive, or if a specific performance constraint is identified. Agencies shall also strive to utilize biodiesel fuels in other equipment as is appropriate.

## **Section 6. Renewable and Clean Energy Resources**

In support of the Commonwealth's broader clean energy goals, agencies shall continue to prioritize the deployment of renewable and clean energy resources to be consumed onsite or on the grid. This may be achieved through onsite installation of renewable energy generation, long-term financial support for off-site renewable or clean energy resources, and/or the procurement of local, clean electricity supply. In addition, such deployment shall prioritize the strategic advancement of cost-effective innovative technologies, energy storage and resilience, and advanced building controls whenever possible.

LBE shall research and assess applicable technologies and approaches that support these broader goals and will work with agencies to pilot innovative solutions, deploy onsite renewable generation, and implement strategies that expand the development of clean energy resources.

## **Section 7. Additional Sustainability Priorities**

### **A. Demand Management and Energy Storage**

To support peak demand reduction priorities, agencies shall, wherever possible, incorporate demand management strategies into their facilities and participate in applicable programs that provide financial incentives for participation in demand reduction programs. Agency efforts shall aim to pair onsite renewable energy with storage in a resilient manner whenever possible.

### **B. Resilience**

Agencies shall incorporate facility and energy resilience and adhere to all applicable resiliency requirements, including, but not limited to, Executive Order No. 569 and the Massachusetts State Hazard Mitigation and Climate Adaptation Plan to improve the capacity of critical infrastructure and energy systems to withstand growing weather-related impacts associated with climate change.

### **C. Building Energy Monitoring**

DCAMM, in collaboration with LBE shall continue to manage and expand an energy metering and monitoring program that ensures access to utility and real-time energy data. This program shall be targeted at buildings larger than 20,000 square feet or where it is deemed cost-effective. Agencies not participating in DCAMM programs shall ensure that building energy performance is monitored and evaluated on a regular basis.

### **D. Water Conservation**

Agencies shall implement efforts to reduce water consumption by following the recommended best practices in the Massachusetts Water Conservation Standards and any future updates.

### **E. Environmentally Preferable Purchasing**

Agencies subject to Executive Order No. 515 shall continue to comply with that Order and purchase environmentally preferable products and services when such purchases meet the needs of the agency and are cost-effective.

### **F. Waste Reduction and Recycling**

Agencies shall comply with all existing and future waste bans promulgated by the MassDEP and strive to minimize the total amount of waste generated.

### **G. Sustainable Landscaping**

Agencies shall aim to incorporate sustainable landscaping practices including, but not limited to: the planting of native plant species on state lands that support a variety of native insect and animal species; reducing the use and toxicity of pesticides unless necessary to address invasive species or provide for public safety; and utilizing zero emission landscaping equipment to reduce pollution and improve the health and safety of agency staff.

## **Section 8. Guidance, Guidelines and Studies**

In order to support agency compliance with the provisions of this Order, LBE, in collaboration with DCAMM, the Massachusetts Clean Energy Center, and other appropriate agencies as determined by LBE, will lead efforts to develop any necessary guidance, guidelines or studies to support agency implementation of strategies and programs designed to meet the goals of this order. Specifically, such documents shall include but not be limited to:

- Research on various carbon policies that may help to meet the goals of this order. Said research shall include recommendations on whether and how agencies may incorporate the following elements into their emissions calculations and programs:
- Carbon sequestration
- Embodied carbon
- Carbon offsets
- Negative carbon emissions
- Internal cost of carbon
- Strategies to reduce non-carbon greenhouse gas emissions (e.g., refrigerants).
- Financing strategies needed to achieve the goals of this order. A preliminary study shall be issued to the Executive Office of Energy and Environmental Affairs and the Executive Office for Administration and Finance and shall be updated as needed.
- Recommendations on developing agency-specific clean energy and low carbon roadmaps to be used by all agencies to consider and analyze options for achieving the long-range goals of this order.
- Recommendations on ways to facilitate the adoption of innovative clean energy technologies and strategies to address administrative and regulatory barriers.

## **Section 9. Program Administration**

### **A. Leading by Example Council**

There shall be established a Leading by Example Council that shall be chaired by the Secretary of the Executive Office of Energy and Environmental Affairs or their designee, and which shall meet no less than four times per year. The purpose of the Council shall be to provide feedback to LBE on priorities, make recommendations on the desired types of assistance and guidance, and support the overall objectives contained in this Order. Membership of the Council shall, at a minimum, include at least one representative from each of the following agencies:



- Executive Office for Administration and Finance
- Executive Office of Education
- Executive Office of Health and Human Services
- Executive Office of Public Safety and Security
- Massachusetts Department of Transportation
- Department of Conservation and Recreation
- Department of Energy Resources
- Department of Environmental Protection
- Department of Higher Education
- Division of Capital Asset Management and Maintenance
- Operational Services Division
- University of Massachusetts Office of the President

The Council may invite other agencies, quasi-independent authorities and public institutions of higher education to join the Council and participate in its meetings and deliberations.

### **B. Agency Participation**

Within 120 days of this Order, all agencies with more than 75 employees shall appoint at least one LBE coordinator, who shall be responsible for disseminating information related to LBE efforts, collaborating with LBE staff, complying with the reporting requirements of this Order as applicable, establishing internal agency committees or working groups as necessary and working in their own facilities to support the targets and programs outlined in this Order. Agencies with fewer than 75 employees may appoint an LBE coordinator. The Council may elect to form various subcommittees that shall be tasked with focusing on specific issues of importance to support LBE in efforts to support the implementation of this Order.

### **C. Energy Tracking, Reporting, Benchmarking and Transparency**

On an annual basis, LBE shall be responsible for tracking and collecting building and vehicle energy consumption, clean energy development, GHG emissions, and other relevant information associated with state government operations. LBE shall report annually on progress toward meeting the targets and objectives of this Order. Every five years, starting in 2025, LBE shall publish a comprehensive review of portfolio progress and efforts undertaken.

LBE shall utilize energy consumption data to benchmark the energy performance and emissions of state buildings and facilities and to compare their performance against other buildings. Such performance shall be made public except when the release of such data presents a public safety or other concern that would override public disclosure of energy data. LBE shall also use energy data to report on the effectiveness of energy projects, identify priorities for future projects, and other metrics deemed relevant by LBE and the Council. LBE is also authorized to report building and facility energy use for all state agency properties that are located in a municipality where an energy disclosure ordinance has been established. Agencies will provide energy consumption data and other information as requested by LBE.

#### **D. Innovative Technologies**

When developing strategies to increase energy efficiency, reduce GHG emissions, construct zero net energy buildings, or install alternative energy technologies, agencies shall consider opportunities to use innovative technologies that can effectively address challenges not solved by business-as-usual practices. LBE shall develop a coordinated approach with other agencies and partners as applicable to support the deployment of new technologies at state facilities, and, in collaboration with the Massachusetts Clean Energy Center, target technologies that are made or manufactured in Massachusetts to help further develop the local clean energy market.

#### **E. Training and Awareness**

To ensure that the Massachusetts government is managing its facilities in the most efficient and economical way possible and to be effective stewards of environmental protection, LBE shall work with all applicable agencies to ensure that state employees are provided with the tools and training necessary to implement sustainability programs across their facilities.

LBE shall develop recognition programs that acknowledge agency leaders in sustainability practices. Such programs shall at least include an annual LBE awards program.

#### **Section 10. Effective Date**

This Executive Order shall take effect as of July 1, 2021 and shall supersede all provisions contained in Executive Order No. 484, except where existing design and construction projects are already subject to prior requirements.

Given at the Executive Chamber in Boston this 22nd day of April in the year of our Lord two thousand twenty-one and of the Independence of the United States of America two hundred forty-four.

## **Executive Order 596: Establishing the Commission on Clean Heat**

DATE: 9/21/2021  
ISSUER: Governor Charlie Baker  
MASS REGISTER: No. 1454

WHEREAS, affordable heating is a critical health need for every citizen of the Commonwealth;

WHEREAS, in 2020 my Administration took executive action to commit the Commonwealth to achieving net zero greenhouse gas emissions in 2050 and, in March 2021, I signed An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy which codified this commitment in statute;

WHEREAS, the heating of buildings currently accounts for nearly one third of statewide greenhouse gas emissions, and the current level of emissions from buildings must be reduced to achieve at least a 50% reduction in economy-wide greenhouse gas in 2030, as measured against a 1990 baseline, a requirement of the recently passed climate legislation;

WHEREAS, the Massachusetts 2050 Decarbonization Roadmap (the “Roadmap”), published in December 2020, identified the need to significantly reduce greenhouse gas emissions from heating of buildings to meet the net zero emissions target in 2050;

WHEREAS, the Interim Clean Energy and Climate Plan for 2030 recommended a special Commission on Clean Heat to advise the Commonwealth on how best to achieve legally mandated greenhouse gas reductions by reducing greenhouse gas emissions associated with heating fuels;

WHEREAS, a cap on greenhouse gas emissions from heating fuels will be a key policy to meet greenhouse gas emission reduction sublimits and the overall statewide limits on emissions;

WHEREAS, reducing and eliminating greenhouse gas emissions from the heating of millions of buildings in the Commonwealth represents a significant undertaking that will impact homeowners and businesses;

WHEREAS, input and feedback from leaders, experts, and other stakeholders outside of the Executive Branch will help to more clearly define the need for a declining cap on emissions from heating fuels, the framework for establishing such a cap, and potential policies to implement such a cap taking into consideration regional differences;

NOW, THEREFORE, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Part 2, c. 2, §I, Art. I, do hereby order as follows:

**Section 1.** There is hereby established a Commission on Clean Heat (the “Commission”) to advise the Governor on the framework for long-term greenhouse gas emission reductions from heating

fuels, consistent with the findings of the 2050 Roadmap and the total emissions limits and sublimits for the Commonwealth established pursuant to the Global Warming Solutions Act.

**Section 2.** The Commission shall be chaired by the Secretary of Energy and Environmental Affairs or her designee. The Commission shall further include not more than 22 additional members to be appointed by the Governor upon the recommendation of the Secretary of Energy and Environmental Affairs who shall not be full-time employees of the Executive Branch and who shall serve at his pleasure, and without compensation. The Secretary shall ensure that her recommendations for these additional members reflect a diversity of perspectives and backgrounds from outside stakeholders including representatives from the fields of affordable housing, energy efficient building design and construction, healthcare, heating system design and technology, real estate and heating fuel distribution. The Chair shall be responsible for convening meetings of the Commission.

**Section 3.** There shall be an Interagency Building Decarbonization Task Force (the “Task Force”) consisting of subject-matter experts from across the Executive Branch, including staff from the Department of Energy Resources and the Executive Office of Housing and Economic Development to support the work of the Commission between meetings. Members of the Task Force shall be designated by the Secretary of Energy and Environmental Affairs and the Secretary of Housing of Housing and Economic Development, as applicable. Members of the Task Force may attend Commission meetings as observers and participate at the discretion of the Chair.

**Section 4.** The Commission shall be responsible for providing policy recommendations to the Governor to meet requirements of the Global Warming Solutions Act, particularly with respect to emissions from heating fuels. In developing these policy recommendations, the Commission shall review the Roadmap and other relevant analyses that the Commission deems informative. Policy recommendations shall include options to accelerate the deployment of energy efficiency programs and clean heating systems in new and existing buildings and transition existing distribution systems to clean energy. Policy recommendations should include financing mechanisms, incentives and other regulatory options, including a framework for a cap on greenhouse gas emissions from heating fuels. The Commission shall develop these recommendations with consideration of various benefits of the recommended policies to Massachusetts, as well as affordability, regional differences, equity, and costs.

The Commission shall, by November 30, 2022 and with the assistance of the Task Force, produce a set of policy recommendations to sustainably reduce the use of heating fuels and minimize the GHG emissions from buildings while ensuring the costs and opportunities arising from such reductions are distributed equitably. Such policy recommendations shall be conveyed to the Secretary of Energy and Environmental Affairs for transmission to the Governor. The policy recommendations shall include an explanation of anticipated burdens and opportunities for the Commonwealth’s businesses and residents. The Commission, with the assistance of the Task Force, will set target dates for interim decisions and work product that would help the Commission complete its final recommendations.

The Commission shall disband on December 15, 2022.

**Section 6.** This Executive Order shall take effect upon execution and shall continue in effect until amended, superseded or revoked by subsequent Executive Order.

Given at the Executive Chamber in Boston this 20th day of September in the year of our Lord two thousand twenty-one and of the Independence of the United States of America two hundred forty-five.