



October 5, 2016

BY EMAIL

Department of Housing and Community Development  
100 Cambridge Street, Suite 300  
Boston, MA 02114

Attention: Ian Meyer

**RE: Comments on proposed amendments to state public regulations at  
760 CMR 4.00, 6.00, 11.00, and 63.00**

Dear Mr. Meyer:

The Massachusetts Law Reform Institute and Greater Boston Legal Services join together with other legal services offices to submit these comments to the Massachusetts Department of Housing and Community Development (DHCD) in response to proposed amendments to 760 CMR 4.00, 6.00, 11.00, and 63.00 released on August 26, 2016. Attached to these comments are proposed revisions to portions of 4.00, 6.00, and 11.00 in a tracked changed format to enable you to understand how we translate our comments into the regulations. These comments are based on our many years of representing tenants and tenant groups in LHA assisted housing. MLRI in a separate letter will also be submitting comments on the civil rights and language access issues in 760 CMR 4.00 and 47.00

We appreciate the work that the Department has done to clarify important protections for tenants, for example that residents can form a Resident Advisory Board and that the RAB can have both state and federal tenants on it. Thank you also for taking the lead to include in regulations that LHAs must provide all residents, whether or not there is an Local Tenant Organization, with an opportunity to comment on matters that affect them. This is important because in many communities there are no tenant organizations and there are important issues that all residents should have the opportunity on which to comment.

Finally, thank you for your own process. Since the new law passed, you gathered different voices to the table to develop, implement, and advance the new law. We appreciate your inclusive process.

**General Requirements**

1. Section 4.03(1)(a) (LHA Websites): In the age of technology this section, requiring LHA’s to have a website or webpage to post important information is long overdue. We urge DHCD to require LHAs to post additional information as a way to facilitate tenants, applicants, and the general public having access to critical information. In the long run, such posting will save LHA’s time. In addition to what DHCD proposes, we urge DHCD to require LHAs to post the following: the names and contact information of all staff; notices of LHA board meetings, agendas, and approved board minutes; a list of all developments and housing programs, including state and federal assisted developments and mixed finance developments, their location, the number of bedrooms and additional features, including accessibility; the results of monitoring by the Department; other important notices to tenants, and copies of its Annual Plan, language access plan, domestic violence plan, and other plans prepared by the LHA for all of its housing programs. (See additional comments 2, 4, 30(c), 51, 53, 67, 69, and 70 about other documents that we urge be posted on the website.)
2. Section 4.03(1)(e) (Adopting and Enforcing Policies): We recommend clarifying that LHAs adopt and enforce policies for “all LHA programs and policies” including language access plan and policies addressing domestic violence. We recommend that regulations require that “such policies must be dated indicating the date of the last revision and posted on the LHA’s website” so that all are clear about whether they have the most recent policy in-hand.
3. Section 4.03(1)(f) (Language Access) – We recommend that regulations clarify that an applicant or tenant who is known “to have a limited ability to read, understand, write” or speak English be given information which includes the name of a “specific staff person” at the LHA for language assistance and that regulations clarify that meaningful language access means providing a “written translation of vital documents in the applicant’s or tenant’s primary language in a timely manner.” MLRI will be submitting comments separately on this section as well.
4. Section 4.03(3) (DHCD’s guidelines and forms): We urge DHCD to include in regulations that “all guidelines and standard forms” be posted on the Departments website and that LHAs shall also post on their website “standard forms, including grievance hearing forms and transfer and reasonable accommodation request forms.”

**Annual Plan Content**

5. Section 4.17(b) (Cover Sheet): We urge DHCD to require that LHAs include as part of the plan a cover sheet for the whole plan with a “profile” of the LHA that includes information about number and type of units in the portfolio. The profile should also include the number of households on the waiting list. This was discussed in stakeholder meetings with DHCD prior to the release of proposed regulations and a template for a cover sheet could be developed by the Department.

6. Section 4.17(b) (Capital Improvements and Maintenance and Repair Plans): We recommend that in both the Capital Improvement Plan and the Maintenance and Repair Plan that the LHA identify capital projects and a list of maintenance and repairs that have not been completed because of lack of funding. For example, if the wiring is faulty on five vacant units and they cannot be brought back online because of funding, this should be included in the plan. It is critical that the public be aware of how the lack of funding impacts a housing authority's ability to carry out improvements and repairs.
7. Section 4.17(b) (Capital Improvements Plan). Proposed 760 CMR 11.02(1)(b) provides that each LHA must submit an annual update to the Capital Improvements Plan at the beginning of each fiscal year. We also recommend that DHCD clarify in 4.17(b) that the Annual Plan in addition to including an updated 5-year Capital Improvement Plan, also includes the annual update to its Capital Improvement Plan.
8. Section 4.17(b) (Narrative): We agree with DHCD that the LHA must include in its Annual Plan in the required narrative section a description of actions that the LHA has taken during the past year in response to findings made by DHCD in its Monitoring Program. We recommend that the LHA be required to include action it has taken on "any findings" not just "significant" findings as the proposed regulations provide, since the purpose of the monitoring program under MGL 121B, 26C is that "[t]he monitoring program and assessment standards established by the department shall be structured to enable the department to identify housing authorities that are failing to meet the minimum standards...."
9. Section 4.17(b) (Policies): We agree with DHCD's new requirement that the Annual Plan include a list of LHA policies and when they were last revised. This will help tenants know what policies their LHA has. We also urge DHCD to require that a LHA must list in the LHA's Annual Plan, all waivers approved by the Department, including a description of the specific waiver and when the Department approved the waiver. This is the type of information that becomes hard to track year after year and having it in the Plan will keep all on the same page.

### **Streamlined Plans**

10. Section 4.17(d) (Streamlined Plans): While we understand that smaller housing authorities have fewer resources to put together plans we feel that the Annual Plan is already streamlined and hope that DHCD, if it does use its discretion to establish a streamlined Annual Plan format, include requirements from each of the elements listed in 4.17(b).

### **Resident Participation**

11. Section 4.17(e) (Resident Participation): We were very pleased to see that DHCD's proposed regulations included in 6.03 a new definition of Resident Advisory Board that enables residents to form RABs that can have both state and federal tenants to provide the LHA with advice on the Annual Plan. We have heard from tenants and LHAs that where they have both state and federal public housing it is most efficient to have a combined state and federal RAB. There is, however, no specific reference to RABs in the Annual Plan regulations. We

recommend that DHCD include in 4.17(e) a requirement that Resident Advisory Boards and members of the public can participate in the Annual Plan review and comment process.

12. Section 4.17(e) (Resident Participation): We recommend that language be added to this section that requires housing authorities to hold at least two meetings with LTOs, RABs, residents, and community advocates in advance of releasing the Annual Plan for public comment. Before a draft plan is released for public comment is the best time for housing authorities to get input from residents and community advocates. After the plan is released for comment, the train has already left the station and without broader participation. Some housing authorities and their consultants are already doing this because it is more efficient in the long run. Consultants especially emphasized the need to open this process up to community advocates since it is often advocates who have worked with tenants for years who understand the nuances and the history of policies.

### **Public Notices, Hearing, and Comments**

13. Section 4.17(f) (Public Notice, Hearing, and Comment) We appreciate that DHCD clarified that the public comment period should be at least from the time that the notice is published through the public hearing date, that the LHA will receive oral comments at the hearing, and that the LHA shall accept emailed comments. These three requirements were adopted in 6.09(3)(h) with respect to consultation between the LHA and the LTO, but they should be repeated in 4.17(f) so that they apply to all residents and community advocates.
14. In 4.17(f)(ii) (Public Notice, Hearing, and Comment): The following text requiring that LHA give public notice of the plan “through publication in a newspaper of local circulation” appeared to be omitted. We urge that this be included and that the LHA be required to give public notice through the publication in a newspaper of local circulation.
15. In 4.17(f)(ii) (Public Notice, Hearing, and Comment): Most importantly we urge DHCD to provide in both 4.17(f)(ii) and 6.09(3)(h) that residents and the public have at least 30 days, as opposed to 10 business days, from the time the draft plan is released to review it and provide comments. Ten days does not provide residents with enough time to meet with one another or their technical advisors to review and process the plan and organize their recommendations. While the federal regulations provide residents with 45 days, we realize that DHCD is working to develop a doable time frame for housing authorities to accomplish this plan along with other plans. Hence, we recommend 30 days as opposed to 45. But we also recommend 30 days in conjunction with the recommendation that LHAs meet with residents and community organization and advocacy groups before the Annual Plan is released because as one consultant said – when the LHA meets with residents and advocates in advance most everything gets worked out before the draft plan is released and there may be less need for an extended public comment period. We also urge you to clarify that “all relevant documents” in addition to the Annual Plan be made available for inspection.
16. In 4.17(f) (Public Notice, Hearing, and Comment): We were very pleased to see that DHCD adopted in 6.09(3)(h) a requirement that the LHA draft a written summary of all comments received from the LTO and its responses to those comments and attach this to its Annual Plan

submitted to DHCD. We urge DHCD to add this requirement specifically to 4.17 and to expand this to include comments from anyone – residents, the general public, and community organizations and advocacy groups. While there may be some duplication, it is much easier to pull the resident participation issues that involve the Annual Plan into 4.17 or at a minimum provide direct citations so that one does not have to wind through all of 6.00 or 6.09 to find what relates to Annual Plans.

## Department Review

17. 4.17(h) (Department Review): We urge DHCD in 4.17(h) to label this section Department Review and to include language clarifying that the Department will review Annual Plans in accordance with guidelines that specify what criteria it will use to approve or disapprove a plan. While *regulations* may not specify the criteria the Department uses, it is important that *guidelines* state clearly what criteria are being used.

## 760 CMR 6.00 Occupancy Standards and Tenant Participation for State-Aided Housing

18. Section 6.02 (2): The current regulations have the correct reference for MRVP (49.00) and for AHVP (53.00) but in the proposed regulations, they are reversed.

## Definitions

19. Section 6.03

a. **Resident:** In the proposed regulations, DHCD adds a definition of “resident” in addition to the definition of “tenant” (signatory of lease on LHA unit) and “household members” (children and adults on a lease for LHA unit). Given that the term is primarily used in 6.09 (tenant participation), we suggest that the term “resident” be limited to adult members and encompass more than just state public housing tenants. For example, an LTO may want to include federal public housing residents in an adjacent site, state voucher tenants, or federal voucher tenants (including RAB members). Our suggested language is as follows:

Resident: As used in 760 CMR 6.09, Resident shall mean an adult member of a tenant household residing in a state-aided public housing unit; where a proposed LTO or LTO’s members include other housing programs, then the adult members of those households; and where there is no LTO, then all adult members of LHA-assisted housing (such as state and federal voucher tenants and adults in mixed finance developments).

b. **Resident Association:** We suggest that this be deleted. As explained in comments below, we believe that inclusion of “resident association” may be confusing and undermine formation of LTOs. For those resident groups which are a precursor to an LTO, we suggest (below) the use of the term “proposed LTO.” For those resident groups which are ad hoc, they are already covered in the section on “Additional Resident Participation” in 760 CMR 6.09 (4). (See comment 35 below.)



## **Minimum Rent**

20. Section 6.04 (1)(e): As proposed, LHAs shall notify tenants of their right to seek an exemption from the minimum rent. We recommend that this be expanded to include notice of the criteria and procedure for seeking an exemption and that such notice be attached to the lease (at lease up) and provided to tenants at recertifications.

## **LTO Participation in General**

21. Section 6.09 (LTO and Resident Participation): Broadly, we urge that DHCD have provisions for two separate types of tenant groups which may participate in various issues affecting them. First, there should be the formally recognized LTOs and where they exist, all negotiations should be with that LTO. Second, there should be informal tenant groups where there is no LTO and these would be formed either for (a) a special purpose (e.g. negotiate a “no smoking” policy or negotiate a relocation agreement where modernization is involved) or (b) as a precursor to the formation of a formal LTO. We think a better term for this latter group is a “proposed LTO” to make it clear that it is not yet a LTO (which, by definition, is fully recognized by the LHA). In its proposed regulations, DHCD requires all resident associations to have formal elections to democratically elect officers and meet other criteria (listed in 6.09 (2)(a)(i) – (x)). Instead, such criteria (with some changes) should apply to those seeking LTO status and not to informal and ad hoc tenant groups who may be formed around a particular issue or have not yet gotten to the point where they are ready to seek recognition as an LTO. In short, if a group meets the proposed criteria for a “resident association”, they should be an LTO. Less formally organized tenant groups are still important for negotiating with a LHA where LTO does not exist. However, by setting up essentially parallel tenant groups (LTOs and resident associations), DHCD may be (inadvertently) undercutting LTOs and causing unnecessary confusion by the terminology.
22. Section 6.09 (1): In the proposed regulations, DHCD limits participation to tenants residing in state public housing (by the use of “resident”) but elsewhere in this section also provides for input from a Resident Advisory Board (which may include federal public housing and Section 8 voucher tenants). Additionally, given the lack of funds for modernization, many housing authorities are replacing traditional public housing with mixed financing developments (where a formerly public housing tenant may now be a tenant of a non-LHA). Accordingly, the purpose should be broadened to include all current tenants of a LHA as well as those in a development that is mixed finance housing that was formerly state public housing. See suggested language attached hereto.

## Proposed LTOs (precursors to formally recognized LTOs)

23. Section 6.09 (2)(a) and (b): As indicated in Comment 19 above, this entire section should refer to LTOs and not resident associations. We have attached some proposed language for your convenience and have explained some of the rationale below:

**Persons Represented (a)(i):** As indicated in the two proceeding comments, we are suggesting a broader definition of what types of tenants an LTO may represent.

**Written Rules or By-Laws (a)(v):** As proposed, the regulations require that, to change a LTO's by-laws, at least 10% of residents must vote. While we recognize the importance of having a broad level of support for any by-law changes, it does not appear realistic to require such a high number. For example, if there are 500 households with 2 persons in each household having voting rights, then there would need to be at least 100 people voting which will be difficult. Rather, we have proposed that the bylaws set the quorum and that perhaps, the percentage be increased from a majority to something higher (such as 66 %) of those voting.

(a)(v) In this section on bylaws, we also propose that the bylaws cover elections (regular and special), recall procedures, and the process for filling vacancies (rather than dictate in (ix) that vacancies must be filled by special elections and cannot be held more than once per year). Given that Board members often resign or move during a term, a LTO should have discretion to fill the vacancy by, e.g. recruiting volunteers, selecting the next highest vote getter in the last election, or other means. It is often difficult to recruit tenants to run for elections to fill vacancies and there should be as few impediments as possible to participation.

**Officers (a)(vii):** In this section, DHCD requires direct election of officers. Instead, it should be up to the LTO to decide on whether officers should be directly elected by the general membership or elected by the Board itself.

**Recall Elections (a)(ix):** See comment above as to special elections and the 20% threshold. Recall elections should not be limited to once per year but rather should occur whenever there are grounds for seeking the removal of an officer or officers.

**Budget (a)(x):** The LHA should only have the authority to disapprove a budget as it relates to its funds (and not to other non-LHA funds raised by a LTO).

**Recognition Where More than One LTO (b)** We deleted language which appears duplicative in the first paragraph.

(b)(vii): We added another factor to be considered when deciding between two proposed LTOs seeking official recognition, namely which proposed board more closely reflects the makeup of the tenant population it seeks to represent.

24. Section 6.09 (2)(d) (Revocation of Recognition): The last sentence of the first paragraph should be revised to require LHAs to provide a description of the measures necessary where appropriate. Change: “The LHA mayshall, except in extraordinary circumstances, include a description of measures which the LHA deems necessary for the LTO to take to cure the violation.
25. Section 6.09 (2)(e) (Department Review of LHA’s Decision on Recognition): Where a proposed LTO is dissatisfied with a LHA decision on recognition and requests DHCD review, the LTO should have the option of requesting an on-site face to face meeting (in lieu of written submissions). Some tenants may have an easier time conveying information verbally (rather than in writing).

### **Operation of LTO (once recognized)**

26. Section 6.09(3)(a): As drafted, DHCD is proposing that the executive director or designee only be required to meet with the LTO once per year. Instead, we suggest at least quarterly meetings should be scheduled (and then if there are no agenda items, the meeting may be cancelled).
27. Section 6.09 (3)(c): Again, the LTO should only be required to submit an accounting to the LHA of the funds allocated by the LHA and not “all sources and all expenditures” as that may include privately raised funds that are not subject to strictures on expenditures. Second, the LHA should provide assistance to the LTO by (a) notifying the LTO at least 30 days in advance of the end of the LHA FY for the submission of the accounting and (b) offer assistance in developing a budget and tracking expenditures.
28. Section 6.09 (3)(e): Local telephone service should be provided to all LTOs and not limited to those with at least 100 state public housing units. In addition, the LHA should be required to provide at LHA cost access to internet and copier service (without any unit threshold).
29. Section 6.09 (3): We suggest that DHCD consider requiring LHAs to assist LTOs with interpretation and translation wherever possible so that LTOs can effectively communicate with all tenants.

### **Consultation on Annual Plan**

30. Section 6.09 (3)(h): We have several comments about this section.
  - a. The citation to 4.19(6) should be corrected to 4.17.
  - b. In several places, in this section the LTO is the only avenue for input on the Annual Plan. For the federal Annual Plans, the RAB, the general public, and individual tenants all have opportunities for input. We strongly urge that wherever the LTO is listed, the RAB, general public and individual tenants are also included. At a minimum, the LHA should be required to provide its written response to all written comments received (and not just those from a LTO).



c. The LHA should also be required to post the draft Annual Plan on its website. Ten business days' notice of the draft Plan may be too short a time frame for tenants to absorb the information, obtain technical support (from legal services or elsewhere), convene a tenant meeting, and submit meaningful comments to the LHA. We suggest that 30 days may be a more reasonable time frame. (See Comment 15).

d. The provision to have the LTO's presiding officer sign the Annual Plan should be deleted. We are unsure about the purpose of this signature requirement. The LTO may oppose portions of the Annual Plan and so any signature should not be deemed to be acceptance of the Annual Plan or confirmation that the proper procedures were followed. Maybe the regulations can instead require that the LHA certifies that it complied with the resident participation regulations.

### **LTO Consultation on Modernization**

31. Section 6.09(3)(i): DHCD deleted all of the tenant participation requirements from 11.00 and has inserted various cross references to 760 CMR 6.09. But the following concepts were not and should be included in the new section 6.09(3)(i) on Consultation between and LHA and LTO regarding LHA Modernization:

- a. The tenant organization shall be involved in determining the needs and priorities to be included in the CIP.
- b. The LHA shall consider the tenants' input on needs and priorities and incorporate some or all of such needs and priorities in a draft funding application if deemed by the LHA to be consistent with sound management.

### **Resident Advisory Boards**

32. Section 6.09(3)(j): Where there is no LTO to designate RAB members, then the LHA should allow tenants to select RAB members. If there is no LTO and no tenant-formed RAB, then the LHA may appoint individual residents who agree to participate as volunteers provided that there is some open and documented process to solicit such volunteers.

### **LHA Board Meetings**

33. Section 6.09(3)(m): We are unsure why DHCD deleted "reasonable prior" notice of Board meetings and believe it should be added back. (In section 4(b) DHCD does define notice as being at least 7 days in advance but this section does not apply to (m)).

## **Additional Resident Participation Provisions**

34. Section 6.09 (4)(b): This section adds a default of 7 calendar days' notice where not otherwise specified. This may often be too short, so we suggest that the default be at least 14 calendar days' notice.
35. Section 6.09 (4)(e): It should be clear that the section entitled "Resident Participation Where There Is No LTO" includes more than just modernization. For example, topics such as the Annual Plan, lease and grievance policy changes, requests for waivers and the like should be covered. Therefore, we suggest that the second sentence be revised to:

"Such resident participation shall include reasonable participation of residents similar to that afforded LTOs including in Sections 6.09 (3)(g) – (i)".

The last sentence should be deleted and replaced with the following sentences:

"Where there is no LTO, the LHA shall also provide the opportunity for resident participation by ad hoc groups formed by residents around a particular issue. While these ad hoc groups do not have formal recognition as an LTO, they may serve a useful function in providing an opportunity for residents to work together on matters that affect their interests. Where there is no LTO or resident-formed ad hoc group, then the LHA may solicit volunteers to serve as representatives from among interested residents."

36. Section 6.09(4)(f): We are concerned that residents may not be aware of decisions made by the Board of Commissioners and that the term "promptly" is vague. Our suggestion is that the LHA have an affirmative obligation to, at least, notify the LTO, any ad hoc resident group, and any volunteers solicited by the LHA of decisions made by the Board where DHCD approval is needed; and that the LHA further provide at least two weeks for comments by said residents to DHCD.

## **Tenant Member on LHA Board of Commissioners**

37. Section 6.10: In the interest of transparency and tenant education, DHCD may want to have a section on LHA board members for cities and then this section on towns. The section on cities should include Boston's unique situation of having an Administrator in lieu of a Board.
38. Section 6.10 (1): The reference to M.G.L. c. 121B, §5 should be revised to §5A.
39. Section 6.10 (1): In this section, the terms "tenant in the LHA's state aided public housing" and the "eligible tenant" should be revised to include those in mixed finance housing (which had formerly been state-aided public housing). Additionally, to the extent a "tenant member" may include federally assisted tenants, this section should be revised to so include them. (As defined by c. 121B, §1, a "tenant member" of a LHA Board in a town is one who is "directly assisted by that housing authority pursuant to this chapter" (referring to c. 121B)).

40. Section 6.10(1)(b)(ii): The reference to “of state-aided public housing” should be deleted, as explained in the comment above. In addition, if an eligible tenant no longer lives in public housing (or even in that town), they should only be a holdover for a maximum of 12 months. That would provide sufficient time to find a replacement by someone who would better represent the viewpoint of public housing tenants in that town.

### **Appendix B (Grievance Procedure)**

41. On the last page (at the end of Appendix B) there is a dangling phrase “privacy policy” which should be deleted or explained.

### 760 CMR 11.00 Modernization and Development of State-Aided Public Housing

#### **Purpose and Applicability, Definitions**

42. Section 11.01: Add to 11.01(1) and 11.01(3) that the purpose of these regulations is also the “preservation” of public housing to be consistent with the definition of “Capital Funds” later in this section. It is important to highlight that one of the goals of the modernization program is preservation of public housing.

43. Clarify in the definition of “Large Projects” that “Initially” means “As of the promulgation of these regulations.”

44. Proposed regulations provide that the RCAT Board discusses issues about RCAT performance and coordination. In addition, to this, it should be clarified that the role of the RCAT Advisory Board is to receive reports and evaluations from the RCAT and to provide input on issues.

45. We noted that the Department changed its initial proposed definition of “Large Projects” from a threshold of \$25,000 to \$100,000 and feel that this is reasonable.

#### **Capital Improvement Plans (CIP) and Project Funding**

46. Section 11.02 (1)(b) provides that each LHA must submit an annual update to the CIP at the beginning of each fiscal year. DHCD should clarify in 4.17((b)(i) that the Annual Plan in addition to including an updated 5 year CIP, must also include the annual update to its CIP in the Annual Plan. (See comment 7).

47. Section 11.02(1)(c): We were pleased to see that DHCD included both LTOs and residents in 11.02(1)(c) in the process of creating a CIP since not all developments have LTOs.

## **Design**

48. Section 11.03(1): The cross reference to tenant participation regulations 6.09 is important since 6.09(3)(i)(vi) states that LHAs shall invite a LTO representative to participate in the interview of the finalist(s) for designer for large projects and to the schematic design review meeting. This text was specifically deleted from 11.03 and we recommend that for clarity that it be added back in.
49. Section 11.03: If DHCD's "design and construction" guidelines referenced in 11.03(3) do not include reference to Architectural Access Board requirements, we urge that these requirements either be referenced in the regulations or included in the design and construction guidelines.

## **Bidding**

50. Section 11.04: We recommend that 11.04(1) provide that the Department's directives include a "preference or incentive in large projects for economic opportunity, job training, and jobs for residents" in order to leverage public dollars for large projects into economic opportunities for residents. We are not seeking a full-blown Section 3 type program, but as regulations are being revised, this is a critical opportunity to provide a vehicle for the state to use public funding to leverage living wage jobs for residents.

## **Construction**

51. Section 11.06(4)(b): On the issue of change orders, we urge DHCD to add the following language: "The LHA must provide to a LTO for any development affected and must post in a conspicuous place in its central office, on its website or webpage, and in any development affected, the approved change order for substantial change orders so that residents are informed of substantial change orders." It is important to be transparent with and notify residents about change orders so that they are aware of when and why projects have changed. It is also important to keep the community on the same page as opposed to tenants not hearing about it and feeling frustrated about why a project is not moving forward or hearing about it via word of mouth in a way that is not entirely accurate.

## **Special Requirements Applicable to Large Projects**

52. Section 11.07: Include a cross reference in the first paragraph to 760 CMR 6.09(3) which is the tenant participation regulation concerning Consultation between LHA and LTO regarding the LHA's Modernization Program, which has a specific reference to Large projects.
53. Section 11.07(5): Concerning change orders we urge the Department to adopt the following language: "The LHA must provide to a LTO for any development affected and must post in a conspicuous place in its central office, on its website or webpage, and in any development affected, the approved change order so that residents are informed about the change order." Again, it is important that the resident community be properly informed about changes in modernization projects to prevent frustration, confusion, and rumors.

54. Section 11.7(6)(c): Residents should be involved in the process where the final punch list is reviewed that will trigger final payment. In 11.07(6)(c) we recommending adding the “LHA shall provide an LTO with residents affected by the project with an opportunity to participate in the inspection to provide input” about deficiencies. Residents may catch important deficiencies because they live there.

### **Capital Assistance Program**

55. Section 11.08(2): Include in 11.08(2) a sentence at the end that “LHA’s must notify all affected residents, whether or not represented by an LTO, to provide residents with an opportunity to comment on the request for a waiver pursuant to 760 CMR 6.09(4)(a)(ii). The LHA must identify and review an approved waiver in the LHA’s Annual Plan pursuant to 760 CMR 4.17.” This will allow residents who want their LHA, who is seeking to opt out of the RCAT program, to actually participate in the RCAT program and to provide them with a way to voice this to the Department during the waiver process.

56. Section 11.08(7)(c): Thank you for clarifying in 11.08(7)(c) that if no tenant candidate receives any vote to be on the RCAT Advisory Board that the Department shall appoint a tenant from the participating LHA’s in the region to the RCAT Advisory Board. This will ensure that there is at least one tenant on the RCAT Advisory Board.

57. Section 11.08(7)(f): In 11.08(7)(f) we recommend that DHCD include in that last sentence that in addition to providing LTOs with notice about quarterly meetings of the RCAT Board, that the LHA will provide all residents with notice. This is consistent with the new proposed residents participation regulation 760 CMR 6.09(4) which seeks to be inclusive and provide all residents with notice and an opportunity to comment on matters which affect them.

### **Tenant Coordinators**

58. Section 11.09: The first introductory paragraph states that the DHCD may require that a LHA engage one or more tenant coordinators to expedite construction activities that involve “substantial” resident relocation and otherwise have a “significant” impact on residents “for an extended period of time.” These terms are vague and we would recommend deleting them. We also recommend replacing the words “construction jobs” with the word “projects” to clarify that this is not about construction jobs for tenants, but about the modernization project.

59. Section 11.09: We recommend replacing the last sentence in 11.09(b) with the following language: “The LTO Board member or his or her household shall not be eligible to receive compensation as a tenant coordinator in his or her development, but may receive compensation as a tenant coordinator in a development where the person is not a LTO Board member.” This provision will prevent any conflict of interest by a LTO Board member who is making suggestions about candidates for a tenant coordinator position, while also clarifying that it would not be a conflict to be a Tenant Coordinator in a development where he/she was not a LTO Board member.



## **Waiver by Department**

60. Section 11.10: We recommend having a cross reference in this paragraph to 760 CMR 6.09(4) which provides residents with an opportunity for notice and comment on requests for waivers.

## 760 CMR 63.00 – Public Housing Innovation Program

Section 63.01: The primary amendment to 760 CMR 63 is the addition of the Regional Public Housing Innovations Program which was passed in 2014. The proposed regulations closely track the authorizing statute, MGL 121B, 38D and 760 CMR 63 would now house regulations for both the Public Housing Innovation Demonstration Program (PHID - Demo), passed in 2008, and the Regional Public Housing Innovation (RPHI - Regional) Program, passed in 2014.

## **Definitions**

61. Section 63.02. PHID and RPHI will share regulatory definitions. Proposed regulations clarify that definitions in CMR 4.00 (administration), 5.00 (eligibility), 6.00 (occupancy and tenant participation), and 11 (modernization) shall also apply. This is a helpful clarification. We recommend that DHCD also include 8.00 (privacy and confidentiality) and 27.00 (relocation assistance).
62. Section 63.02. Proposed amendment to the definition of Local Housing Authority added that a “local housing authority” does not include a regional non-profit or other entity contracted by DHCD to administer MRVP or AHVP. The is helpful and consistent with the original intent of the program which is to repair, preserve, and redevelop public housing.

## **RPHI (Regional) Program - Statutory Exemptions**

63. Section 63.04(D)(1): This section on Statutory Exemptions clarifies (in additional language beyond that provided in MGL 121B, Section 38D) that if there are conflicts with 121B that are not subject to exemption under the statute and regulations, that a regional housing authority must apply to DHCD for an exemption from such conflicts. New language further provides that a LHA must include in its application an explanation of the reason for each exemption being requested, including a demonstration that the exemption is necessary to achieve the goals in the application/plan. This makes sense and is helpful clarification.
64. Section 63.04(D)(2): This section includes new language beyond the statutory language that DHCD shall approve a request for an exemption as long as it is consistent with purpose of 121B, Section 38D, DHCD guidelines, “all other applicable provisions of law,” and to the extent that it is necessary to achieve the goals in the LHA’s application and plan. This also makes sense and is helpful clarification.

## RPHI - Annual Plan

65. Section 63.04(F): While 63.04(F) tracks the language of 121B, Section 38D in terms of the preparation of an Annual Plan for RPHI program, there is not much guidance about the scope of tenant and community participation and having a regional meaningful resident and community input process presents new challenges. Further clarity is needed. We recommend that in 63.04(F)(1) that “adequate notice and opportunities to participate in the development and preparation of the plan” be clarified and regulations state that:
- a. The Regional Housing Authority must hold meetings with residents and advocates at each of the “participating communities” to develop the plan before it is released. There must a minimum of 7 participating communities or could be up to 10 participating communities depending upon the size of the Regional Housing Authorities portfolio.
  - b. The Regional Housing Authority must make the draft plan and all relevant documents available at that participating housing authority or in a central place in each of participating community, if there is no housing authority, at least 30 days before the public hearing.
  - c. That the Regional Housing Authority must send express notice of the hearings to residents and known community groups.
  - d. The Regional Housing Authority should hold at least one hearing in each community.
  - e. The Regional Housing Authority should give tenants and the community the opportunity to make oral comments at the hearing and submit written or emailed comments at least through the date of the public hearing or later as specified by the LHA. This tracks the regulations that DHCD has proposed in 6.09(3)(g) concerning the yearly plan public process.
66. 63.04(F)(2): This section states what the Annual Plan must contain and tracks the statute. But since the Regional Housing Authority does not have to submit an Annual Plan under 760 CMR 4.17, it is important the regulations clarify what the Regional Housing Authorities include in their RPHI Annual Plan since that will in effect be the Annual Plan for that housing authority and make this more as consistent with Annual Plans under 4.17. We recommend the following be included in 63.04(F)(2):
- a. In (b) about how the Regional Housing Authority will achieve the repair and redevelopment of public housing, add “the time frame for planning and construction.” This is provided in 4.17.
  - b. In (e) about how the authority will meet its goals and objectives, add “and a description of any findings made by DHCD in its monitoring program.” We presume that DHCD will monitor the Regional Housing Authorities under RPHI and the Annual Plan should state if there are any findings by DHCD.

- c. Add a new (h) requiring a list of all of the Regional Housing Authorities policies indicating the date of the last revision of the policy as is provided in 4.17.

### **RPHI - Annual Report**

67. Section 63.04(G)(1): Because both the statute and proposed regulations refer to the Annual Report as the “primary means” by which the Regional Housing Authority is required to provide information to tenants and the public, 63.04(G)(1) should require that the Annual Report be posted on DHCD’s and the Regional Housing Authority’s website and made publicly available for inspection at each of the participating communities at either the local housing authority, or if there is none, at city or town hall. The Regional Housing Authority should also be required to make and mail copies to tenants upon request to address possible regional transportation challenges.
68. Section 63.04(G)(2)(b): There appears to be a typo and instead of RPRIP should be RPHI.
69. In 63.04(G)(3) regulations should clarify how tenants and members of the community find out whether DHCD disapproves of a Regional Housing Authorities Annual Report. There should be express notice to residents and known community groups. We recommend using the same language in 63.04(F)(3) related to the Annual Plan and adding at the end: “The Regional Housing Authority shall notify tenants of such approval or disapproval” and that DHCD have a place on its website where in addition to the Annual Report being posted, there is information about whether the report has been approved, deemed approved, and disapproved, and if disapproved, the reasons why.

### **RPHI Independent Evaluation**

70. Section 63.04(I): This section should clarify that the evaluation, which happens twice during the initial term of participation, must be published on DHCD and the Regional Housing Authorities website and made available to tenants and the community upon request.

### **Waiver Provision**

71. Section 63.06: There should be a cross reference in 63.06 to 760 CMR 6.09 to clarify that local or regional housing authorities must provide all affected residents with notice and an opportunity to comment on any requests for waivers of the regulations.

We thank you for your attention to these comments. Please let us know if we can provide any further clarification.

Sincerely,




Annette Duke  
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Brian O'Connor  
Justice Center of Southeast Massachusetts



Peter Benjamin  
Community Legal Aid  
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Enclosed:

Proposed Revisions to 760 CMR 4.03 and 4.17 (revisions tracked)

Proposed Revisions to 760 CMR 6.09 (revisions tracked)

Proposed Revision to 760 CMR 6.09 (no tracking)

Proposed Revisions to 760 CMR 11.00 (revisions tracked)