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Catherine Racer, Undersecretary for Housing Development
Executive Office of Housing and Livable Communities
Low Income Housing Tax Credit Program
100 Cambridge Street, 3rd Floor
Boston, MA 02114
Via email to: catherine.racer@mass.gov

Re: **Comments and Proposals on the 2025-2026 Draft Qualified Allocation Plan**

Dear Ms. Racer:

MLRI appreciates the opportunity to submit these comments on the draft Low Income Housing Tax Credit Program 2025-2026 Qualified Allocation Plan (QAP). Our comments and proposals focus on how to harness the QAP to:

1. Better affirmatively further fair housing;
2. Provide reports on the results of various QAP policies;
3. Prioritize preservation and expansion of public housing; and
4. Strengthen preservation and prioritize permanent and extended affordability.

1. QAP Policies Must Be Informed by the Persistent and Extreme Residential Segregation by Race and Income in Massachusetts

In formulating the QAP, HLC must keep front and center its obligation to affirmatively further fair housing which means:

> ". . . taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity . . . ."[1]

In this draft and previous QAPs, HLC developed policies to implement many of the commitments in the agency's fair housing plans. In these comments, we suggest how to build further on those commitments.

[1] HUD AFFH regulation.

2. Proposals to Better Evaluate Affirmatively Furthering Fair Housing and Other Policies in the LIHTC Program

A. Provide an annual report that would allow HLC and the public to keep track of and evaluate the results of the QAP policies. The report, including maps, could tell us, for example:

- How the selection of developments in the year of the report measured up against the stated policies in the QAP;
- The number and location of family, elder, and specialized units in the portfolio and the number added in the reporting year;
- A description of the census tract in which all family developments in the portfolio, and those selected and developed in the reporting year, are located;
- A description (for projects after a certain number of years) of whether the concerted community revitalization goals considered when awarding credits to high poverty or high minority neighborhoods were achieved;
- For projects receiving points as a catalyst for private investment, a description of the investment and its results;
- A description of who lives in the tax credit units (by race, ethnicity, income, family size, disability and more);
- The effect, if any, of residency preferences used by tax credit developments;
- If the projects in what are determined to be opportunity areas are more racially integrated than the communities in which they are located;
- For developments located in Qualified Census Tracts, a description of those tracts (income, race, school quality, crime, etc.).

B. Additional Proposals

- Improve the LIHTC website. The HLC LIHTC website is currently inadequate to allow the public to understand how the program's policies are working. We urge HLC to provide accessible program information on the website.
- Ensure that tax credit units in higher opportunity areas are broadly available to people from high poverty areas.
- Eliminate all local support policies and substitute Section 42 statutory minimum notice requirement.
- Assess the disparate impact effects of local residency preferences as proposed in the QAP.
- Convene a fair housing advisory group or appoint a tax credit allocation committee to work with HLC on a range of affirmatively furthering fair housing issues in the HLC tax credit program.

3. Priority for Public Housing Redevelopment that Preserves the Existing Number of Housing Units and Creates New Affordable Housing

Public housing provides the most vulnerable families, seniors, people with disabilities, and immigrants with a place to call home. There are 43,376 state public housing and 30,008 federal public housing apartments in Massachusetts built with public dollars on publicly owned land.[2] Most residents are extremely low income. Waiting lists for these apartments are historically long and as the draft QAP recognizes, the current shortage of rental units available and affordable for **extremely low-income renters** is estimated at over 170,000 homes.[3]

The need for rehabilitation of public housing is great. In 2023, HLC estimated a backlog of at least $4.25 billion in repairs needed in state public housing.[4] The state has committed to making deeper investments in public housing through the passage of a $2 billion housing bond for public housing in the recent Affordable Homes Act. This Act further requires 1-for-1 replacement of public housing during redevelopment and recognizes that the preservation of every public housing apartment is critical.[5]

On the federal side, housing authorities and their affiliates have been preserving public housing by transitioning to a Section 8 voucher platform (either Project Based Vouchers or Project Based Rental Assistance) which often needs tax credits to make the redevelopment financially feasible. Additionally, housing authorities are increasingly leveraging their "Faircloth Authority"[6] with federal dollars to expand the number of permanently and deeply affordable housing units available to the lowest income families.[7] However, the lack of tax credits has posed challenges

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[2] State Public Housing: As of June 27, 2023, EOHLC reported that there were 43,376 state public housing units which include Chapter 689 state public housing for adults with special needs (689 public housing units were not included in HLC's count of 41,500 public housing unit listed on the CHAMP website). According to EOHLC, since 2023, approximately 182 units of state public housing have been or are being redeveloped with federal funds, of which 42 are awaiting final documentation by HUD to be federalized. Federal Public Housing: Slide 2 of HUD Dashboard (December 15, 2024) available at: www.hud.gov/program_offices/public_indian_housing/programs/ph/PH_Dashboard

[3] Draft 2025-2026 QAP on page 20, citing the National Low-Income Housing Coalition tabulation of 2022 American Community Survey data available at https://nlihc.org/housing-needs-by-state/massachusetts.

[4] mass.gov/info-details/the-affordable-homes-act-research-and-analysis#public-housing-investments-

[5] Section 35 of Chapter 150 of the Acts of 2024 amends Mass. General Law, Section 34, Chapter 121B. Section 35 provides that generally tenant protections and rights in state-aided public housing programs continue to apply when public housing is redeveloped.

[6] The Faircloth Amendment refers to Section 9(g)(3) of the United States Housing Act of 1937 which prohibits HUD from funding the construction or operation of federal public housing beyond the number of units that a housing authority owned, assisted, or operated as of October 1, 1999. As of October 1, 1999, Massachusetts had 39,166 federal public housing units ("Faircloth Limit"). With the unreplaced loss of thousands of federal public housing units since then, as of December 31, 2023, Massachusetts housing authorities have the untapped "Faircloth Authority" to access federal operating and capital funds to create and operate at least 6,199 new public housing units.

[7] For example, the Cambridge Housing Authority has demolished a 175 federal public housing development, Jefferson Park Extension (family housing), and is building 175 replacement units, plus an additional 103 deeply affordable housing apartments on the same site with tax credits and other financing. Another example is 116 Norfolk Street in Cambridge, where the Cambridge Housing Authority renovated 37 federal public housing congregate apartments and built additional units on site resulting in 62 studios soon to be available for formerly homeless individuals.

for these efforts to preserve and expand deeply affordable housing with guaranteed federal rental assistance.

As you develop the 2025-26 QAP Plan, we urge you to capitalize on this momentum and include a priority for allocating tax credits (i.e. increase the points) for public housing projects that will both <u>preserve</u> the same number of existing public housing and also <u>expand</u> the stock of affordable housing units. Tax credits can and should be used to protect our public housing communities and bring on new units of affordable housing at the same time.

4. Prioritize Permanent And Extended Affordability and Strengthen Preservation of Privately Owned Subsidized Housing

We appreciate HLC's commitment to preserving existing federal and state subsidized housing. This housing serves tenants among the lowest-income in the state, and can be the best housing available, located in safer neighborhoods with access to opportunities, such as good schools, employment, health care and transportation. These developments are vitally important to fair housing goals, providing housing for a disproportionate number of tenants of color and other protected groups. Failure to preserve this housing can result in formerly accessible areas becoming permanently closed to low-income and even moderate-income families.

In addition, affordable housing preservation is a cost-effective way to leverage decades of federal, state and local investment in housing to provide affordable housing for this century. Because G.L. c. 40T does not come into play for preservation when an owner simply allows affordability restrictions to lapse, in such cases affordable units in which public funds have been invested for decades can be lost and simply converted to market.

A. Incentivize Permanent and Extended Affordability

As the QAP describes, our state faces an affordability crisis exacerbated by the loss and future loss of subsidized housing that is converted to market rate units when affordability commitments end. The QAP prioritizes preserving these units, but we should avoid creating the same problem in 30 or 45 years when LIHTC affordability requirements come to an end. The QAP contains no priorities for owners willing to commit to permanent affordability.

Threshold #9 requires a commitment to 30-year affordability (45 years if applying for Massachusetts LIHTC) (p. 36). In addition, up to 3 points can be awarded for a commitment of 50 or more years (p. 51).

We propose that the QAP: A) increase Threshold #9 to 50 years; and B) award additional points for owners willing to commit to permanent and longer term affordability.

B. Disqualify Owners that Fail to Preserve Affordability

HLC should use scarce public funds to encourage preservation of existing affordable housing by prioritizing owners who do so. This amplifies the impact of LIHTC funds incentivizing owners to preserve their other existing affordable units.

We propose that the QAP include a disqualification for production proposals for affordable housing owners who convert publicly subsidized housing to market rate when there are viable alternatives to maintain affordability. This would leverage the impact of tax credit funds to include: both the projects being financed and *in addition* encourage preservation of other existing affordable housing. Limited public resources should be used to encourage owners that are committed to long-term affordability and preservation, and should not be used to support those owners that on the one hand are converting existing publicly subsidized developments to market, and on the other seeking new public funds from HLC.

To achieve this goal, we suggest the QAP *for production tax credits, disqualify (or provide a large point deduction for) any owner where, with respect to any property whose affordability restrictions lapse or have lapsed, the owner or any affiliated entity on or after January 1, 2020 has not taken "all reasonable and diligent actions" (the Chapter 40T standard) to promote the continued affordability of housing owned or controlled by that owner or any affiliated entity.*

This standard should not be difficult to implement, because both the Legislature and HLC (as DHCD) already have grappled with that issue in the 40T statute and detailed regulations-- in both cases following a lengthy process involving buy-in from developers, public and quasi-public agencies, municipal representatives, tenants and tenant advocates—and HLC already is tasked with making such determinations. See G.L. c. 40T, sec. 1 (Definition of "Preserve Affordability") and 760 C.M.R. 64.02 (2) (Standards for "Preserve Affordability").

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In conclusion, we thank you and your team for your consistent and impressive work and for our state's strong tax credit program that creates and preserves quality affordable rentals. We hope you will consider these comments and proposals and provide responses as HLC does for the Moving to Work plan. Understanding your thoughts and insights on these issues would greatly assist us to adjust and improve our suggestions in coming years. As always, we hope to discuss and work with you on these issues.

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Massachusetts Law Reform Institute