

760 CMR 5.00: ELIGIBILITY AND SELECTION CRITERIA

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5.01: Effective Date

760 CMR 5.00 became effective August 9, 1996 and superseded 760 CMR 4.00 and 760 CMR 5.00, as previously promulgated. Amendments to 760 CMR 5.03 and 5.05 became effective June 12, 1998. Additional amendments to 760 CMR 5.03, 5.06, and 5.16, are effective August 29, 2003. Any waivers in effect on August 9, 1996 for a tenant selection plan at a local housing authority (LHA) shall remain in effect unless specifically revoked by the Department.

5.02: Applicability

(1) 760 CMR 5.00 applies to all persons residing in or applying for state-aided public housing, known as (St. 1948) c. 200, (St. 1966) c. 705, (St. 1954) c. 667 housing, with the exceptions noted in 760 CMR 5.02(2). It applies to applicants and participants in the Alternative Housing Voucher Program (AHVP). It governs the order of tenant selection of applicants to the Massachusetts Rental Voucher Program (MRVP).

(2) 760 CMR 5.00 does not govern the order of tenant selection for units in public housing known as (St. 1974) c. 689 or (St. 1954) c. 667 congregate housing or units financed by the Massachusetts Housing Finance Agency (MHFA). It also does not govern the eligibility of applicants for units which receive a federal Section 8 subsidy.

5.03: Definitions

Affirmative Action Goals - the applicable percentages of an LHA's units of family housing and elderly/handicapped housing as calculated pursuant to 760 CMR 5.08(3) prior to the 1996 amendment.

AHVP - Alternative Housing Voucher Program.

Appropriate Unit Size - the size of a unit is appropriate for a household if the unit meets all the following criteria:

- (a) Household members of the opposite sex, excepting husband and wife (or those in a similar living arrangement), do not have to share a bedroom, provided that children of the opposite sex under the age of eight shall share a bedroom and provided that other household members of the opposite sex may elect to share a bedroom.
- (b) Persons of the same sex shall share a bedroom, provided that a household member, age 21 or over, may elect not to share a bedroom with his or her child, grandchild, or legal ward and provided that a household member does not have to share a bedroom if a consequence of sharing is or would be a severe adverse impact on his or her mental or physical health and if the LHA receives reliable medical documentation as to such impact of sharing.

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(c) Each bedroom shall contain at least 50 square feet of floor space for each occupant and a minimum of 70 square feet and shall meet all other applicable requirements of the State Sanitary Code (105 CMR 410.000) for a room occupied for sleeping purposes. No bedroom shall be shared by more persons than the number permissible under 760 CMR 5.03.

(d) Only bedrooms may be used for sleeping purposes by household members; the living room, kitchen, bathroom and hallways shall not be used for sleeping purposes by any household member.

Department - the Department of Housing and Community Development or successor agency.

Elderly Persons of Low Income - persons having reached the age 60 or over who are income eligible for state-aided public housing. As used herein "elderly person" shall mean an elderly person of low income.

Elderly Household - a household, residing in or applying for elderly/handicapped housing, containing at least one elderly person.

Elderly/Handicapped Housing - c. 667 housing managed pursuant to the provisions of M.G.L. c. 121B, §§ 39 and 40 for elderly persons of low income and handicapped persons of low income.

Family (Household) - a family or household consists of:

- (a) two or more persons who live or will live regularly in a unit as their primary residence:
 1. whose income and resources are available to meet the household's needs; and
 2. who are either related by blood, marriage, or operation of law, or who have otherwise evidenced a stable inter-dependent relationship.
- (b) one person.

A household member shall be considered to be living regularly with a family if temporarily absent for reasons such as hospitalization, duty assignment, employment, or school attendance in another location. Upon receipt of notice from the Department of Social Services that one or more children will be reunified with a household member, such child or children, if eligible and qualified, shall be considered household members for purposes of securing a unit of appropriate unit size for the reunified family.

A full-time, live-in personal care attendant, as defined in the regulation prescribing rent determination, whether or not a household member for purposes of rent determination, if determined by the LHA to be qualified, shall be deemed a household member for purposes of determining the appropriate unit size in public housing.

In the event one or more household members, who have not signed the lease, cease living regularly with a family the remaining household members shall constitute the family.

In the event that a household member, who has signed the lease, ceases to occupy the unit, one or more remaining household members may be given permission for continued occupancy of the unit, provided that:

1. the departing household member is not relocating to public or assisted housing elsewhere and is current in his or her financial obligations to the LHA and is not subject to eviction proceedings;
2. the remaining household members are eligible and qualified for public housing and (excepting newborns) have resided in the unit for at least one year, and;
3. at least one adult household member (or emancipated minor) applies for and signs a new lease with the LHA. In the event of divorce or separation between spouses who are both household members, or entry of a protective order, a Massachusetts court with jurisdiction may determine which spouse and family members shall be entitled to continued occupancy.

In the event that a household member, who has signed the lease, applies for the addition of a person, who meets the criteria in 760 CMR 5.03: Family (Household)(a), as an additional household member, the LHA shall determine whether the person is qualified and whether the augmented family is eligible. If so, the LHA shall approve addition of the household member to the family if the unit is of appropriate unit size or, if the unit is too small, upon transfer of the family to a unit of appropriate unit size.

Family Housing - c. 200 or c. 705 housing managed pursuant to the provisions of M.G.L. c. 121B, §§ 32 and 34.

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Handicapped Persons of Low Income - the definition of "handicapped persons of low income" is set out in M.G.L. c. 121B, § 1. As used herein "handicapped person" shall mean a handicapped person of low income.

Handicapped Household - a household, residing in or applying for elderly/handicapped housing, consisting of at least one handicapped person and no elderly person.

Homeless Applicant - an applicant who:

- (a) is without a place to live or is in a living situation in which there is a significant, immediate and direct threat to the life or safety of the applicant or a household member which situation would be alleviated by placement in a unit of appropriate unit size;
- (b) has made reasonable efforts to locate alternative housing;
- (c) has not caused or substantially contributed to the safety-threatening or life-threatening situation; and
- (d) has pursued available ways to prevent or avoid the safety-threatening or life-threatening situation by seeking assistance through the courts or appropriate administrative or enforcement agencies.
- (e) For the 2012 fiscal year, a household that otherwise qualifies for any preference or priority based on homeless status or being at risk for homelessness shall retain that preference or priority notwithstanding receipt of rental assistance that is intended to be temporary including, but not limited to, any temporary or bridge subsidies provided with state or federal funds.

For purposes of 760 CMR 5.03: Homeless Applicant(e), "rental assistance that is intended to be temporary" shall mean rental assistance initially granted for a term of 12 months or less, and months, and which is not eligible for renewal or extension from the same program source for longer than 12 months from the date for which assistance was first paid.

Local Housing Authority (LHA) - a public body politic and corporate created pursuant to M.G.L. c. 121B, § 3 or similar provisions of earlier general laws or of special laws. The definition of local housing authority shall include a regional non-profit corporation or other entity under contract to the Department to administer the MRVP or AHVP.

Local Resident - a person who has a principal residence or a place of employment in a city or town at the time of application to an LHA in that city or town and at the time of final determination of eligibility and qualification. Temporary residence with relatives or friends in the city or town is not sufficient unless the person's last residence and domicile was in the city or town. In the case of an applicant determined by the LHA to be homeless, the applicant may select one community for local preference, either the community from which he or she was displaced through no fault of his or her own, or the community in which he or she is temporarily housed.

Minority - "minority" shall mean:

- (a) Asian American - with origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands;
- (b) Black - with origins in any of the black racial groups of Africa;
- (c) Hispanic - of Mexican, Puerto Rican, Cuban, Central or South American origin; or
- (d) North American Indian - with origins in any of the original peoples of North America, with cultural identification through tribal affiliation.

MRVP - Massachusetts Rental Voucher Program.

Primary Residence - principal home (domicile) occupied by all members of a household not less than nine months of the year.

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Transfer for Administrative Reasons - transfer of a household from one unit to another at the discretion of the executive director of an LHA at any time for a sound administrative reason such as: fire in or condemnation of an occupied unit; harassment or abuse of a tenant or household member; or change in the number of persons in the household so that the unit is no longer of appropriate unit size for the household. A transfer for administrative reasons may be made between units in elderly/handicapped housing and family housing in the event that transfer cannot be made to a unit of appropriate unit size in the same type of housing, provided that the household is eligible for the housing to which the transfer is made.

Transfer for Good Cause - transfer of a household from one unit to another because the unit is no longer of appropriate unit size, or there is a compelling and documented medical impairment which could be substantially improved by transfer to another available unit. A transfer for good cause may be made between units in elderly/handicapped housing and family housing in the event that transfer cannot be made to a unit of appropriate unit size in the same type of housing.

In the absence of mitigating circumstances deemed sufficient by the LHA, a transfer for good cause shall not be made unless the applicant:

- (a) has filed a transfer application complete with all supporting documentation;
- (b) is current in rent, charges and fees owed to the LHA; and
- (c) has not committed and household members have not committed any serious violations of the lease for at least two years, and the applicant is not subject to eviction proceedings or to the terms of an agreement for judgment in a prior eviction proceeding.

Transfer to the AHVP - transfer of a household from elderly/handicapped housing to the AHVP pursuant to the provisions of 760 CMR 53.00.

Unit - a rental housing unit in state-aided public housing. Where the context involves the MRVP or AHVP, "unit" shall mean a rental housing unit for which the rent is subsidized under either program.

Veteran - the definition of "veteran" is set out in M.G.L. c. 121B, § 1.

5.04: Marketing

Each LHA has a continuing responsibility to ensure that households in its region of the state are aware of any availability of units and have an opportunity to apply. The LHA shall undertake a marketing effort whenever its waiting list for units is less than the number of applicants anticipated to be placed in the next 12 months. The LHA shall undertake appropriate affirmative fair marketing efforts whenever the number of its minority tenant households and minority households on the waiting list for either family housing or elderly/handicapped housing is less than the number of households meeting its affirmative action goal for the respective program.

5.05: Procedure Following Application

(1) Every applicant shall use application forms approved by the Department. The application forms shall be available at the LHA's central office or, upon request by mail. The LHA shall provide reasonable assistance to applicants in completing the application forms.

(2) Each application form received by the LHA shall be date and time stamped, and the applicant promptly provided with a receipt including the control number. After a completed application form is received, the LHA shall make a preliminary determination of eligibility based on information in the form and shall also determine whether an applicant appears to be entitled to any preference or priority status. The LHA may at this time, in its discretion, verify some or all information provided. The applicant shall be notified of the LHA's preliminary determination and may request a private conference if found ineligible or not to be entitled to a priority or preference category requested.

(3) When an applicant approaches the top of the waiting list, the LHA shall make a final determination of the applicant's eligibility and qualification. The applicant shall update the application and provide any additional information or verification reasonably required by the LHA. An applicant determined to be ineligible or unqualified shall be sent written notification of:

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- (a) the determination;
- (b) the reason(s) for the determination detailing the material facts;
- (c) the right to request a private conference to redetermine eligibility and/or qualification.

(4) When an application for a transfer for good cause is denied, when an application for addition of a household member is denied, or when the LHA orders an administrative transfer, a household member, who has signed the lease, may grieve the decision of the LHA under the grievance procedure, and this shall be the sole administrative remedy.

NON-TEXT PAGE

5.06: Income Eligibility

- (1) Income limits for admission of an applicant to state-aided public housing and for participation in the AHVP shall be set at two year intervals. The income limits shall be the "Low Income Limits", set by the United States Department of Housing and Urban Development (HUD), then in effect, for a similarly sized household in the city or town in which the LHA is located. Household income shall be determined in the same manner as net household income for rent determination, provided that income shall be imputed to assets which have been disposed of as provided by 24 CFR Part 5, Subpart F or successor regulatory provisions.
- (2) A household occupying a unit in elderly/handicapped housing shall remain eligible for continued occupancy until such time as 30% of its monthly net household income equals or exceeds the fair market rent (FMR) then in effect for the Section 8 Existing/Voucher Program for a unit of appropriate unit size in the area in which the LHA is located.
- (3) A household occupying a unit in family housing shall remain eligible for continued occupancy until such time as 32% of its monthly net household income equals or exceeds the fair market rent (FMR) then in effect for the Section 8 Existing/Voucher Program for a unit of appropriate unit size in the area in which the LHA is located.
- (4) An AHVP participant shall remain eligible for continued occupancy in a unit until such time as the participant's rent share equals or exceeds the contract rent. The participant shall retain his or her AHVP voucher for 90 days from the date on which the LHA determines that the participant's share equals or exceeds the contract rent. At the end of that period, if the participant's share continues to equal or exceed the contract rent, the household will not be eligible for continued assistance under the AHVP.

5.07: Eligibility of Handicapped Persons

- (1) The definition of handicapped persons of low income is set out in M.G.L. c. 121B, § 1. A handicapped person of low income, as so defined, may have one or more physical or mental impairments, which shall be considered in conjunction with each other if more than one exists.
- (2) The LHA shall determine whether non-elderly applicants for elderly/handicapped housing are handicapped persons of low income. Upon request, the applicant shall provide documentation sufficient for the LHA to be able to make a determination of eligibility. Such documentation shall be subject to third party verification. As part of the determination process the following actions and findings are necessary.
 - (a) The applicant shall provide certification by a physician documenting a physical or mental impairment which is expected to be of long and continued duration but at least for more than six months;
 - (b) the LHA shall determine that either certain special architectural design features or low-rent housing are not available in the private market and that the applicant is faced with living in an institution or decadent, substandard housing, or paying excessive rents; and
 - (c) the LHA shall determine an applicant to be of low income if the applicant's household income is within the income limits set for state-aided public housing.
- (3) Examples of a person with a qualifying physical impairment which may substantially impede his or her ability to live independently in conventional housing shall include but shall not be limited to a person:
 - (a) who is confined to a wheelchair;
 - (b) who, because of the use of braces or crutches, or because of the loss of a foot or leg, or because of an arthritic, spastic, pulmonary or cardiac condition walks with significant difficulty or insecurity;
 - (c) who, due to a brain, spinal or peripheral nerve injury, suffers from significant coordination deficits;
 - (d) who is blind within the definition of blindness set out in 111 CMR 5.06(4) or successor regulatory provision;
 - (e) who is deaf within the definition set out in M.G.L. 6, § 191; or
 - (f) who has a developmental disability which prevents the person from living totally independently and would benefit from the LHA's specialized housing (such a person may include but is not limited to a person with cerebral palsy, mental retardation, or epilepsy).

5.08: Determination of Qualification for Placement

(1) In making its final determination the LHA shall determine if applicant and household members are qualified for public housing. An applicant and the applicant household shall be disqualified for public housing for any of the following reasons:

(a) The applicant or a household member has disturbed a neighbor or neighbors in a prior residence by behavior, which if repeated by a tenant in public housing, would substantially interfere with the rights of other tenants to peaceful enjoyment of their units or the rights of LHA employees to a safe and secure workplace.

(b) The applicant or a household member has caused damage or destruction of property at a prior residence, and such damage or destruction of property, if repeated by a tenant in public housing, would have a material adverse effect on the housing development or any unit in such development.

(c) The applicant or a household member has displayed living habits or poor housekeeping at a prior residence, and such living habits or poor housekeeping, if repeated by a tenant in public housing, would pose a substantial threat to the health or safety of the tenant, other tenants, or LHA employees or would adversely affect the decent, safe and sanitary condition of all or part of the housing.

(d) The applicant or a household member in the past has engaged in criminal activity, or activity in violation of M.G.L. c. 151B §4, which if repeated by a tenant in public housing, would interfere with or threaten the rights of other tenants or LHA employees to be secure in their persons or in their property or with the rights of other tenants to the peaceful enjoyment of their units and the common areas of the housing development.

(e) The applicant or a household member who will be assuming part of the rent obligation has a history of non-payment of rent and such non-payment, if repeated by a tenant in public housing, would cause monetary loss; provided, however, that if the applicant or household member paid at least 50% of his/her household's monthly income for rent each month during a tenancy but was unable to pay the full rent, an eviction for non-payment of the balance shall not disqualify such individual from public housing pursuant to 760 CMR 5.08(1)(e).

(f) The applicant or a household member has a history of failure to meet material lease terms or the equivalent at one or more prior residences, and such failure, if repeated by a tenant of public housing, would be detrimental to the LHA or to the health, safety, security or peaceful enjoyment of other tenants or of LHA employees.

(g) The applicant or a household member has failed to provide information reasonably necessary for the LHA to process the applicant's application.

(h) The applicant or a household member has misrepresented or falsified any information required to be submitted as part of the applicant's application, or a prior application within three years, and the applicant fails to establish that the misrepresentation or falsification was unintentional.

(i) The applicant or a household member has directed abusive or threatening behavior which was unreasonable and unwarranted towards an LHA employee during the application process or any prior application process within three years.

(j) The applicant or a household member does not intend to occupy public housing, if offered, as his/her primary residence.

(k) The applicant or a household member is a current illegal user of one or more controlled substances as defined in M.G.L. c. 94C, §1. A person's illegal use of a controlled substance within the preceding 12 months shall create a presumption that such person is a current illegal user of a controlled substance, but the presumption may be overcome by a convincing showing that the person has permanently ceased all illegal use of controlled substances. This disqualification of current illegal users of controlled substances shall not apply to applicants for housing provided through a treatment program for illegal users of controlled substances.

(2) Prior to disqualifying an applicant under 760 CMR 5.08(1)(a) through (j), the LHA shall permit the applicant to show mitigating circumstances, which may include rehabilitation or rehabilitating efforts, sufficient so that when the potentially disqualifying behavior is weighed against the mitigating circumstances, the LHA is reasonably certain that the applicant or household member will not engage in any similar conduct in the future. In making this determination, the LHA shall consider all relevant circumstances including;

(a) the severity of the potentially disqualifying conduct;

(b) the amount of time which has elapsed since the occurrence of such conduct;

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(c) the degree of danger, if any, to the health, safety and security of others or to the security of the property of others or to the physical conditions of the housing development and its common areas if the conduct recurred;

(d) the disruption and inconvenience which recurrence would cause the LHA; and

(e) the likelihood that the applicant's behavior in the future will be substantially improved.

The greater the degree of danger, if any, to the health, safety and security of others or to the security of property of others or to the physical condition of the housing, the greater must be the strength of the showing that a recurrence of behavior, which would have been disqualifying, will not occur in the future.

Although an applicant or household member may have a history of non-payment of rent and not fit within the exception in 760 CMR 5.08(2)(e), mitigating circumstances shall be considered in determining qualification.

(3) In determining whether an applicant is qualified for participation in the AHVP, the LHA shall use the standards and procedures set out in 760 CMR 5.08(1) and (2).

5.09: Selection Categories

(1) Priority Categories. The LHA shall use the following priority categories in descending order in determining the order of tenant selection:

(a) 1st Priority - Homeless due to Displacement by Natural Forces an applicant, otherwise eligible and qualified, who has been displaced by:

1. fire not due to the negligence or intentional act of applicant or a household member;
2. earthquake, flood or other natural cause; or
3. a disaster declared or otherwise formally recognized under disaster relief laws.

(b) 2nd Priority - Homeless due to Displacement by Public Action (Urban Renewal) an applicant, otherwise eligible and qualified, who will be displaced within 90 days, or has been displaced within the three years prior to application, by:

1. any low rent housing project as defined in M.G.L. c. 121B, § 1, or
2. a public slum clearance or urban renewal project initiated after January 1, 1947, or
3. other public improvement.

(c) 3rd Priority - Homeless due to Displacement by Public Action (Sanitary Code Violations) an applicant, otherwise eligible and qualified, who is being displaced, or has been displaced within 90 days prior to application, by enforcement of minimum standards of fitness for human habitation established by the State Sanitary Code (105 CMR 410.000) or local ordinances, provided that:

1. neither the applicant nor a household member has caused or substantially contributed to the cause of enforcement proceedings, and
2. the applicant has pursued available ways to remedy the situation by seeking assistance through the courts or appropriate administrative or enforcement agencies.

(d) 4th Priority - Emergency Case under the Emergency Case Plan established by the LHA pursuant to 760 CMR 5.11.

(e) 5th Priority - AHVP Participant an applicant, otherwise eligible and qualified, who is living in a non-permanent, transitional housing subsidized by the AHVP.

(f) 6th Priority - Transfer for Good Cause.

(g) 7th Priority - Standard Applicant an applicant, otherwise eligible and qualified, who does not fit within any of the previous six priority categories.

(2) Preference Categories. Apart from the affirmative action preference to be applied pursuant to 760 CMR 5.10(3) the LHA shall apply the following preferences in descending order within each of the priority categories in determining the order of tenant selection:

(a) Veteran - Any veteran applying for elderly/handicapped housing receives this preference if the applicant resides in the community. A veteran applying for family housing receives this preference in all c. 200 units or, if the LHA has no c. 200 units, in 20% of c. 705 units. In c. 200 and c. 705 units the order of preference is as follows:

1. veterans with service-connected disability;
2. families of deceased veterans whose death was service connected; and
3. other veterans.

(b) Local Resident. Any local resident applying for public housing receives this preference.

5.10: Placements and Offers

(1) General Provisions for Placements.

(a) Placements are to be made in elderly/handicapped housing to achieve a mixed population of elderly households in 86.5% of the units and handicapped households in 13.5% of the units. The LHA shall place applicants in accordance with 760 CMR 5.10(2) in order to attain or to sustain these percentages. Such placements shall also be made in accordance with any applicable priority and preference categories and the affirmative action preference, if applicable.

(b) Any accessible or modified unit shall be offered to an applicant household which includes a person, regardless of age, who has a physical handicap which handicap necessitates one or more of the special design features of the unit.

(c) Except as provided in 760 CMR 5.10(1)(a) and (b) and subject to the affirmative action preference, if applicable, when a unit or rental assistance voucher becomes available, it shall be offered to the applicant for the applicable program with an appropriate household size who has the lowest control number in the highest preference category within the highest priority category.

(2) Placements by LHA in Elderly/Handicapped Housing. Prior to making a placement in elderly/handicapped housing, the LHA shall determine the LHA's current percentage of c. 667 units occupied by handicapped households. In making this determination the LHA shall count all c. 667 units including c. 667 congregate units, c. 667 section 8 new construction or substantial rehabilitation units, c. 667 modified units, and c. 667 conventional units. The LHA shall then place applicants as follows:

(a) If the percentage of units occupied by handicapped households is less than 13.5%, the LHA shall place one eligible and qualified handicapped household for each eligible and qualified elderly household placed until such time as the percentage of handicapped households equals or exceeds 13.5%.

(b) If the percentage of the units occupied by handicapped households equals or exceeds 13.5%, the LHA shall place eligible and qualified elderly households until such time as the percentage of handicapped households falls below 13.5%.

(c) If the percentage of units occupied by handicapped households equals or exceeds 13.5%, but the LHA has exhausted its waiting list of eligible and qualified elderly households, the LHA shall place those eligible and qualified handicapped households whose members have attained the age of 50 but are less than 60 years old until such time as the percentage of handicapped households falls below 13.5% or until there is an application from an eligible and qualified elderly household.

(d) If the percentage of units occupied by handicapped households equals or exceeds 13.5%, and the LHA has exhausted its waiting list of eligible and qualified elderly households and eligible and qualified handicapped households whose members have attained the age of 50 but are less than 60 years old, the LHA shall place eligible and qualified handicapped households, without regard to age, until there is an eligible and qualified elderly household or, in the absence of such an elderly household, an eligible and qualified handicapped household whose members have attained age 50 but who are less than 60 years old.

(3) Placement by LHA granting Affirmative Action Preference. On an annual basis each LHA shall determine whether the number of households in its family housing with at least one minority member and the number of minority households in its elderly/handicapped housing with at least one minority member meets the applicable affirmative action goal. If the number of households with at least one minority member for either type of housing fails to meet the LHA's goal, the LHA shall provide an affirmative action preference for the type of housing involved until the goal is met. If an LHA provides such a preference, the LHA, subject to Department approval, shall establish a placement rate by which it will place minority and non-minority applicants during the next 12 months. The rate shall not be higher than 33.33% nor less than 20% of all placements made for the housing involved. The affirmative action preference, when applicable, shall result in selection of the applicant with a household with at least one minority member and of appropriate size who has the lowest control number in the highest preference category within the highest priority category. The affirmative action preference shall not limit the placement of a minority household which would otherwise be due the next unit offer.

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(4) Offers to Applicants.

(a) An applicant offered a unit must accept the offer within seven days of the date of the written offer. For good cause the LHA may extend the time for response. An applicant is entitled to only one offer of a unit of appropriate unit size provided that the LHA shall offer another unit when the applicant provides reliable documentation establishing that the unit offered is inappropriate and would cause severe and unreasonable hardship. An applicant who fails to accept the offer of a unit within seven days or to provide such documentation within that period, shall be removed from the waiting list. After being removed from the waiting list, if the applicant files a new application with the LHA the applicant shall not be entitled to any priority or preference received on the prior application(s) for a period of three years.

(b) An applicant offered an AHVP voucher shall make a diligent search to locate an apartment within the time specified in 760 CMR 53.00. An applicant who is unsuccessful in locating a unit within such time shall lose the voucher, and the LHA shall remove the applicant from the AHVP waiting list. When an applicant is on the waiting list for elderly/handicapped housing and becomes an AHVP participant the LHA shall drop the applicant to the bottom of that waiting list.

(5) Transfer Offers.

(a) When making a transfer for good cause, the LHA shall make one written offer of a unit which is of appropriate unit size and appropriate for the tenant's documented medical needs (if any). A tenant must accept the transfer offer within seven days of the date of the offer. For good cause the LHA may extend the time for accepting the offer. A tenant who fails to accept a transfer offer of a unit of appropriate unit size within seven days shall be removed from the transfer list. After being removed from the waiting list, if the tenant files a new application with the LHA the tenant shall not be entitled to any priority or preference received on the prior application(s) for a period of three years unless there are mitigating circumstances deemed sufficient by the LHA.

(b) An LHA may decide at any time to initiate a transfer for administrative reasons. Such a transfer must be implemented in a manner consistent with the relevant provisions of the tenant's lease and/or applicable law.

(c) An LHA may only make a transfer to the AHVP upon application by a handicapped household.

5.11: Emergency Case Plan

Each LHA shall have an emergency case plan approved by the Department. It shall set out circumstances under which the LHA shall grant emergency case status to homeless applicants. Each emergency case plan shall be reasonably reflective of the needs of persons who are homeless, in abusive situations, or encountering severe medical emergencies. The emergency case plan shall be posted at all times in the LHA's administrative office where applications are received and shall be a public document. Any granting of or denial of emergency case status shall be made only after verification of circumstances warranting emergency case status. Non-receipt of requested documentation, without good cause established by applicant, shall be cause for determining applicant unqualified.

5.12: Verification Procedures

(1) At the time of determining final eligibility and qualification, the LHA shall require an applicant to provide the LHA access to reliable and reasonably obtainable documentation verifying the accuracy of information appearing on the application form or otherwise necessary for the LHA's determination. Income of applicants shall be verified by the procedure specified for rent determination. If the LHA has verified any information when making a preliminary determination of eligibility for the applicant, the LHA shall reverify such information on its final determination of eligibility and qualification. Non-receipt of requested documentation, without good cause established by applicant, shall be cause for determining applicant unqualified.

(2) The LHA shall require an applicant to provide the names and current addresses of all landlords (or housing providers) for applicant and household members during the period five years prior to application through the date of the final determination.

5.12: continued

If, after request the LHA has failed to receive a reference from a landlord (or housing provider) it shall notify applicant of non-receipt, and the LHA shall request that applicant use his or her best efforts to cause the landlord (or housing provider) to submit the reference to the LHA. In the event the applicant uses his or her best efforts but is unsuccessful, the applicant shall cooperate with the LHA in securing information from other sources about the tenancy. Non-receipt of a reference from a landlord (or housing provider) shall be cause for determining an applicant unqualified unless the applicant can show that he or she has used best efforts to secure the reference and that he or she has complied with reasonable requests for cooperation in securing other information.

(3) In determining qualification the LHA shall check Criminal Offender Record Information and may also check: public records; other sources of public information; credit reports; and other reliable sources. The LHA may also make a home visit, which shall be scheduled reasonably in advance. Observations by the person making such a visit shall be promptly reduced to writing and placed in the applicant's file.

(4) Information regarding eligibility or qualification may be obtained by the LHA from interviews with the applicant and with others, from telephone conversations, letters, or other documents, and from other oral or written materials. All such information received shall be recorded in the applicant's file including the date of its receipt, the identity of the source, and the person receiving the information.

5.13: Review of Denial of Eligibility, Qualification, Priority Status, or Preference Status

(1) The Private Conference between Applicant and LHA. An applicant shall be entitled to a private conference with the LHA as follows:

(a) Notice of a Pre-Conference Determination. If upon a preliminary or final determination the applicant is determined ineligible or unqualified, or if the applicant is determined not to be eligible for a priority category or a preference category for which applicant applied, the LHA shall mail written notice of the determination to applicant at applicant's last known address. The notice shall set out the reason for the adverse determination and shall advise applicant of the provisions of the following paragraph concerning applicant's right to request a private conference with the LHA. The notice shall state that the applicant may be represented at the private conference by counsel or by another person of applicant's choice at the applicant's expense.

(b) Request for a Private Conference. Within 20 days of mailing of notice of a pre-conference determination, the applicant may request a private conference with the LHA. The request for a private conference shall be made in writing and shall be delivered or mailed to the LHA within such 20 day period.

(c) Purpose of the Private Conference. The purpose of the private conference shall be to enable the applicant to discuss with the LHA the reasons underlying the pre-conference determination and to permit consideration of all pertinent information on a new determination of eligibility, qualification and/or priority or preference status.

(d) Scheduling the Private Conference. Promptly after receipt of a request for a private conference the LHA shall notify the applicant of a time, date and place for the private conference. The date shall be within 30 days from the LHA's receipt of the request. Thereafter, for good cause and with notice to applicant the LHA may reschedule the private conference to a later date. Unless the applicant agrees to a shorter period of time, the applicant should receive at least seven days prior notice of the time and date of the private conference.

(e) Applicant's Access to LHA Records. Prior to and at a private conference, the applicant or his or her representative shall have the right to inspect the documentation on the basis of which the pre-conference determination was made and any other documentation pertinent to the applicant's eligibility, qualification or entitlement to priority or preference status. The LHA shall make reasonable arrangements for photocopying any such documentation as applicant may specify with sufficient advance notice.

5.13: continued

(f) Procedure at the Private Conference. The executive director shall conduct the private conference or shall designate one or more impartial persons to do so. Selection of persons who made the pre-conference determination shall be avoided unless the executive director deems there to be good reason for their selection. The conference officer or officers shall conduct the private conference fairly. Procedure shall be informal. At the private conference, applicant or applicant's representative may offer applicant's own testimony, may question the LHA on pertinent matters, and may offer other testimony, documentation, information, and argument. The LHA may also offer testimony, documentation, information, and argument. The applicant and the LHA may question each other's witnesses. Upon request the LHA may give the applicant additional time to secure documentation or information.

(g) Tape Recordings or Notes of The Private Conference. The LHA shall tape-record the private conference or shall take accurate notes of what occurred. If the applicant makes a written request at least two days before the private conference, the LHA shall tape-record the private conference, unless there is a good reason why it is unable to do so.

(2) The LHA's Decision Following a Private Conference. Within 15 working days after the close of a private conference or as soon thereafter as reasonably possible, the LHA shall notify the applicant in writing of its decision with an explanation of its reasons and shall specify any change, if appropriate, in the prior preliminary determination of the applicant's eligibility, qualifications, and/or priority or preference status. The decision shall be mailed to applicant and applicant's representative, if any, at their last known addresses. Included with a decision shall be notice about the applicant's right to request reconsideration and about the applicant's right to request review by the Department.

(3) The Right to Request Reconsideration of the LHA's Decision. If the LHA's decision following a private conference is adverse to the applicant, within 14 days from the date on which the LHA's decision was mailed, the applicant may mail or deliver to the LHA a written request that the LHA reconsider its decision. The reason or reasons for the request shall be specified. If the applicant has new information relevant to the factual basis of the adverse decision, this new information should be included with the request. Following receipt of a request for reconsideration the conference officer or officers shall review the request for reconsideration, and shall notify the applicant in writing whether or not the prior decision would be changed and, if so, shall specify the changes. Included with the decision on a request for reconsideration shall be notice about the applicant's right to request review by the Department.

(4) The Right to Request Department Review of the LHA's Decision. If the LHA's decision following a private conference or its decision following a request for reconsideration is adverse to the applicant, the applicant or his or her representative may request a review of the adverse decision by the Department. The request for review shall be in writing and shall be delivered or mailed to the Department at 100 Cambridge St., Boston, MA 02202. The request for review must be received by the Department or must be mailed in a properly addressed envelope post-marked no more than 21 days from the date on which the LHA's decision was mailed to applicant. If applicant shows good cause for a late request for review, the Department may permit a request for review to be received late. If an applicant requests reconsideration pursuant to 760 CMR 5.13(3), a request for review by the Department should not be made until after the decision on reconsideration.

(5) Department Review. Review by the Department shall be in accordance with any applicable law. The purpose of review is to ensure uniform and consistent application of the eligibility and selection criteria by LHAs. The scope of review shall be whether there was an adequate factual basis for a determination by the LHA and whether the determination was made in accordance with the regulations and other applicable law or authority.

5.14: Update and Reclassification of Waiting List

The LHA shall update and reclassify all applications on file at least once in every three years in the following manner:

5.14: continued

- (1) The LHA shall contact each applicant:
 - (a) to determine whether or not:
 1. applicant is still interested in obtaining housing through the LHA;
 2. the applicant is still preliminarily eligible;
 3. the applicant's preference and priority status remain the same; and
 - (b) to advise the applicant that a failure to respond will result in removal of the application from the waiting list. Any applicant, whose application is so removed from the waiting list shall be given notice of the removal and the right to request a private conference.
- (2) The LHA shall review all updated information and may change its determination of preliminary eligibility and priority and/or preference status. The LHA shall notify each applicant of its determination and the right to request a private conference.

5.15: Waiver Provision

An LHA may submit to the Department for approval changes to the eligibility and selection criteria set out in 760 CMR 5.00. The LHA shall consult with the local tenant organization(s) prior to submitting any such changes to the Department. The LHA shall specify in writing the reason why each change is requested. The Department in its discretion may approve a change if it determines that good cause exists for the change(s) and that the change is reasonable under the circumstances and will be consistent with all applicable provisions in M.G.L. c. 121B.

5.16: Administration

- (1) From time to time the Department may develop and issue guidelines and or standard forms to be utilized by the LHA in connection with the provisions of 760 CMR 5.00 and with reports required by the Department. It is the responsibility of each LHA to ensure that it is adhering to the current guidelines and utilizing all current forms.
- (2) The LHA shall maintain permanent handwritten ledgers including a master file ledger and waiting lists ledgers. The LHA shall maintain the Department's prescribed on-line vacancy ledger in accordance with guidelines issued by the Department as they may be amended from time to time. Waiting lists and vacancy ledgers indicating the applicant's control number shall be considered public information; and, upon request, shall be available for public inspection.
- (3) Any notice to an applicant or tenant, who is known not to speak English, shall bear a notice in commonly spoken foreign languages of the importance that the notice be translated.
- (4) Board members shall not be involved in LHA decisions on applications for housing.

REGULATORY AUTHORITY

760 CMR 5.00: M.G.L. c. 121B, §§ 29 and 34; c. 23B and FY 2012 Budget, Line Item 7004-0099.

(PAGES 49 THROUGH 54 ARE RESERVED FOR FUTURE USE.)