

Massachusetts Law Reform Institute

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Comments on the 2004 Draft QAP

Dear Ms. Gumble and Ms. Racer:

Thank you for the opportunity to testify on January 5 regarding DHCD's draft FY 2004 QAP for the Low Income Housing Tax Credit Program. We understand that DHCD would like written comments by today, January 7. Because of time constraints, we are unable to submit comments other than the notes from Ms. Liben's oral testimony. We ask your indulgence for this rough presentation, but time does not permit a more elegant statement.

In these comments, we refer to various studies and reports. We believe that DHCD has all of this material, but please let Judith Liben know if you would like her to forward more specific cites. Also, as Ms. Liben pointed out yesterday, we had only a short time to review the draft and therefore we may not have understood it correctly, or may have misread some of the numerous provisions. If so, please let us know and we will modify our comments appropriately.

Comments on the 2004 Draft QAP

1. This testimony will focus on the civil rights and fair housing impact of the QAP and its provisions concerning housing for poor families.
2. The commonwealth, including DHCD, is strictly obligated under federal and state civil rights and housing laws to investigate and analyze the fair housing effects of all of its programs, and to take affirmative steps to reduce racial segregation and high concentrations of poverty in the administration of those programs. Accordingly, DHCD is required to adopt civil rights guidelines for the tax credit program and to develop policies that enhance opportunities for non-segregated housing, across a spectrum of communities in the commonwealth.
3. These laws include (but are not limited to):

- a. Fair Housing Act of 1968;
 - b. Title VI of the Civil Rights Act of 1964;
 - c. LIHTC regulations at 26 CFR §1.42-9(a)
 - d. G.L. 151B;
 - e. Various federal executive orders
 - f. 760 CMR 47
 - g. Massachusetts Executive Order 215
 - h. Consolidated Plan requirements
4. All these laws require that in administering programs such as the tax credit program, the Commonwealth must directly address issues of fair housing by, at a minimum:
- a. analyzing barriers to fair housing choice;
 - b. taking appropriate actions to overcome the effects of impediments; and,
 - c. keeping records reflecting the analysis and showing the actions taken.
5. HUD instructs states administering programs such as the tax credit program to:
- a. Undertake a comprehensive review of a jurisdiction's laws, regulations, and administrative policies, procedures, and practices (this includes the tax credit program);
 - b. Do an assessment of how those laws, regulations and practices affect the location, availability, and accessibility of housing;
 - c. Do an assessment of the availability of affordable, accessible housing in a range of unit sizes;
 - d. Take appropriate actions to provide fair housing choice for all and fostering compliance with the nondiscrimination features of the Fair Housing Act.
6. For the past three years we have been asking DHCD to undertake the basic and required steps to incorporate fair housing principles into the tax credit program and to use the program as a lever to achieve wider housing opportunities - especially for very low, and extremely low-income families of color. We have consistently pointed out that the commonwealth's tax credit program lacks any statewide site review standards to limit racial and economic isolation. This year, we hope is the last time that this testimony will be necessary.
7. In our comments on the last three years draft QAPs, we have stressed that DHCD must begin by asking and answering two critical questions:

- a. What are the patterns of racial segregation in Massachusetts, and
 - b. Does the QAP work to correct problems of residential segregation and regional inequities?
8. The answer to the first question is that most metropolitan areas in the state are highly segregated - especially as between city and suburbs.
9. The answer to the second question is that the QAP has not, and does not now deal with the problem, even though it is legally obligated to do.
10. Here are few aspects of the context that DHCD must consider when planning the tax credit program:
- a. Recent analysis of 2000 census shows that among the 331 metro areas, Lawrence, Massachusetts is the most segregated in the nation as between whites and Hispanics, with a score of 75 (out of 100).
 - b. Further, the study shows that eight Massachusetts metro areas are among the most segregated in the country as between whites and Hispanics. Those metro areas are:
 - Lawrence (#1, the most segregated in the nation, with a score of 75);
 - Providence-Fall River (#3, with a score of 68);
 - Springfield (#9, with a score of 63);
 - Lowell (# 14, with a score of 61);
 - Worcester (#17, with a score of 61);
 - Boston (#22, with a score of 59);
 - Brockton (#25, with a score of 58);
 - New Bedford (#31, with a score of 56).
 - c. Although segregation between whites and blacks in Massachusetts metro areas is slightly less dramatic than that between whites and Hispanics, it is nevertheless significant.

- i. Of the 331 metro areas in the nation, Boston is the 54th most segregated between whites and blacks, with a score of 66.
 - ii. Springfield is #65, with a score of 64;
 - iii. Brockton is #69, with a score of 64;
 - iv. Providence-Fall River is #107, with a score of 59.
11. Recent studies show that the Boston metro suburbs remain *overwhelmingly* white.
12. For a variety of reasons, poor and minority families have only limited opportunities to move from high poverty, racially isolated neighborhoods to lower poverty, more integrated communities with better housing, better schools and better employment opportunities.
13. Recent studies tell us that this segregation is not primarily caused by income inequality as DHCD's analysis of impediments would have us believe.
14. One reason, of course, is that not all communities are doing their fair share to provide affordable, racially integrated housing.
 - a. As an example - consider the characteristics of some of the communities most opposed to the Massachusetts comprehensive permit law, chapter 40B:

PROMINENT ANTI-40B COMMUNITIES BY NUMBER OF 40B UNITS, RACE AND INCOME

	40B Units	%	Non-Hisp. White	Median Family Income
	Massachusetts		81.9%	\$61,664
1.	Taunton 1,442 (6.30%)		91.7%	\$52,433
2.	Woburn 877 (5.73%)		89.0%	\$66,364
3.	Plymouth 748 (3.94%)		94.8%	\$63,266
4.	Stoughton 727 (6.97%)		87.5%	\$69,942
5.	Canton 640 (7.87%)	91.6%		\$82,904
6.	Mansfield 577 (7.14%)		94.3%	\$78,058
7.	Marshfield 361 (3.96%)		97.7%	\$76,541
8.	Norton 322 (5.42%)	92.1%		\$71,848
9.	Scituate 292 (4.25%)		96.2%	\$86,058
10.	Foxborough 217 (3.47%)		97.1%	\$78,811
11.	Billerica 216 (1.65%)		94.7%	\$72,102
12.	Bridgewater 206 (2.70%)		87.3%	\$73,953
13.	Sharon 202(3.36%)	89.3%		\$99,015
14.	Kingston 138 (3.16%)		97.0%	\$65,101
15.	Duxbury 172 (3.37%)		98.2%	\$106,245
16.	Hingham 172 (2.35%)		97.5%	\$98,598
17.	Cohasset 76 (2.76%)		97.8%	\$100,137
18.	Marion 31 (1.48%)	92.2%		\$74,265
19.	W. Newbury 26 (1.84%)		98.5%	\$99,050
20.	Boxborough 12 (0.63%)		<u>87.8%</u>	<u>\$110,572</u>
Total	7,454 units		93.5% white (community avg)	\$81,264 (community avg)

15. Recent studies continue to demonstrate that folks in poor minority communities have worse schools, are farther away from employment and in general experience conditions that are more difficult than other communities.
16. And all long-term studies show that there are significant, long term benefits for families who move to lower poverty neighborhoods.
17. Given this state of affairs, how does the commonwealth's tax credit program work to improve the system of regional segregation by race and income?

18. The problem is that DHCD cannot begin to answer that question or to understand the program's impact since it does not collect the information necessary to even approach the question?
 - a. Data collection and analysis is the most basic and easily accomplished aspect of the legal duty to "affirmatively further fair housing." Nevertheless, although explicitly alerted to this responsibility for the at least the last three years, DHCD does not gather and analyze information which would allow it to identify civil rights problems, assess the impact of its programs, and guide the agency in efforts to address the causes and cures. Nor does DHCD track and monitor performance of recipients of tax credit resources to determine the effect of the funding and whether the programs have furthered fair housing or otherwise addressed patterns of segregation.
 - b. The courts and HUD have stressed that this is the first step to developing a programmatic approach to address issues of segregation and regional inequities and DHCD has failed in this regard.
19. Lacking the necessary data from the administering agency, we will refer to HUD reports. These demonstrate that in Massachusetts tax credit units are disproportionately located in poor, minority, central cities. HUD's most recent report covering the years from 1995 - 2000 reveals that:
 - a. 69% of tax credit units are located in central cities compared to 48% of all rental units in the state.
 - b. 26% of tax credit units are in suburban areas compared to 49% statewide.
 - c. 37% of tax credit units are in census tracts where more than 30% of people are poor while statewide only 10% of all rental units are located in such tracts
 - d. 50% of tax credit units are in areas where more than half the people are minority while statewide only 16% of all rental units are located in such tracts.
20. In short, the apparent result of DHCD's tax credit allocation - no matter what the intent - is that an undue number of units are in poor and minority areas and the program appears to do little to provide substantial expanded housing opportunities poor families in general, and especially for families of color.
21. While we appreciate the provisions of the QAP which do address these issues,¹ their

¹The QAP contains an affirmative action selection requirement which has some promise. However, the requirement is not explained and it is not clear what it means. At least for Boston the requirement is quantified and the entire requirement should be similarly quantified. We know that DHCD understands how to address issues of

positive effect are far outweighed by other aspects of the scoring system which we will comment on below.

Comments on Threshold Requirements

22. Threshold #1 - set aside categories.

- a. **New production set aside:** The QAP requires that at least 75% of new units have 2 or more bedrooms. This is a good start, but there should be even greater preference for new developments with units with more than 2 bedrooms
- b. **Preservation set aside:** The QAP describes DHCD's "preference for projects that *include* units suitable" for families. This provision is far too vague. What does "include" mean? DHCD should clarify that preference is given for projects that are substantially suitable for families with children.

23. Threshold # 3 - Local support:

- a. Given the fact that so many non-urban communities are over 95% white and many have demonstrated overt hostility to the development of affordable housing, this requirement should be deleted or given a very low score

race discrimination in admissions to housing and has developed good models in its public housing admissions regulations and 40B guidance which require racial data collection and the use of a nondiscriminatory admissions policies in communities that are disproportionately white.

Another positive provision is the 6 bonus points for developing large family projects in towns with less than 10% affordable housing.

- b. The plan puts too heavy a burden on developers who want to do work in communities that are racially segregated and that have shown hostility to affordable housing by requiring the sponsor to demonstrate “substantial efforts to meet local concerns and obtain chief elected official’s support.” Developers are already dissuaded from making the effort to work in these communities - DHCD should not be making their job harder.

24. Threshold #9 - Commitment to 30 yr term of affordability:

- a. The QAP should require permanent affordability as several other states have done. If not in perpetuity, at least DHCD should align this durational requirement with the 3 point preference it gives for 50 year affordability. In other words, there should be a minimum 50 yr affordability period.

25. **Threshold #11 - inclusion of units for Very Low Income persons or families:** Does DHCD mean to say “Extremely Low Income” since the text says must reserve 10% for under 30% of AMI? Please clarify/

Comments on Fundamental Project Characteristics:

26. **Readiness to proceed:** DHCD should temper this requirement for projects facing local hostility in non 40B communities.

Comments on Special Project Characteristics

27. **There should be a preference for families with children and for homeless families.** It is nothing short of irresponsible to administer a tax credit program that fails to explicitly address issues of family homelessness. The Governor has taken the trouble to establish a commission and report on the dramatic rise of homelessness in the state, yet our primary production program pays no attention to the problem.
28. **QAP should stress and explain certain provisions of the Sustainable Development Principles that would further fair housing.** Included in these principles (worth 14 points) are:
 - a. **#3 - Fairness** (“Promote equitable sharing of the benefits and burdens of development . . .to ensure social, economic and environmental justice.”) The QAP does little to address this.
 - b. **# 6 Coordinate housing with the location of jobs, transit and services.** This should be part of what DHCD means by “neighborhood revitalization” in qualified census tracts.

- c. **# 10 - Plan regionally:** We don't see how is this reflected in the QAP?
29. Official local support: 6 is too many points for the reasons above. There should be no such preference, or only minimal points.
30. **Neighborhood revitalization effort in Qualified Census Tracts:**
- a. Neighborhood revitalization should mean much more than the description on page 37. It should include requirement that housing is part of a broader plan that includes employment opportunities - similar to the OCD principles and more. If tax credits are used in poor and minority communities, they should be combined with other resources to create expanded (and more racially integrated) opportunities for residents of these areas - all without gentrification and displacement.
31. **Preference for developments in non-40B communities:**
- a. This is a good preference that encourages development across a broad array of communities. Unfortunately, its effect is undercut by the 14 point preference for EO 418 certified communities for the reasons described below. Also, we don't quite understand why the preference is limited to "large family housing projects."
32. **Preferences for developments that conform to §42 statutory preferences.** The way the QAP sets this up, the preferences for these important social policy goals are minimized.
- a. QAP gives 6 pt maximum total for *either*: a) extended affordability; b) lowest income served; or c) located in a QCT.
- b. The QAP should award 6 points *each* -at least for extended affordability and lowest income served because these are such important social values.
- c. Duration of affordability: Developer can get 6 pts for affordability in perpetuity; 3 pts for 50 year affordability. At a minimum, DHCD should increase the threshold requirement of 30 year affordability to 50 years to be consistent with this 3 point preference.
- d. 10% set aside for households under 30% of AMI: This is already a threshold requirement so it doesn't make sense to award preference points for the same thing. Instead, the Plan should give separate preference points for proposals that reserve *more than* 10% for extremely low income, especially families with children.

33. 14 point bonus for proposals in 418 certified communities:
- We have repeatedly pointed out the perverse effect of this bonus.
 - This year, it is even worse because there are now fewer and fewer 418 certified communities (because now they actually have to show some housing).
 - A quick cont revealed that only about 102 out of 351 communities are 418 certified in FY 2004. 249 communities are not certified and thus developers are blocked from 14 preference points if they try to propose housing in two-thirds of the cities and towns in the commonwealth.
34. **There are at least three reasons why EO 418 certified communities should not be part of the QAP scoring:**

- First reason, possible civil rights violation:** DHCD must, but has not, do a thorough fair housing analysis of the effect of this preference. It should start by examining all communities that are not 418 certified in order to determine if sponsors are dissuaded from attempting projects in towns that are racially segregated.

For example, 17 out of the 20 most vocal anti 40B towns are not certified

1.	Taunton	1,442 (6.30%)	91.7%	\$52,433
2.	Woburn	877 (5.73%)	89.0%	\$66,364
3.	Plymouth	748 (3.94%)	94.8%	\$63,266
4.	Stoughton	727 (6.97%)	87.5%	\$69,942
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- b. If, for example, a developer wants to build affordable, racially integrated housing in Hingham (97.5% white, median income almost \$99,000), the developer won't get the 14 bonus points and probably won't get local support.
 - c. Denial of a 14 point preference may be just what many towns want since it may help them avoid additional affordable housing. DHCD should be encouraging such developments rather than hindering them.
 - d. And is likely illegal under fair housing laws to deny substantial bonus points to those who try to develop in white suburbs with restrictive zoning. This preference basically makes it harder for developers to build in suburbs and also in many smaller cities.
35. Second reason, EO 418 denies preference for discretionary funds to *communities* - not to sponsors trying to develop affordable housing in these communities. It shouldn't even apply to the QAP.
36. Third reason, Denying 14 bonus points for proposals in non-418 certified communities often conflicts with the Commonwealth's sustainable development principles.
- a. For example, here are a few of the over 200 communities that are not EO 418 certified and yet may be good " smart growth" candidates under the sustainable development principles: Arlington,, Belmont, Brookline, Billerica, Bridgewater, Chelmsford, Concord, Braintree, Burlington, Danvers, Dedham, Dracut, Everett, Fitchburg, Framingham, Gloucester, Haverhill, Hanover, Lexington, Lincoln, Malden, Maynard, Melrose, Medford, Milton, Needham, Natick, North Andover Plymouth, Salem, Saugus, Stoneham, Tewksbury, Taunton.
 - b. And a final note: EO 418 is another major state initiative involving millions of dollars in public expenditures and preferences for state resources in which there are no analyses about the effect of the Executive Order on deconcentrating poverty and creating non-segregated housing. In violation of fair housing and civil rights laws, the state will give 418 benefits to a community even if it has restrictive zoning practices that violate fair housing laws and the Allocation Plan bolsters that error.

CONCLUSION

Each year DHCD applies for and receives federal funds and certifies that it has *affirmatively furthered fair housing* in the administration of all of its programs. Despite this certification, DHCD has not administered its programs in a manner that will address the state's stark pattern of regional inequity and residential segregation, and has not made the effort to educate itself about the fair housing impact of its programs. DHCD and other state entities distribute millions of federal and state housing and community development dollars which *could* directly affect the geographic availability of housing opportunities available to poor and minority families, especially those living in urban high poverty neighborhoods. Nevertheless, the funds appear to be distributed with little if any consideration for fair housing concerns.

We hope that this will be the year that DHCD and other state agencies create real fair housing guidance to enable them to fulfill their legal and moral obligation to use state resources to address concentrations of poverty and racially segregated neighborhoods and the exclusion of poor and minority people from many communities in the state.

We urge DHCD to harness all of its programs to fulfill its duty to further fair housing and break down barriers to a truly “fair share” development of affordable, racially integrated housing. We look forward to assisting DHCD to achieve this goal.

Sincerely,

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