

760 CMR 5.00: ELIGIBILITY AND SELECTION CRITERIA

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5.01: Waivers Granted Prior to Effective Date

Effective April 10, 2019, any waivers of 760 CMR 5.00 for a tenant selection plan at a local housing authority (LHA) are hereby revoked, unless expressly renewed in writing 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 applies to applicants and participants in the Massachusetts Rental Voucher Program (MRVP) only to the extent that 760 CMR 49.00: *Massachusetts Rental Voucher Program* expressly states that 760 CMR 5.00 shall govern.

(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 Mass Housing. 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 5.10(3).

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 younger than eight years old 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, 21 years of age or older, 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.

5.03: continued

(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 105 CMR 410.00: *Minimum Standards of Fitness for Human Habitation (State Sanitary Code: Chapter II)* 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.

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

Elderly Persons of Low Income. Persons having reached 60 years of age or older who are income eligible for state-aided public housing. As used in 760 CMR 5.00, Elderly Person shall mean an elderly person of low income.

Elderly/Handicapped Housing. St. 1954, 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 interdependent 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.

5.03: continued

Family Housing. St. 1948, c. 200 or St. 1966, c. 705 housing managed pursuant to the provisions of M.G.L. c. 121B, § 34.

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

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 in 760 CMR 5.00, Handicapped Person shall mean a handicapped person of low income.

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;
- (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; and
- (e) has been or is about to be displaced from a Primary Residence.

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.

Local Housing Authority shall include a regional nonprofit corporation or other entity under contract to the Department to administer the AHVP and the MRVP where made applicable pursuant to 760 CMR 49.00: *Massachusetts Rental Voucher Program*.

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. Each person may select up to two cities or towns for the purpose of Local Residence, one for residency and one for employment. 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 by residency, 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. In the event that the applicant is employed in more than one city or town, the applicant may select one community for local preference on the basis of employment.

Minority:

- (a) Asian - with origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent;
- (b) Black or African American - with origins in any of the black racial groups of Africa;
- (c) Hispanic/Latino - of Mexican, Puerto Rican, Cuban, Central or South American origin;
- (d) American Indian or Alaska Native - with origins in any of the original peoples of North and South America, and who maintains tribal affiliation or community attachment; or
- (e) Native Hawaiian or Other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands;

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.

Statewide Online Application System. An internet application system developed by the Department required to be used by all LHAs to manage their applications and waiting lists for state-aided family and elderly/handicapped public housing.

## 5.03: continued

Transfer for Administrative Reasons. Transfer of a household from one unit to another within one LHA 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 within one LHA 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: *Alternative Housing Voucher Program*.

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 pursuant to 760 CMR 4.07: *LHA Fair Housing Marketing Plan* 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 established pursuant to 760 CMR 5.10(3) for the respective program.

## 5.05: Application Procedures

(1) Every applicant shall use the Statewide Online Application System or application forms approved by the Department. The application forms shall be available at all LHAs' central offices or, upon request, by mail. LHAs shall provide reasonable assistance to applicants in completing the application forms. When an applicant submits a paper application form at any LHA, the LHA shall accept the application and promptly enter the information thereon into the Statewide Online Application System.

(2) Every application entered into the Statewide Online Application System shall receive a date and timestamp for each program at each LHA to which the application is made. Applicants may return to their online applications to view their application status and to make changes at any time. Applicants may also make changes at any LHA in person or by mail.

## 5.05: continued

(3) Determinations of Priority, Preference, Eligibility and Qualification.

(a) When an applicant approaches the top of a waiting list for an LHA program to which the applicant has applied, the LHA shall make a final determination of the applicant's priority, preference, eligibility and qualification. The applicant shall update the application and provide any additional information or verification reasonably required by the LHA.

(b) If the LHA determines that an applicant is not eligible for a claimed priority or preference or is ineligible or unqualified for housing, it shall send written notification to the applicant of:

1. the determination;
2. the reason(s) for the determination detailing the material facts; and
3. the right to request a private conference to redetermine the applicant's priority, preference, eligibility and/or qualification pursuant to 760 CMR 5.13.

After a final determination of priority, preference, eligibility and/or qualification has been made by the LHA, that determination will govern the application only for the application to that program at that LHA in the Statewide Online Application System. If an applicant who has been removed from the waiting list reapplies for any program at that LHA, the reapplication will receive a new date and time stamp, and new final determinations shall be made on the application when the application reaches the top of the waiting list.

(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.

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.

(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.

## 5.07: continued

(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 blind person set out in 111 CMR 3.03: *Definitions*;
- (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 nonpayment of rent and such nonpayment, 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 or her household's monthly income for rent each month during a tenancy but was unable to pay the full rent, an eviction for nonpayment of the balance shall not disqualify such individual from public housing pursuant to 760 CMR 5.08(1)(e).

## 5.08: continued

- (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 or 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;
- (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) 1<sup>st</sup> 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) 2<sup>nd</sup> 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:

## 5.09: continued

1. any low rent housing project as defined in M.G.L. c. 121B, § 1;
  2. a public slum clearance or urban renewal project initiated after January 1, 1947; or
  3. other public improvement.
- (c) 3<sup>rd</sup> 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 105 CMR 410.000: *Minimum Standards of Fitness for Human Habitation (State Sanitary Code: Chapter II)* 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) 4<sup>th</sup> Priority. Other Priority situations as described in the Housing Situation Priority Policy established by the Department pursuant to 760 CMR 5.11.
- (e) 5<sup>th</sup> Priority. AHVP Participant an applicant, otherwise eligible and qualified, who is living in a non-permanent, transitional housing subsidized by the AHVP.
- (f) 6<sup>th</sup> Priority. Transfer for Good Cause.
- (g) 7<sup>th</sup> 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. A veteran applying for family housing receives this preference in all St. 1948, c. 200 units or, if the LHA has no St. 1948, c. 200 units, in all St. 1966, c. 705 units. In St. 1948, c. 200 and St. 1966, 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 earliest date and time stamp 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 St. 1954, c. 667 units occupied by handicapped households. In making this determination the LHA shall count all St. 1954, c. 667 units, including St. 1954, c. 667 congregate units, St. 1954, c. 667 section 8 new construction or substantial rehabilitation units, St. 1954, c. 667 modified units, and St. 1954, c. 667 conventional units. The LHA shall then place applicants as follows:

## 5.10: continued

(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 50 years of age, but are younger 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 50 years of age, but are younger 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 50 years of age, but who are younger than 60 years old.

(3) Placement by LHA Granting Affirmative Action Preference. Affirmative Action Goals have been established for many LHAs as a specific remedy for discriminatory effects in tenant selection. The affirmative action preference in placement remains in effect, subject to review by the Department and applicable law. 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 in placement 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 LHA shall establish the percentage of its placements to which the preference shall apply for each type of housing involved; such percentage shall not be higher than 33.33% nor less than 20% of placements made for any type of housing. The affirmative action preference in placement, when applicable, shall result in selection of applicants with at least one Minority household member for a unit of appropriate size in accordance with the highest preference category within the highest priority category of general applicability. The affirmative action preference shall not limit the placement of a Minority household which would otherwise be due the next unit offer.

(4) Offers to Applicants.

(a) An applicant offered a unit must accept the offer within seven business 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 business days or to provide such documentation within that period, shall be removed from the waiting list for that program at that LHA and after being removed from the waiting list, if the applicant files a new application with that LHA, the applicant shall not be entitled to any priority or preference previously received based on information provided in that application for a period of three years. The LHA shall give the applicant notice of the removal of the application from the LHA's waiting list for that program and the right to request review pursuant to 760 CMR 5.13.

## 5.10: continued

(b) An applicant who fails to accept three unit offers as set out in 760 CMR 5.10(4)(a) within a five-year period shall be removed from the waiting lists for all programs at all LHAs in the Statewide Online Application System for which the applicant applied, and any new application filed by the applicant for those programs at those LHAs will not be entitled to any priority or preference received based on information provided in prior applications for a period of three years. The LHA that made the third offer shall give the applicant notice of the removal and the right to request review pursuant to 760 CMR 5.13. An LHA conducting a review after a third failure to accept an offer may not consider the circumstances of the application's removal for failure to accept the first and second offers made, unless the applicant can clearly demonstrate a compelling reason for not requesting a timely review of the prior removals.

(c) An applicant offered an AHVP voucher shall make a diligent search to locate an apartment within the time specified in 760 CMR 53.00: *Alternative Housing Voucher Program*. 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: Housing Situation Priority Policy

The Housing Situation Priority Policy issued by the Department sets out the criteria to be used by LHAs to determine the Priority to be granted to the applications of Homeless Applicants. The Priority of an application on the LHA waiting list shall be initially set by the Statewide Online Application System based on the unverified Housing Situation that is claimed by the applicant on the application form. When an application nears the top of an LHA's waiting list, the LHA shall require the applicant to provide verification of the Housing Situation that was claimed on the application. If the applicant fails to submit all documentation necessary to verify the Housing Situation that was claimed on the application within ten business days of the LHA's request for verification, then the application will be granted Priority 7 Standard. If at any subsequent time the applicant submits verification of the previously claimed Housing Situation, the LHA will grant the verified Priority as of the date and time of the applicant's initial claim. If an applicant submits documentation that fails to verify any criteria of the claimed Housing Situation Priority, then the LHA shall deny the Priority and inform the applicant of the right to appeal the determination pursuant to 760 CMR 5.13.

An applicant may claim or delete an existing claim of Housing Situation Priority at any time. Any grant of a claimed Priority by an LHA shall be made only after verification of the circumstances that meet the criteria for the Priority as set out in the Housing Situation Priority Policy. Any change to an application's Priority, including the grant or denial of a Priority, that is made by an LHA shall only affect the position of the application on that LHA's waiting list for the program for which the applicant is being considered at that LHA.

The DHCD Housing Situation Priority Policy shall be posted at all times on DHCD's website at <https://www.mass.gov/orgs/housing-and-community-development> and in the LHA's administrative office where applications are received and shall be a public record.

5.12: Verification of Preference, Eligibility and Qualification

(1) When an application nears the top of a waiting list for housing in a program at an LHA, the LHA shall require the 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 final determination of the applicant's Preference, eligibility and qualification. If the LHA is unable to verify the information that was provided in the application within ten business days of the LHA's request for verification, then the LHA may make an offer of housing to the applicant appearing next on the waiting list for whom it has obtained fully verified information. If an LHA determines that the criteria for Preference, eligibility or qualification is not met, then the LHA shall deny the applicant's Preference, eligibility or qualification and inform the applicant of the right to appeal the determination pursuant to 760 CMR 5.13. Any grant or denial of a Preference, or determination of ineligibility or disqualification, that is made by an LHA shall only affect the application on that LHA's waiting list for the program for which the applicant is being considered at that LHA.

(2) 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, and that information is more than 90 days old, the LHA shall reverify such information on its final determination of eligibility and qualification. Nonreceipt of requested documentation, without good cause established by applicant, shall be cause for determining applicant unqualified.

(3) 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.

If, after request the LHA has failed to receive a reference from a landlord (or housing provider) it shall notify applicant of nonreceipt, 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. Nonreceipt 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.

(4) In determining qualification the LHA shall check Criminal Offender Record Information and Sex Offender Registration Information and make reasonable efforts to check available records of out-of-state criminal convictions. The LHA 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.

(5) 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.

## 5.13: continued

(b) Request for a Private Conference. Within 20 days of mailing of notice of a preconference 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 preconference 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 preconference 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.

(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 preconference 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.

## 5.13: continued

(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 02114. 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

(1) Applicants who have not contacted an LHA or logged into the Statewide Online Application System for two years shall be contacted by the Department Systems Administrator by email, and if there is no response, by first class mail.

(a) to determine whether:

1. applicant is still interested in obtaining state-aided public housing;
2. the applicant's appropriate unit size or accessibility needs have changed;
3. the applicant's claimed priority and preference status remain the same; and

(b) to advise the applicant that a failure to respond within 30 days will cause the application to be made inactive in the Statewide Online Application System resulting in the application not being processed by any LHA. Any applicant whose application is made inactive shall be notified of the same and will be restored to the waiting list(s) if the applicant contacts an LHA or logs into the Statewide Online Application System within one year after the notice. If the applicant fails to log into the Statewide Online Application System or contact an LHA within one year after the notice, then the applicant shall be given notice of removal of the application from all waiting lists and the right to request review pursuant to 760 CMR 5.13 above by any LHA to which the applicant applied.

(2) In its contact inquiry, the Department Systems Administrator will instruct applicants to update their applications in the Statewide Online Application System or to return the update form to an LHA. An LHA that receives a paper update from an applicant shall review all updated information and promptly log in on behalf of the applicant and enter any changes made by the applicant into the Statewide Online Application System.

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.

5.16: continued

(2) Each LHA with applicable programs shall use the Statewide Online Application System and shall maintain the Department's prescribed online vacancy ledger in accordance with guidelines issued by the Department as they may be amended from time to time. The Statewide Online Application System and online vacancy ledgers shall be considered public information; and, upon request, shall be available for public inspection with all personally identifying information redacted.

(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. 23B; M.G.L. c. 121B, §§ 29, 32, 34 and 40; and St. 2014, c. 235, § 14.

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