

## REVIEW OF THE HOUSING DEVELOPMENT INCENTIVE PROGRAM (“HDIP”)

January 29, 2022

### 1. INTRODUCTION

The Housing Development Incentive Program (“HDIP”) provides millions in state tax credits every year to developers of market rate and often luxury housing in Gateway Cities. In recent years, there have been efforts in the Legislature to double or triple the annual amount of credits and in the recently enacted “ÁRPA” spending bill, the annual HDIP credit cap was increased by 20%<sup>1</sup>

Because there is scant public information about HDIP and the results of the roughly \$75 million that the commonwealth has thus far awarded or reserved for this explicitly unaffordable housing program, in 2019 and 2021 the Massachusetts Law Reform Institute (MLRI)<sup>2</sup> submitted Public Records Requests to DHCD to learn the basic facts about HDIP credit awards and developments. This review summarizes and comments on the information gathered from DHCD’s responses to those requests.<sup>3</sup>

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<sup>1</sup> Section 1599-2022 of H.4269, *An Act relative to immediate Covid-19 recovery needs*, increases the annual HDIP credit cap from \$10 to \$12 million.

<https://malegislature.gov/Laws/SessionLaws/Acts/2021/Chapter102>

<sup>2</sup> Founded in 1968, MLRI is a nationally recognized nonprofit poverty law and policy center. Its mission is to provide statewide advocacy and leadership in advancing laws, policies, and practices that secure economic, racial, and social justice for low-income people and vulnerable communities. MLRI specializes in large-scale legal initiatives and systemic reforms that address the root causes of poverty, remove barriers to opportunity, and create a path to economic stability and mobility.

<sup>3</sup> In 2020 the Legislature amended the HDIP statute, Chapter 40V, and required DHCD to submit a report every December with some basic information about HDIP including:

- (i) a list of municipalities with approved HD zones; (ii) a list of housing development projects that have received certification; (iii) information about each housing development project, including the site address, project sponsor, range of rents of the residential units, type of residential units, number of each type of residential unit, number of affordable rental units for persons whose income is not more than 60 per cent of the area median income and the number of affordable owner-occupied units for persons whose income is not more than 80 per cent of the area median income; and (iv) the total amount of qualified project expenditures for which a tax credit was issued or reserved pursuant to section 5 for each housing development project, the year the credit was issued and the completion or estimated completion year of the housing development project.

As of January 21, 2022, this report had not been submitted to the Legislature.

## 2. WHAT IS HDIP?

HDIP is a state tax credit program enacted in 2010, codified at G.L. c.40V and administered by the Department of Housing and Community Development (DHCD). Credits may be awarded every year to developers for market rate residential projects in the 26 Gateway cities.<sup>4</sup> The HDIP-subsidized units can be priced at whatever the market will bear, and no affordability is required.<sup>5</sup>

HDIP is the only state program that provides direct subsidies specifically for developers of market rate housing. Until recently DHCD made HDIP awards on a first come, first-serve basis with no criteria based on need, projected benefit to neighborhoods, state housing goals and more. In addition, until recently HDIP did not appear to require sponsors to be in good standing under state laws and programs<sup>6</sup> and several HDIP developers have been charged with building code, permit and tenant law violations or accused of defective construction.<sup>7</sup> By contrast, affordable housing tax credits are awarded competitively based on multiple criteria reflecting state housing goals, fair housing and equity considerations, public input, and more extensive sponsor vetting.

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<sup>4</sup> The 26 Gateway cities are communities with populations between 35,000 and 250,000 and median household income and rate of educational attainment of a bachelor's degree or above below the commonwealth's average. GL c. 23A, s.3A.

<sup>5</sup> HDIP offers tax credits to qualifying projects that are a) located in a local Housing Development Zone and b) receive a city property tax increment exemption (TIE) for the increase in assessed value associated with the market rate residential portion of the project. An explanation of the program is at [DHCD's website](#).

<sup>6</sup> Starting August 2021, the state added a requirement that sponsors of HDIP pre-applications be in good standing with DHCD and its quasi-public housing affiliates.

<sup>7</sup> Examples of problematic HDIP developments include:

- Chelsea – the HDIP project's management company settled part of a whistleblower case for \$80,000 for unlawfully charging tenants for water and then trying to evict for refusal to pay. <https://www.justice.gov/usao-ma/pr/chelsea-landlord-and-property-manager-agree-80000-settlement-false-claims-act-violations>
- Springfield – the city halted work on one HDIP project “after once again finding alleged improper plumbing work including unlicensed workers and sealing off work without inspections.” [https://www.masslive.com/news/2018/11/springfield\\_inspectors\\_halt\\_pl.html](https://www.masslive.com/news/2018/11/springfield_inspectors_halt_pl.html) There were complaints of no air conditioning in a second luxury HDIP building with the same developer during heat wave. <https://www.masslive.com/springfield/2021/06/in-the-midst-of-heat-wave-tenant-at-luxury-silverbrick-lofts-in-springfield-complains-landlord-refuses-to-turn-on-ac-citing-state-law.html> [https://www.westernmassnews.com/news/springfield-apartment-residents-are-now-seeing-relief-from-the-heat/article\\_60b819a8-ca36-11eb-b403-3b72de65a085.html](https://www.westernmassnews.com/news/springfield-apartment-residents-are-now-seeing-relief-from-the-heat/article_60b819a8-ca36-11eb-b403-3b72de65a085.html) This developer currently has a \$4 million HDIP credit request under review for a development in Worcester.
- Lynn – construction defects left tenants with very high heating bills. <https://www.itemlive.com/2017/12/19/lynns-vault-luxury-residences-brand-new-tenant-heating-bills-high/>
- Lowell and Worcester-the developer of student housing projects also was sued.

HDIP lacks a clearly articulated rationale. The authorizing statute defines it as a program to increase housing, stabilize neighborhoods, and promote economic development in Gateway cities. There is no mechanism to evaluate if the last two somewhat vague goals have been met and, in many cases, we cannot say what benefits, if any, these market rate projects have brought to the residents of these cities.

The 26 Gateway cities vary widely: some gaining population, others growing little; some attracting market rate developments, some not. Poverty rates range from 7% to 30%. Two- and three-unit building prices rose by 40% or more in some cities between 2015 and 2018. Most have low vacancy rates.

Based on the most recent information we have been able to gather through public records requests (there are no helpful reports or evaluations), as of October 2021, approximately **\$75.6 million** in credits have been awarded or reserved. Although HDIP requires that 80% of the units must be market rate, there is no requirement that any of the units be designated/set aside at affordable prices and very few are. Affordable units are not eligible for the credit.

### **3. KEY FACTS AND FEATURES OF THE HDIP PROGRAM**

- **As of October 2021, 53 HDIP projects in 17 cities<sup>8</sup> have received conditional or final credit awards or reservations of credits totaling \$75.6 million.** Three other projects have pending applications for \$7.8 million, and 14 projects have applications exceeding \$16.5 million<sup>9</sup> which would bring the total to **\$99.94 million**.
- The 53 projects with credit awards or reservations have **a total of 3,006 units**, many with excessively high above-market rents.

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<sup>8</sup> The 17 cities are Barnstable, Brockton, Chelsea, Fall River, Fitchburg, Haverhill, Holyoke, Lawrence, Leominster, Lowell, Lynn, Malden, Pittsfield, Quincy, Salem, Springfield and Worcester. Several of these cities have multiple HDIP projects while Attleboro, Chicopee, Everett, Methuen, New Bedford, Peabody, Revere, Taunton and Westfield have none (Attleboro and New Bedford have applied for credits this year for two and one project respectively).

HDIP credits and developments have thus far been concentrated in just a few cities. Three cities alone (Worcester, Malden and Lowell), account for approximately 43% of HDIP units approved or under review. More than half of the credits (and more than half of the projects) have been awarded, reserved or likely to be awarded to five cities. Recent DHCD policies attempt to expand the geography of the awards and move away from the first-come, first-served system in place thus far.

<sup>9</sup> Excluding the credit request amount for one project which was missing from PRR.

- **Projects range widely in size** from 7 to 320 units, with a median size of 40 units. Twenty-three (23) projects have or are proposed to have 30 or fewer units, seven (7) have 100 or more units. Two projects (229 units) are student housing only, all market-rate. 52 are rental projects and one is a for-sale project (60 units).
- **All Gateway cities are not alike nor are all neighborhoods within these cities alike. Yet HDIP fails to prioritize among them based on clear criteria. As a result, millions in credits have gone to stronger markets that are already attractive to developers.** HDIP authorizes Gateway cities to designate any area they choose as an HD Zone as long they deem it “in need of multi-unit housing”. There are no requirements that the area needs revitalization. Zones can be any size: one city’s HD zone consists of a single development site, while other cities have designated more than half their land and recently Salem approved a citywide HD Zone.

Gateway cities are sometimes described as “weak market cities” but many do not fit into the traditional definition. Although several Gateway cities are not seeing significant amounts of market rate development, others, including those within commuting distance to Boston, attract or are in the process of attracting high-end projects with no need for our limited state housing resources. For example, developers have been awarded millions in HDIP credits in Malden, 11% of the total HDIP units approved or in review thus far. Rents at the Malden HDIP developments are high: at one, up to \$2,656 for studios, \$2,930 for 1-bedroom units, and \$3,430 for 2-bedroom units. Yet, as a recent report notes:

In recent years, Malden Center has seen hundreds of new market-rate units . . . None of these units are affordable by deed restriction. Recent new housing developments serve higher-income residents, but primarily do not provide housing for lower- or moderate-income residents. . . Many residents are cost burdened or severely cost burdened, paying more than 30% or even 50% of their incomes on housing. The risk of displacement for lower- and moderate-income residents has increased.<sup>10</sup>

Worcester is another city with several HDIP projects that is seeing significant development and no longer needs subsidies to attract market rate development. As of September 2021, 2,265 rental units are currently in construction or proposed for the next five years, including 2,015 market rate units, on top of the 1,801 added since 2011.<sup>11</sup> To date, four HDIP projects have been approved in Worcester (167 units, all market, with \$6.5 million in credits). Four additional projects with 918 apartments have applied for credits, including a 228-unit project (\$2 million credit request under review) which is adjacent to Polar Park – a high-end developer magnet.<sup>12</sup> The others include a 312-unit project (\$4 million credit request under

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<sup>10</sup> [City of Malden Housing Needs Assessment](#).

<sup>11</sup> Marco Cartolano “More Apartments Coming to Worcester, but some Tenants Want More Affordable Housing”, <https://www.telegram.com/story/news/2021/09/02/worcester-apartment-boom-tenants-want-more-affordable-housing/>

<sup>12</sup> “Worcester Seeking More Tax Breaks for WooSox-Related Development”, <https://www.wbjournal.com/article/worcester-seeking-more-tax-breaks-for-woosox-related-development;>

review), a 371-unit project (\$1 million credit pre-application submitted) and a 7-unit project (\$975,000 credit pre-application). The latest HDIP project to open is asking \$1,950 to \$3,000 for one-bedroom apartments and up to \$3,600 for two-bedroom apartments. Worcester's total HDIP credit amount, including for developments likely to be approved, is \$12.5 million - 20% of the commonwealth's total credits.

Chatham Lofts, a new HDIP-funded development in Worcester's hot new downtown theater district opened to much fanfare in late 2021. The developer is scheduled to receive \$1,750,000 in state credits for this ultra-luxury development. The rents for these 24 luxury apartments are as high end as the building's self-promotion.<sup>13</sup> Top rents for studios, 1-bedroom and 2-bedroom apartments respectively are \$1,800, \$3,000 and \$3,600. Meanwhile, in the same month, the average rent for a studio in Worcester was \$1,238, \$1,445 for a 1-bedroom and \$1,550 for a 2-bedroom apartment.<sup>14</sup>

Also, 115 Madison, a 228-unit luxury development is under review at DHCD for \$2 million in HDIP credits. This development will be right next to the new Polar Park baseball stadium and has received glowing press for expanding the park's footprint.<sup>15</sup> In addition to the now standard luxury amenities in many HDIP developments, this state-assisted building will include a pool, fire pits and a dog-washing station. The project has been delayed by more than 2 years and could be a problem since planned taxes from developments such as these "are key to helping the city pay off the bonds it floated to help build the most expensive minor league ballpark ever built."<sup>16</sup>

In several Gateway Cities large HDIP developers are also receiving assistance from additional public sources and benefitting from new state-funded infrastructure investments under MassWorks, as well as new or upgraded MBTA commuter rail and T stops. In addition to local tax breaks and state HDIP credits, some are also taking advantage of and subsidized by a generous and controversial federal tax credit for wealthy investors to build almost

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"Madison Properties Breaks Ground on First Residential Development Near Polar Park", <https://www.worcesterchamber.org/madison-properties-breaks-ground-first-residential-development-near-polar-park/>; "The Silverbrick Group purchases Worcester's first skyscraper for \$14.5 million from Commerce Associates, LLC", <https://nerej.com/silverbrick-purchases-worcester-s-first-skyscraper-for-14-5-million>

<sup>13</sup> "With 24 brand-new luxury apartments in the heart of the Theater District, Chatham Lofts brings a unique urban living experience to downtown Worcester. Each apartment marries historic elegance with modern innovation making you feel immediately at home in this sophisticated environment. Take advantage of our high-end features including a fitness studio, gaming room, conference areas, secure garage parking, and more, while you settle into your new home." <https://www.zillow.com/b/chatham-lofts-worcester-ma-964VkW/>

<sup>14</sup> <https://www.zumper.com/rent-research/worcester-ma>

<sup>15</sup> "You ain't seen Nothing Yet" ? <https://www.masslive.com/worcesterredsox/2021/07/you-aint-seen-nothing-yet-worcester-celebrates-new-residential-development-that-will-expand-footprint-of-polar-park-community-with-228-market-rate-units.html>

<sup>16</sup> [Worcester Business Journal](#)

anything in “Opportunity Zones”.<sup>17</sup> Reports have found that this federal tax break encourages investment in projects (e.g., luxury housing, student housing) and places that are expected to appreciate rapidly over 10 years, rather than those offering less rapid appreciation. Many researchers note that Opportunity Zone investors gravitate towards stronger market communities.<sup>18 19</sup>

- **HDIP rents are generally well above prevailing market rents with no limit on future rent increases. HDIP rents often exceed average local asking rents, some by 50-70%** (or \$500-\$1,000) per month. Twenty-five of the 26 projects for which MLRI was able to obtain data in 2020 had rents above their city average, in some cases \$700- \$1,000 per month higher, and 25 projects had rents above HUD zip code area rent estimates.
- **HDIP housing is generally not suitable for families with children**, even those that can afford the rents. Of the 50 (out of 53) projects for which we have bedroom data, it appears that at least 65% are either shared suites in student housing, studios, or one-bedroom units. Less than 1% of the units have 3 or more bedrooms.<sup>20</sup>
- **Two projects, each with \$2 million in HDIP subsidies, are student-only high-priced housing**, with 229 furnished units in 1–4-bedroom suites that rent by the bedroom or by the bed for far above average asking rents in the cities where they are located – Worcester and Lowell.<sup>21</sup> In Lowell, the developer was accused of renting to non-students. In Worcester, the same developer of the student-only housing was accused of improper utility billing practices, security deposit law violations and lease violations in a class action lawsuit settled for

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<sup>17</sup> Brett Theodos et al., “An Early Assessment of Opportunity Zones for Equitable Development Projects (Urban Institute, June 17, 2020), <https://www.urban.org/research/publication/early-assessment-opportunity-zones-equitable-development-projects>, p 37.

<sup>18</sup> Ibid, p.31 and p.37

<sup>19</sup> <https://nrcr.org/the-new-york-times-how-a-trump-tax-break-to-help-poor-communities-became-a-windfall-for-the-rich/>

<sup>20</sup> Of the 50 projects (2,667 units) for which we have bedroom information, 8.6% of the units (229) are student housing (one-bedroom or shared suites) and 49% (1,486) are zero or one-bedroom apartments; 30% (810) are two-bedroom units; another 4% (115) are either one- or two-bedroom units (details unavailable). Only 0.9% (23) have three or more bedrooms.

<sup>21</sup> For a look at the well-appointed HDIP student-only housing in Lowell see, <https://www.youtube.com/watch?v=bnifNT9iOkU>.

- In Lowell, units are rented by the bed. The current asking rent for two-bedroom suites with 2 or 4 beds ranges from \$2,150-\$2920. This is 24-68% higher than current median rents for a two-bedroom apartment in Lowell as reported by Apartment List.com for December 2021.
- In Worcester, the one-bedroom student units rent for \$1,665 (\$326 or 24% above median asking rents for one-bedroom units in December as reported by RentalSource.com. The combined per-bed rent in a two-bedroom student suite is \$2,730 (\$1,264 or 86% above recent average two-bedroom asking rents). In Worcester, the developer was accused of improper utility billing practices, security deposit law violations and lease violations in a class action lawsuit settled for \$550,000 in 2019

\$550,000 in 2019.<sup>22</sup>

- **HDIP provides no protections for lower income and working-class residents who may be adversely affected by high rent developments** that might contribute to rent increases and higher costs in their neighborhoods, forcing them to move from their homes and communities when they are no longer able to afford the higher rents.
- **HDIP does not require developers to demonstrate if or how a project will affirmatively further fair housing and the state’s fair housing goals.**
- **There has been no meaningful monitoring, evaluation or reporting on the results of HDIP awards statewide.** It is clear what the program has accomplished for developers, but what has it contributed to communities and community residents in both strong and weak market cities?

#### **4. THE MULTIPLE CRISES WE FACE NOW REQUIRE TARGETING LIMITED HOUSING RESOURCES TO THE GREATEST NEEDS**

**Even before COVID-19 Massachusetts had an affordable housing emergency - especially in Gateway cities where almost half of all renters are very low income.** About half of renter households in Gateway cities are rent burdened, paying more than 30% of their income towards housing, compared to 46% statewide, indicating an even greater need for affordable, rather than high-priced housing in Gateway cities.<sup>23</sup>

COVID-19 has exposed and reinforced the critical need for affordable housing in the commonwealth, particularly for working-class residents of color and families with children many of whom live in Gateway cities. Any increase in state housing expenditures, including tax expenditures, must consider those most impacted by the pandemic. Increasing HDIP tax expenditures each year into the indefinite future without meaningful affordability requirements, equity considerations, and protections against neighborhoods rent increases and possible displacement does the opposite.

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<sup>22</sup> See “Edge Merrimack River Violating Permit” <https://www.lowellsun.com/2019/07/27/city-edge-merrimack-river-violating-permit/> and see <https://www.telegram.com/news/20190917/edge-at-union-station-settles-tenants-class-action-lawsuit-for-550000>

<sup>23</sup> Calculated using U.S. Department of Housing and Urban Development (HUD) Comprehensive Housing Affordability Strategy (CHAS) dataset 2014-2018 <https://www.huduser.gov/portal/datasets/cp.html>



## 5. HDIP SHOULD BE EVALUATED AND IMPROVED RATHER THAN EXPANDED.

Given limited resources, the renewed public emphasis on the affordable housing crisis and the need for greater equity in all state programs, **the best approach would be to thoroughly evaluate/revise the HDIP program, rather than raise the credit cap.**

- **Include a meaningful affordability component.** HDIP projects with more than 10 units should include at least 20% permanently affordable units (for renter households up to 60% of area median and homeowners up to 80% of area median) with 10% of those affordable units for households under 30% of AMI, *or* proof that the municipality has approved and funded projects in the HD Zone or nearby that will add at least an equivalent number of similarly affordable units;
- **Provide HDIP credits for a mixture of bedroom sizes** to better accommodate families with children;
- **Require HDIP developers to demonstrate that a project is not likely to contribute to increased neighborhoods rents, gentrification, or displacement, and will affirmatively further fair housing goals;**
- **Prioritize projects for which HDIP credits are demonstrably necessary.** Developers should demonstrate that projects would not be feasible without an HDIP credit and document the amount needed;
- **Maximize program benefits by focusing HDIP awards on proposals that best advance state housing goals.** Select projects in communities that might need it the most, and that will advance other state goals. A better model is the way the commonwealth awards affordable housing tax credits - on a scored competitive basis using clear criteria and public input to determine the best outcomes for communities and residents of the commonwealth;<sup>24</sup>
- **Establish metrics and issue an annual report on the results of the program<sup>25</sup>;**
- **Establish a sunset date for HDIP or require that HDIP be re-authorized periodically** after monitoring, reporting, and legislative hearings;
- **Require public participation in formulating the criteria for HDIP awards.**

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<sup>24</sup> See, for example, the recent draft Qualified Allocation Plan for the state and federal Low Income Housing Tax Credit Program which sets out the requirements and mission of the program in detail, <https://www.mass.gov/doc/draft-2022-2023-low-income-housing-tax-credit-qualified-allocation-plan/download>

<sup>25</sup> At a minimum, DHCD should file the annual report required by Legislature described in footnote 3.