

BY EMAIL

October 5, 2016

Department of Housing and Community Development
100 Cambridge St., Suite 300
Boston, MA 02114

Attn: Ian Meyer

Re: Massachusetts Law Reform Institute Comments on Civil Rights/Fair Housing Aspects of Proposed DHCD Regulations at 760 CMR 47 and 4

The Massachusetts Law Reform Institute (MLRI) appreciates the opportunity to provide comments and recommendations on selected aspects of the civil rights, fair housing and affirmatively furthering fair housing provisions in the Department's proposed regulations at 760 CMR 47 and related provisions in proposed 760 CMR 4. MLRI is a non-profit statewide poverty law and policy center whose mission is to advance economic, racial, and social justice through legal action, advocacy, coalition building, and community outreach. MLRI is a leading advocate on issues concerning the Department's efforts to further fair housing, and we look forward to working with DHCD on these regulations and the upcoming process under federal law to affirmatively further fair housing ("AFFH").¹

760 CMR 47 sets out a civil rights framework for the Department, applicants and recipients of the Department's financial assistance. We hope that the policies and principles outlined in this regulation, along with more specific guidance from DHCD as needed, will prompt applicants and recipients to review the effect of their policies and practices through the prism of civil rights/fair housing obligations, and adjust those policies accordingly.

Please note that we have incorporated several, but not all of these comments/suggestions (and other suggestions not in this narrative) in a copy of the proposed regulations attached here.

GENERAL COMMENTS

- 1. Relationship between 760 CMR and the upcoming Assessment of Fair Housing under HUD's AFFH rule.** We recognize that proposed 760 CMR 47 precedes and to some extent

¹ These comments primarily concern civil rights provisions affecting tenants and applicants for DHCD-related housing resources and are not addressing the employment and contracting provisions in 760 CMR 47.

anticipates the Department's forthcoming preparation of its Assessment of Fair Housing (AFH) required by the HUD AFFH rule at 24 CFR Part 5 et seq.² The relationship between the broad provisions of 760 CMR 47 and the HUD Assessment, with its detailed data analysis, goal-setting and robust public participation is not clear since the federal AFFH effort has not yet started. The AFFH process will result in a comprehensive presentation of the Department's fair housing goals and a statement of meaningful and measureable actions it will take to overcome the legacy of segregation, unequal treatment, and historic lack of access to opportunity in housing. If it were not for the deadlines imposed on issuance of these regulations, it would probably make more sense to issue 760 CMR 47 *after* the federal process is complete in an effort to align the two. But for now, we urge the Department to review these regulations after the AFH is complete to determine if changes should be made as a result of the final AFH.

2. **Proposed 760 CMR 47 as a “framework.”** As the Department says, this regulation is a “framework,” and we recognize that it cannot address all civil rights/fair housing issues in detail. Because 760 CMR 47 is necessarily general (and may be modified in the future to coordinate with the Department's Assessment of Fair Housing) we would recommend adding to the Purpose and Scope Provisions at 47.02 the following language: “The Department will issue further guidance if needed to amplify and clarify the framework set out in this regulation.” See suggested language attached here.
3. **Declaration of Policy at 47.01(1).** Consistent with the terminology and goals throughout the proposed regulation we suggest adding the following bolded language: “Non-discrimination, **affirmatively furthering fair housing** and equal opportunity are the policy of the Department of Housing and Community.” See suggested language attached here
4. **We recommend that 760 CMR 47 better address disability discrimination and reasonable accommodations.** Although persons with disabilities are protected from discrimination under state and federal laws, there appears to be no coverage of disability discrimination in proposed 760 CMR 47 or proposed 760 CMR 6. Reasonable accommodations are mentioned once in proposed 760 CMR 4.03 requiring LHAs to administer programs by, among other activities: (e) adopting and enforcing appropriate anti-discrimination policies, which meet the requirements of applicable law, including, a policy against sexual and other discriminatory harassment and a policy for reasonable accommodation on account of disability. Specific reference to disability discrimination and reasonable accommodations should be included in 760 CMR 47.

We also recommend that in an appropriate regulation the Department instruct housing providers to include in documents such as a notice to quit or to terminate assistance, an offer to discuss reasonable accommodation requests. This is the practice in HUD multifamily housing.

² Similarly, housing authorities and other agencies that receive federal funds and DHCD assistance will be developing their own Assessments of Fair Housing under HUD guidelines which should add detail, goal-setting and measureable outcomes to their fair housing efforts under 760 CMR 47.

5. **We recommend that 760 CMR 47 better address national origin (language access) discrimination.** Although language access is among the most frequent civil rights problems encountered by tenants, participants and applicants for DHCD programs, this critical fair housing issue is not covered in proposed 760 CMR 47 (other than mention of national origin discrimination).³ We recommend that DHCD implement its legal obligations pursuant to Title VI of the 1964 Civil Rights Act, the Fair Housing Act, G.L. c. 151B and state and federal Executive Orders by providing a statement that by a certain date the Department will issue a Language Access Plan for itself and a model Language Access Plan, guidance and training on language access for LHAs and other applicable recipients of funding.⁴

6. **We recommend that these or other regulations better address fair housing issues related to tenant-based vouchers.** The Department administers/oversees more than 20,000 state and federal tenant-based vouchers. These mobile vouchers are our only housing resource designed to allow the widest choice about where to rent. But it is widely recognized that the programs have not fulfilled the promise of widening the choice to include what are sometimes called opportunity areas. Typically, voucher participants rent in poor and often disproportionately minority neighborhoods without any real assistance from housing agencies to use their vouchers in areas with better schools, less crime, and other attributes.

If not covered in forthcoming MRVP regulations or DHCD's Housing Choice Voucher plans, we urge the inclusion of specific provisions in 760 CMR 47 on these programs. At a minimum, to better encourage wider geographic choice in the voucher programs, the regulation should require that voucher agencies gather data, map, and report on where their tenant-based vouchers are used. If vouchers are concentrated in poor and minority areas, the agencies should determine why and adopt policies and practices to improve opportunities for more diverse locational outcomes.

SPECIFIC COMMENTS

1. **760 CMR 47.03 (Definitions).** We recommend that the Department define **Affirmatively Furthering Fair Housing (AFFH)** and not merely refer to the HUD regulation. The AFFH obligation is critical and runs throughout 760 CMR 47. Recipients of Department financial assistance should know what AFFH means without going to a HUD regulation. See suggested language attached here..

³ Proposed 760 CMR 4.03(1)(f) instructs LHAs to "give to an applicant or tenant, who is known not to speak English, information in commonly spoken foreign languages that states that "this is an important document, please contact the (name of the local housing authority) at (phone number of local housing authority) for free language assistance." This applies only to LHAs and not other recipients of Department assistance. MLRI hopes to work with DHCD separately to develop more detailed proposals on language access.

⁴ Related to this issue, we recommend that language access should be added to the Responsibilities of the DHCD Diversity Officer in proposed 47.04(1)(g). See suggested language attached here.

2. **760 CMR 47.03 (Definitions). We recommend that the Department define the Data Collection Law.** We suggest this definition as part of our proposal in these comments to insert data collection requirements in selected provisions of 760 CMR 47. See suggested language attached here.
3. **760 CMR 47.04(1) and 47.09 (Role of the Department and Compliance and Sanctions). We recommend changes to clarify that the Department’s ability to consider and act on civil rights violations is not limited to those arising from MCAD or Attorney General cases.** We applaud the approach of 47.04(1) concerning the Department’s funding decisions when it learns of civil rights violations. We agree that applicants or recipients with discriminatory policies or practices or that fail to further fair housing goals should incur some loss of Department funding after a process for corrective action is unsuccessful. But there may be some confusion, most likely unintentional, among different provisions in 760 CMR 47 on the process by which DHCD considers and takes action upon discovery of discriminatory policies or practices.

On the plus side, 760 CMR 47.04(1)(c) sets out a helpful and broad list of civil rights issues the Department may consider when making funding decisions. And 760 CMR 47.09 encourages any person who has evidence of non-compliance with the regulation to submit a complaint to the Undersecretary. These are excellent provisions.

Our concern is with other provisions in 760 CMR 47 and 4 implying that DHCD may consider a possible discrimination complaint or issue only after MCAD or AG involvement – and most likely an actual finding. Very few discrimination complaints against housing providers and other DHCD recipients are filed at these agencies, the decision process is lengthy, and those agencies don’t ordinarily address affirmatively furthering or language access issues.

To harmonize these provisions, we propose adding language in several places so that, as in 47.09, it is clear that the Department may consider discrimination issues brought to its attention in various ways, not only from MCAD or the AG. This will make the regulation consistent throughout. See suggested language attached here.

4. **760 CMR 47.04(1)(g) – We recommend including Data Collection issues among the responsibilities of the Diversity Officer.**⁵ Fair housing advocates worked hard for passage of the Data Collection Law in 2006. We hope to see it become more meaningful in the analyses of civil rights housing issues, and that the results of the law will be more easily accessible to the public. Also, in furtherance of that goal, we propose additions to the responsibilities of the Diversity Officer.

We also suggest adding compliance with the Data Collection Law in 47.08 - Responsibility of Applicant. See suggested language attached here.

⁵ Considering the breadth of responsibilities given to this officer, it might make more sense to re-title the position to “Civil Rights and Fair Housing Officer” since “diversity” implies that the position concerns only hiring/contracting issues.

5. **760 CMR 4.02 (Definitions).** Similar to 760 CMR 47.03, we suggest defining AFFH here to avoid having to flip between regulations.
6. **760 CMR 4.03(1) (General Requirements).** Consistent with 760 CMR 47, we suggest adding the following bolded language: “(1) Each LHA shall administer its operations in a fair and consistent manner **in accordance with state and federal civil rights laws.** . . .” See proposed language attached here.
7. **760 CMR 4.03(1)(d).** For the same reasons as in #2 above, we recommend the following addition to the regulation concerning posting of civil rights notices at LHAs “. . . . posting in a conspicuous place in the LHA’s central office and on its website or webpage, a notice stating that any individual who believes he or she has been denied employment or housing, discharged, or has suffered discrimination in compensation or in the terms, conditions, or privileges of employment or housing on the basis of race, color, religious creed, national origin, sex, sexual orientation, gender identity, genetic information, age, ancestry, disability, marital status, veteran status, membership in the armed forces, presence of children, or political beliefs, or any other basis prohibited by law, has the right to **bring the complaint to the Equal Opportunity Officer at the LHA or** file a complaint with the Massachusetts Commission Against Discrimination (MCAD).
8. **760 CMR 4.03(1)(d) (LHA websites/pages).** We appreciate this instruction to LHAs to post important matters on their websites or pages. And please note that MLRI and CASLS’ comments on proposed 760 CMR 4 recommend broadening the items to be posted on LHA websites and propose examples of additional items.

We also urge the Department to take a fresh civil rights look at its own website and pages.⁶ One example, concerning results of required data collection by LHAs, is illustrative. The DHCD public housing webpage at <http://www.mass.gov/hed/housing/ph-manage/lha-data-collection.html> tells us that:

DHCD also will evaluate the data as part of its efforts to affirmatively further fair housing. More specifically, DHCD will analyze the data to ensure that housing choice, equitable housing opportunities, and inclusive patterns of housing are available across the Commonwealth. DHCD will annually report to the state legislature on its data collection efforts and results by December 31st, and may provide reports to other interested parties in a manner consistent with all applicable privacy laws.

⁶ See, for example, MLRI’s January 8, 2016 letter to DHCD concerning the lack of public information on the Low Income Housing Tax Credit program. That letter describes in some detail how the Department’s website has little if any information, data, reports or analysis of the program that would allow advocates or the public to make a thoughtful fair housing analysis or even learn where tax credit units are located. We once more ask the Department to discuss with advocates and review what it posts on its website with an eye to fair housing issues and provide a generous and useful amount of information to the public as we have suggested in many communications with the Department.

However, we are unable to find on the DHCD website the most basic information resulting from the required data collection such as: the data submitted by each agency; what actions the Department has taken if an agency fails to submit the required data; DHCD's analyses of the data; any policies or procedures DHCD has developed as a result of the data collection; the annual report to the Legislature.

We once more urge the Department to make better use of its own website for the benefit of advocates, tenants, applicants and the public. A good start would be to post the comments submitted on this round of proposed regulations and the Department's responses, if any, to those comments.

9. **760 CMR 4.06 (Equal Opportunity Officer at LHAs).** We recommend that the Department include a description of what this person is supposed to do and how they will be trained.
10. **760 CMR 4.12(j) (Development of Additional Units).** We appreciate the Department's inclusion of a provision forbidding discriminatory admissions preferences in additional LHA units. We suggest that the regulation more specifically provide that preferences will not have effect of delaying or denying admission of protected groups and will work to affirmatively further fair housing.

We thank the Department for proposing these rules. There is a lot of territory to cover and we are sure it wasn't an easy task within the tight time limits allowed. We look forward to your responses to our suggestions and also to the work ahead developing the Assessment of Fair Housing.

Please feel free to contact me if you have any questions or would like to discuss these issues further.

Sincerely,


Judith Liben
Senior Housing Attorney
Massachusetts Law Reform Institute
40 Court Street, 8th Floor
Boston MA 02108
617-357-0700 X327
jliben@mlri.org

MLRI Suggested Changes to 760 CMR 47 **October 3, 2016 (in bold)**

760 CMR 47.00: NON-DISCRIMINATION, EQUAL OPPORTUNITY, AND AFFIRMATIVE FURTHERANCE OF FAIR HOUSING REGULATIONS GOVERNING RECIPIENTS OF DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FINANCIAL ASSISTANCE

47.01: Declaration of Policy

47.02: Purpose and Scope

47.03: Definitions

47.04: Role of the Department of Housing and Community Development 47.05: Employment Policies

47.06: State Services

47.07: Contracting and Supplier Diversity Business Enterprise Utilization

47.08: Responsibility of the Applicant

47.09: Severability, Compliance and Sanctions

47.01: Declaration of Policy

(1) Non-discrimination, **affirmatively furthering fair housing** and equal opportunity are the policies of the Department of Housing and Community Development in all of its decisions, policies, programs and activities. To that end, the Department shall rigorously take affirmative steps to ensure equality of opportunity in the internal affairs of the Department, as well as in its relations with the public **and program participants**. The Department, in performing its statutory responsibilities, shall consider the likely effects which its decisions, policies, programs and activities shall have in meeting the goal of equality of opportunity.

(2) Equal opportunity and Affirmatively Furthering Fair Housing requires more than vigilance in the elimination of discriminatory barriers on the grounds of race, color, religion, national origin, ancestry, disability, sex, age, familial status, veteran status or military service, sexual orientation, gender identity or expression, and other bases prohibited by law. It also entails positive and aggressive measures to ensure equal opportunity in internal personnel practices and in those policies and programs which affect persons and political subdivisions throughout the Commonwealth.

(3) The Department shall initiate, where appropriate, **and when it learns of likely or actual discriminatory policies, practices or failure to affirmatively further fair housing** affirmative policies and programs designed to remedy the lingering effects of any past and present discriminatory patterns and practices and to affirmatively further fair housing to the extent that such policies and programs are consistent with the purposes and provisions of applicable law, as amended, including M.G.L. c.151B, Executive Orders 526, 559, and 565, Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act.

47.02: Purpose and Scope

(1) 760 CMR 47.00 is designed to provide a framework within which the Department can design and implement policies and programs to ensure equal opportunity and full participation for all **residents** of the Commonwealth. **“The Department will issue further policies and guidance if needed to amplify and clarify the framework set out in this regulation”.**

(2) 760 CMR 47.00 is also intended to define the equal employment opportunity, fair housing, and business utilization obligations of any applicant for state, state-assisted, federal or federally-assisted funds administered by the Undersecretary of the Department.

47.03: Definitions

1. Affirmatively Furthering Fair Housing (AFFH) as used herein has the meaning given by the U.S. Department of Housing and Urban Development under the Affirmatively Furthering Fair Housing Final Rule at 24 C.F.R. 5.152 or any applicable successor regulation.. **“AFFH means taking steps proactively to address significant disparities in access to community assets, to overcome segregated living patterns and support and promote integrated communities, to end racially and ethnically concentrated areas of poverty, and to foster and maintain compliance with civil rights and fair housing laws”**

Applicant means any person, private for-profit or non-profit organization, or political subdivision of the Commonwealth which submits to the Department any application, contract, request, or plan for Financial Assistance from the Department which the Undersecretary is not obliged by law to fund.

Clearinghouse means any individual, organization, or agency established for, among other reasons, the purpose of furthering fair housing opportunities.

Commission means the Massachusetts Commission Against Discrimination (MCAD) and its successors.

Data Collection Law means Chapter 334 of the Acts of 2006 which provides for the gathering, compiling, and reporting of data by the Department of Housing and Community Development (DHCD) to provide current, accurate, and detailed information on the number, location, and residents of assisted housing units and recipients of state or federal rental assistance in the Commonwealth. These regulations are also intended to ensure that the Commonwealth affirmatively furthers fair housing. DHCD will use this data to analyze and evaluate applicable housing programs, and to provide information to the legislature and other interested parties.

Department means the Department of Housing and Community Development and its successors

Financial Assistance means any of the following, to the extent such assistance is provided by or on behalf of DHCD:

- (a) any discretionary grant, loan or advance of state or federal funds,
- (b) any grant or donation of state or federal property or interest in property,
- (c) any state or federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance, such as the allocation of federal or state tax credits, tax-exempt bond authority, or loan guarantees, and/or
- (d) the sale, lease, or licensing of state or federal property, both real and personal, or any interest in such property, at a price below the current market value of such property interest.

LHA means a Local Housing Authority as established under M.G.L. c.121B or comparable legislation.

Racial/Ethnic Minority Group Member means a person who is:

- (1) Of one of the following groups, as defined by the U.S. Census Bureau:
 - (a) American Indian; or Alaska Native
 - (b) Asian;
 - (c) Black or African American;
 - (d) Hispanic or Latino;
 - (e) Native Hawaiian or Other Pacific Islander; or
- (2) Cape Verdean, Eskimo, Aleut, or any other racial/ethnic minority designation pursuant to applicable executive order or law.

Political Subdivisions means any unit of local government, city, town, county, or subdivision thereof; instrumentality of the Commonwealth; or any other government entity, including authorities.

Supplier Diversity Business Enterprise means a business enterprise defined under current state law or by policy of the Operational Services Division for purposes of the Supplier Diversity Program, including Minority Business Enterprises, Women Business Enterprises, Service-Disabled Veteran-Owned Business Enterprises, Veteran-Owned Business Enterprises, Disability-Owned Business Enterprises, and LGBT-Owned Business Enterprises.

Undersecretary means the Undersecretary of the Department of Housing and Community Development.

47.04: Role of the Department of Housing and Community Development

The Department is the Commonwealth's lead housing and community development agency. In this capacity, it is charged with addressing the management, housing, and community development needs of the Commonwealth's 351 cities and towns. The Department is also charged with coordinating the Commonwealth's overall long-term housing and community development strategy.

(1) In deciding whether to award Financial Assistance to an Applicant, the Undersecretary shall consider whether the Applicant is in compliance with applicable civil rights obligations in the areas of housing, employment, public accommodation, and Supplier Diversity Business Enterprise utilization as applicable. To facilitate the Undersecretary's review of the Applicant's civil rights record, the Undersecretary shall implement the following procedures:

- (a) Seek information from the Commission, the Office of the Attorney General **and elsewhere** regarding the civil rights compliance of Applicants for Financial Assistance and conduct related searches of judicial decisions **and other sources** regarding discrimination claims against Applicants.
- (b) Inform Applicants of the requirements of 760 CMR 47.00;

(c) Other factors that the Department may consider in deciding whether to award Financial Assistance to an Applicant include, but are not limited to, the following:

1. Efforts in Affirmatively Furthering Fair Housing by the Applicant generally, and as proposed for a project or activity for which the Applicants seeks funding.
2. Efforts to overcome barriers to multi-family and affordable housing growth, such as exclusionary zoning and land use and permitting denials;
3. Efforts to provide a diversity of housing types;
4. Availability of, and efforts to provide, subsidized housing for a range of income levels and family types and sizes consistent with regional need;
5. Efforts to provide housing that increases access and community integration for persons with disabilities;
6. Application for, and use of, funds to improve access to opportunity and community assets in furtherance of diversity and fair housing goals.
7. Progress in planning for and achieving greater accessibility in housing and in the community;
8. Civic engagement and affirmative outreach in providing affordable housing and civil rights related education and resources; and
9. Other criteria the Department determines to be consistent with affirmative furtherance of fair housing and equal opportunity goals.

(d) Upon information from the Commission or the Office of the Attorney General **or from other sources** that an Applicant is in apparent non-compliance status **or has failed to affirmatively further fair housing**, the Department **shall** direct the Applicant to make a sincere and concerted effort to reach agreement with the Commission, Office of the Attorney General, or other relevant enforcement authority **or the Department** which will bring the Applicant into **compliance and correct any discriminatory practices..**

(e) The Department will not award funds to an Applicant that the Department finally determines to be in non-compliance status **or otherwise has acted in a discriminatory manner or failed to affirmatively further fair housing** based on its review in accordance with 760 CMR 47.04(1) unless the Undersecretary finds that the proposal or project is necessary for the protection of the public health or

welfare and the Applicant has made a sincere and concerted effort to reach agreement with the Commission, Office of the Attorney General, or other relevant enforcement authority **or to otherwise address issues relating to discrimination or failure to affirmatively further fair housing that have been brought to the Department's attention.**

(f) The Department will award funds to an Applicant that the Department determines to be in conditional compliance status, **or making a sincere and concerted effort to correct any determination of discrimination or failure to affirmatively further fair housing** based on its review in accordance with 760 CMR 47.04(1)), only where the Undersecretary determines, including after consultation with **applicable persons or agencies including** the Commission or the Office of the Attorney General, that the imposition of certain conditions on such award will further the Applicant's ability and willingness to comply with applicable civil rights requirements. If an Applicant fails to comply with these conditions during the period of such award, the Department may conclude that such failure warrants a determination that the Applicant is in non-compliance.

(g) The Undersecretary shall appoint a Diversity Officer (**note - perhaps change title to Civil Rights and Fair Housing Officer?**) who shall have, among other things, the following authority and responsibilities:

1. establish reporting requirements for all successful Applicants relative to their compliance with the obligations under 760 CMR 47.00;
2. gather information, **including that required by the Data Collection Law** and report such information regularly to the Undersecretary, relative to successful Applicants' compliance with the obligations under 760 CMR 47.00 **and report to the Undersecretary any failure to provide data required by the Data Collection Law and propose what corrective action the Undersecretary should take in response to that failure ;**
3. track and advise the Undersecretary relative to program compliance with the equal opportunity obligations of Executive Order 526 or superseding Executive Orders;
4. recommend approval or disapproval of all Department appointments and Department funded construction contracts;
5. supervise monitoring and enforcement of the Department's affirmative action plan as described in 760 CMR 47.06 herein;
6. inform and otherwise assist Department program managers regarding the substance of any civil rights comments provided by the Commission or the Office of the Attorney General **and others** , as well as of any compliance conditions imposed by the Department on the award of Financial Assistance.
7. in concert with the Department's Chief Counsel, inform Department program managers of any changes in applicable civil rights laws and policies; and
8. in concert with the Department's Chief Counsel, provide instruction to Department program staff on civil rights compliance and procedures for tracking compliance.

47.05: Employment Policies

(1) All Department officials and supervisory employees shall appoint, assign, train, evaluate, compensate, and promote agency personnel on the basis of merit and fitness, without discrimination on

the basis of race, color, religion, national origin, disability, ancestry, sex, age, military service/veteran status, sexual orientation, gender identity, or any other basis prohibited by law.

(2) The following standards and procedures shall govern the preparation and adoption of affirmative action and diversity plans by the Department:

- (a) set forth goals and timetables and employ all reasonable measures to eliminate the lingering effects of any present or past discriminatory employment practices;
- (b) review its existing staffing patterns, and to the extent that such patterns indicate a pattern of staffing of Racial/Ethnic Minority group members and women, persons with disabilities, and veterans that is not fairly reflective of the percentage of Racial/Ethnic Minority Group members, women, persons with disabilities, and veterans in the Boston Metropolitan Statistical Area (MSA), take appropriate remedial measures to resolve and eliminate such patterns in future hiring and promotion decisions;
- (c) conduct an ongoing review of its affirmative action and diversity plan to ensure compliance with such plan, and with the intent of 760 CMR 47.00 in accordance with applicable executive orders;
- (d) appoint a Diversity Officer to supervise monitoring and enforcement of the affirmative action and diversity plan. In addition, the Diversity Officer shall have the authority to recommend approval or disapproval of all appointments and Department funded construction contracts.

(3) The Undersecretary shall, in conjunction with the Commission, periodically review the above standards and procedures and shall propose modifications and amendments where appropriate, provided however, that any such modifications and amendments shall include without limitation, the provisions of this policy 760 CMR 47.06(1)(a) through (d).

47.06: Non-Discrimination in State Services

All Department services shall be provided without discrimination in accordance with 760 CMR 47.01. No Department facility shall be used in furtherance of any discriminatory pattern or practice nor shall the Department become a party to any agreement, arrangement, or plan which has the effect of sanctioning such patterns or practices. 760 CMR 47.07 shall apply to any public, quasi-public, or private non-profit entity which provides such services pursuant to a contract with the Department. Any such contract shall include language implementing 760 CMR 47.07.

47.07: Contracting and Supplier Diversity Business Enterprise Utilization

(1) Each successful Applicant shall ensure that every construction contract or contract for goods or services utilizing Financial Assistance from the Department shall contain a provision prohibiting discriminatory employment practices by contractors, sub-contractors, and suppliers of goods or services based on race, color, religion, national origin, ancestry, age, sex, disability, military service, sexual orientation, gender identity or expression, or any other basis prohibited by law. The non-discrimination provision shall require contractors and suppliers of goods or services to give written notice of their commitments under 760 CMR 47.09 to any labor union, association, or brotherhood with which they have a collective bargaining or other agreement. Such notice shall also be given to the Commission, SDO, and the Department's Diversity Officer.

(2) Each successful Applicant shall take affirmative steps to increase the participation of Supplier Diversity Business Enterprises in all construction, consultant, goods, and service contracts, including identifying any practical impediments to such participation. Each such Applicant shall also take such further steps as the Department may from time-to-time conclude will further compliance with this requirement, including the establishment of annual goals for Supplier Diversity Business Enterprise participation.

47.08: Responsibility of the Applicant

(1) It is the responsibility of each Applicant for Financial Assistance from the Department to ensure that in the administration of its policies, programs, and projects, it is in compliance with 760 CMR 47.00 and all applicable civil rights laws, and is pursuing all reasonable measures designed to foster equal opportunity and participation in such policies and programs. To the extent that the Applicant identifies policies and programs which may have had and/or may continue to have a discriminatory impact on individuals, businesses, or organizations relative to housing, employment or Supplier Diversity Business Enterprise utilization, the Applicant must take appropriate affirmative measures to remedy the effects of such discrimination. The obligations of the Applicant herein apply not only to an initial determination of eligibility for Financial Assistance but also to the administration of any such assistance.

(2) Relative to an application for Financial Assistance for a residential project, it is the responsibility of each Applicant to do the following:

(a) If developing operating, or managing housing:

(i) submit an affirmative fair housing marketing and resident selection plan to the Department consistent with applicable Department regulations, guidelines, or directives.. No Financial Assistance shall be provided by the Department to such an Applicant until such plan is approved in writing by the Department, and

(ii) list the availability of units in the development **on its website and** with any Clearinghouse in accordance with applicable guidelines or directives issued by the Department

(b) adopt other measures to affirmatively further fair housing opportunities, such as the Applicant's participation in a region-wide strategy or plan.

The requirements of 760 CMR 47.09(4)(d) shall not apply to any application for Financial Assistance for housing to be constructed or renovated pursuant to the Department's Chapter 689 (Special Needs) Program.

47.09: Severability, Compliance and Sanctions

The provisions of 760 CMR 47.00 are severable, and if any of these provisions shall be held illegal by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Any person who has evidence of non-compliance with 760 CMR 47.00 may submit a written complaint to the Undersecretary for appropriate action.

(1) If any complaint indicates that (a) Department action is not warranted or (b) that further investigation by a civil rights enforcement agency is necessary or appropriate to determine whether a violation has occurred, the Undersecretary shall so inform the complainant in writing. The Department shall also refer the complainant to the Commission, the Office of the Attorney General, or other applicable agency as appropriate.

(2) The Undersecretary may notify the Commission or the Office of the Attorney General, with a recommendation that appropriate proceedings be brought to enforce any rights of the Commonwealth under any law of the United States or the Commonwealth.

(3) The Department may also require the Applicant to develop, implement, or update a fair housing or equal employment opportunity plan in furtherance of the objectives of 760 CMR 47.00.

The Undersecretary, in determining compliance with 760 CMR 47.00, shall request the assistance of the Commission or the Office of the Attorney General where appropriate.

REGULATORY AUTHORITY:

760 CMR 47.00: M.G.L. c. 6A, § 8; M.G.L. c. 23B; M.G.L. c. 121B; and M.G.L. c. 151B, § 4; Title VIII of the 1968 Civil Rights Act, 42 U.S.C. § 3601 et seq.; Executive Orders 526, 559, and 565.