



Review of the Housing Development Incentive Program ("HDIP")



About the Massachusetts Law Reform Institute

Founded in 1968, the Massachusetts Law Reform Institute (MLRI) is a statewide nonprofit poverty law and policy center. Its mission is to advance economic, racial, and social justice through a multipronged strategy that includes legal action, policy advocacy, coalition building, community engagement, and public awareness campaigns. MLRI specializes in large-scale initiatives and systemic reforms that address institutional policies that harm low-income people, promote economic fairness and opportunity, and create a path to stability and self-sufficiency for low-income individuals and families. In addition, MLRI serves as the statewide poverty law support center for the Massachusetts civil legal services delivery system, providing substantive expertise to local legal aid programs and to social service, health care and human service providers, and other community-based organizations that serve low-income people.

MLRI coordinates two statewide legal information websites: www.masslegalhelp.org (for individuals and social service providers seeking legal information to assist low-income clients) and www.masslegalservices.org (for legal aid lawyers and advocates).

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I. INTRODUCTION

The Housing Development Incentive Program (“HDIP”) provides millions in state tax credits and local tax breaks for developers of market rate and often luxury housing in the 26 Massachusetts Gateway Cities.¹ The commonwealth has awarded almost \$90 million in credits for this program and will distribute millions more every year—*indefinitely*. As the affordable housing crisis in Gateway Cities spirals out of control, HDIP millions subsidize only *unaffordable* housing, with rents that can be shockingly high and no limits on increases.

An exponential increase in HDIP market rate credits is expected to be considered and likely passed in the 2023-2024 legislative session.² If approved, the annual \$10 million cap on credit awards would be raised to \$57 million in 2023 or 2024, \$30 million each year thereafter, and another \$22 million in unused credits added. This massive expansion would mean that in the next five years developers will receive at least \$200 million in tax credits for expensive housing meant for smaller households with disposable incomes. Meanwhile, as newly elected Governor Maura Healey stresses: “Gateway Cities struggle to keep rents stable as demand for their housing increases.”³

HDIP is the state’s only housing subsidy exclusively for market rate/high priced housing. If the program is enlarged as anticipated—more than tripling the annual cap on credit awards—it would become one of the commonwealth’s major housing programs, providing at least \$200 million in the next five years. This expansion would come despite scant public information on the program. There is no monitoring, evaluation, or reporting of the results of the commonwealth’s investment to date—\$89.4 million in credits approved or reserved for 61 developments, 31 completed and 30 under construction or pending. Unlike affordable housing tax credit programs that require developers to meet rigorous criteria to achieve a range of goals for the public good, HDIP imposes only

¹ The 26 Gateway Cities are municipalities with populations between 35,000 and 250,000 that have below state average median household incomes and rates of educational attainment of a bachelor's degree (or above). GL c. 23A, §3A. The Gateway Cities are Attleboro, Barnstable, Brockton, Chelsea, Chicopee, Everett, Fall River, Fitchburg, Haverhill, Holyoke, Lawrence, Leominster, Lowell, Lynn, Malden, Methuen, New Bedford, Peabody, Pittsfield, Quincy, Revere, Salem, Springfield, Taunton, Westfield, and Worcester.

² This sweeping HDIP expansion had been approved by both branches of the Legislature in July of 2022 and was expected to be included in the multi-billion dollar economic development package negotiated by a House and Senate conference committee and signed by Governor Baker in late November 2022. However, because tax changes were stripped from the bill, the HDIP increase was not included and will most likely be taken up again in the next session.

³ <https://maurahealey.com/issues/housing/>.

minimal obligations in return for the millions in tax credits.⁴

HDIP's support for only higher priced housing is far removed from its original proposed concept that called for mixed-income housing targeted to distressed areas, with benefits, economic inclusion, and protections against displacement for lower income Gateway City residents. As designed in 2010, the Legislature adopted a much different model—providing no support for mixed income housing in distressed neighborhoods and including none of the benefits or protections for local residents originally envisioned for the program.⁵

To address the lack of information about HDIP credit awards and developments, MLRI submitted several public records requests to the Department of Housing and Community Development (DHCD), the agency that administers the program. The facts collected thus far demonstrate that HDIP should be revised to address program inequities and deficiencies, to better serve residents of Gateway Cities, and to ensure that taxpayer subsidies are invested wisely for the public good. Our investigation revealed:

- 1. HDIP tax credits are not distributed evenly or equitably among Gateway Cities and often are misdirected to strong market areas where no subsidy is needed.**
 - A large share of HDIP tax credits have been awarded to developers who build luxury housing in hot market areas that are already attracting new market rate construction without public support.
 - More than half of the HDIP credits and more than half of the units have been awarded or reserved for only 5 of the 26 Gateway cities.
- 2. HDIP rents are generally well above market and often shockingly high—with no limits on increases.**
 - HDIP supports only market rate, not affordable units—only 2% of HDIP units are affordable, although often not sufficiently affordable for lower income residents.
 - HDIP projects built or approved to date generally cater to smaller households with disposable income. They have few units appropriate for families with children (70% of units are studio or one-bedroom units shared student housing suites and only 1.4% of units have 3 or more

⁴ Some local community groups have called HDIP “development with no strings attached.”

⁵ One of the original sponsors of the 2010 HDIP legislation told the author of this report that the lack of any affordability in the program might have been a drafting error.

bedrooms).

- The program requires rents or sale prices to be no lower than the prevailing rents for new construction or substantial rehabilitation projects; as a result, HDIP rents are up to 50-70% above local median asking rents.

3. Although HDIP supports developers, it does not benefit or protect lower income Gateway Cities families and fails to recognize the affordable housing crises they face.

- HDIP ignores the skyrocketing rents and shortage of affordable housing in Gateway Cities and provides support for housing at prices beyond the means of lower income residents.
- HDIP developers also benefit from multiple additional sources of state and local assistance and investment, including infrastructure grants, transit investments, and historic rehabilitation credits.

4. There is no meaningful monitoring, evaluation, or reporting on the results of HDIP awards statewide.

- HDIP lacks transparency. This opaque program has not been monitored or evaluated, there is little public information, and although required by the Legislature, there are no reports on the program.⁶
- Unlike affordable housing tax credits, HDIP credits are not awarded competitively based on multiple and clear criteria reflecting state housing goals, fair housing and equity considerations, public input, and extensive sponsor vetting.

⁶ 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 August 30, 2022, DHCD had not submitted this report to the Legislature. To our knowledge, this MLRI review is the only overall report on the program.

- HDIP does not even appear to require developers to demonstrate why the state assistance is needed and that projects would not be feasible without an HDIP credit.

The information obtained by MLRI demonstrates why this costly tax credit program should be completely reconfigured. The commonwealth and residents of Gateway Cities deserve a new and improved HDIP that would include mixed income housing with truly affordable units, provide assistance only where needed, not provide assistance for luxury housing, benefit a broad range of Gateway Cities residents including those with lower incomes and with children, and be publicly accountable and transparent. These and other necessary program revisions are outlined in Section III of this report.

II. KEY FACTS AND FEATURES OF THE HDIP MARKET RATE TAX CREDIT⁷

What are market rate units? The HDIP statute defines a market rate residential unit as “a residential unit priced consistently with prevailing rents or sale prices in the municipality as determined based on criteria established by the department.”⁸ In reality, as detailed in DHCD’s HDIP guidelines, the criteria for setting rents are *not* determined by the department. Instead, developers can set rents at whatever level they can justify by a market study, with no limit on increases. Additionally, DHCD’s guidelines say there are no ceilings on rents or prices and HDIP rents may not be set below current market rents.⁹

As of August 2022, 61 HDIP projects (4,063 units) in 18 cities have received credit awards or reservations totaling \$89.4 million. Nine other projects submitted applications in 2021 for over \$9.87 million in credits which, if awarded, would bring total awards to over \$99.4 million. Many of these 61 projects charge or plan to charge above-market rents. Most projects are 100% market rate and only 2% of the units overall are or will be affordable—but often even those units are too expensive for the low-income residents facing the highest cost burdens.¹⁰ The 61 projects range widely in size from 7 to 371 units. Two projects (229 units)

⁷ An explanation of HDIP program basics can be found at. [DHCD's HDIP website](#). This review concerns only the state tax credit component of HDIP.

⁸ GL c. 40V, s.1. Similarly, HDIP regulations provide that units “will be considered Market Rate Residential Units if they are priced consistently with prevailing rents or sale prices in the municipality as determined based on criteria established by the department.”

⁹ <https://www.mass.gov/files/documents/2016/07/nk/hdic-implementationguide.pdf>

¹⁰ Income restricted at or below to renters at or below 80% of HUD area median income.

are student housing only, all market rate and expensive. All but one are rental projects. Credit amounts per market rate unit range from just under \$2,700 to over \$128,000.

HDIP as designed is a far cry from the Gateway Cities residential reinvestment program first proposed in a 2009 MassINC policy brief written when there were 11 rather than 26 Gateway Cities.¹¹ The brief called for a program to support large scale revitalization projects in distressed neighborhoods where there are opportunities to build a market for mixed-income development, using state tax credits and local abatements. The idea was to prime the pump and stimulate development where it was not happening. It called for revitalization guided by three main principles:

- (1) *Redevelopment in Gateway Cities that increases economic diversity should not lead to displacement of lower-income residents. Massachusetts must grow its cities to develop more sustainably. Economic diversity can be achieved by rebuilding a market for middle-income residents without displacing lower-income families.*
- (2) *As a component of revitalization strategies, however, every effort should be made to coordinate affordable housing investment with targeted neighborhood revitalization projects.*
- (3) *Lower-income families should benefit from revitalization. Innovative and aggressive economic inclusion strategies are needed to ensure low-income families benefit directly and immediately from reinvestment catalyzed with public resources.*

As enacted in 2010 and since amended, HDIP turns away from this more balanced model in several ways. The program provides incentives only for higher priced developments, not mixed income, and makes credits available to all 26 cities without targeting weak market or distressed areas. HDIP does not require economic inclusion, direct benefits for low-income residents, or protection against rent hikes and displacement.¹² In some cities, millions in HDIP credits have created islands of segregated, high priced housing for small households with disposable income and no children. Meanwhile, several developers appear to be reaping substantial profits.¹³

¹¹ [MassINC Going for Growth 2009](#) (especially pages 18-19)

¹² [GL c. 40V](#)

¹³ One developer has sold a share in the ownership of three of its HDIP projects in Lowell and Haverhill, <https://whav.net/2022/04/20/besides-haverhill-lupoli-companies-sells-interest-in-lowell-apartment-building-for-33-3-million/>; another developer has put two of its HDIP projects in Springfield up for sale, <https://investments.silverbrickgroup.com/campaigns>).

HDIP is the only state program that provides direct subsidies for developers of *unaffordable housing* and involves a much looser award process than is used in affordable housing tax credit programs. Until recently, DHCD made HDIP awards on a first-come, first-serve basis with no competitive criteria based on need, sufficient bedrooms for families with children, projected benefit to neighborhoods, state housing goals or fair housing considerations.¹⁴ Also, HDIP did not appear to require sponsors to be in good standing under state laws and programs and several HDIP developers have been charged with building code, permit and tenant law violations or accused of defective construction.^{15, 16} By contrast, affordable housing tax credits are awarded competitively to projects that best meet multiple and clear criteria developed with public input that reflect state housing goals, fair housing and equity considerations. Sponsors undergo extensive vetting and most affordable developers face a multiyear wait for awards due to resource constraints.¹⁷

¹⁴ In July 2021, DHCD announced its first [competition](#) to award \$7-\$10 million in credits. It received 14 applications and reserved \$5.975 million in credits for five projects in March and June 2022. It is unclear whether it will continue to use a competition if the credit cap is raised as proposed

¹⁵ 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.

¹⁶ 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 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-seeking-relief-from-the-heat/article_60b819a8-ca36-11eb-b403-3b72de65a085.html This developer was approved in December 2021 for \$3.8 million HDIP credit award for a project 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.

¹⁷ 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>

HDIP lacks a clearly articulated rationale. While initially proposed as a tool for distressed areas, the authorizing statute defines it as a program to increase housing, diversify the housing stock, stabilize neighborhoods, and promote economic development in Gateway Cities. There is no mechanism to evaluate if the last two vague goals (stabilize neighborhoods and promote economic development) have been met; in many cases it cannot be said what benefits, if any, this publicly funded support for expensive apartments has brought to local residents. And although the 26 Gateway Cities vary widely (some growing much faster than the statewide average, others growing little or losing population; some attracting market rate developments, some not) HDIP does not differentiate or target distressed areas.¹⁸

1. HDIP tax credits are not distributed evenly or equitably among Gateway Cities and are often misdirected to strong market areas where no subsidy is needed.

Because HDIP does not differentiate among Gateway Cities and neighborhoods or target where the need might be greatest, millions of dollars in credit approvals have gone to stronger “hot” market areas that are already attracting development without subsidies. HDIP authorizes Gateway Cities to designate any area they choose as an HD Zone if they deem it “in need of multi-unit housing.” Zones can be any size: one city’s HD zone consists of a single development site, other cities have designated more than half their land, and one approved a citywide HD Zone. Despite MassINC’s 2009 proposal for revitalizing downtowns “to build community wealth and create jobs for low and moderate-income residents,” there is no requirement that the HD Zone area needs revitalization, or that HDIP benefits or create jobs for local residents.¹⁹

Although HDIP supporters often describe Gateway Cities as “weak market or distressed,” many do not fit into the traditional definition. While some Gateway municipalities are not seeing significant market rate development, others, including those within commuting distance to Boston, have attracted high-end projects with no need to use our limited state housing resources.²⁰ For example, developers in Malden were awarded \$5 million in HDIP credits for a 389 apartment development (all market rate and steps from transit). But as the Metropolitan Area Planning Council notes:

¹⁸ [US Census Quick Facts](#), 2010 vs 2020 population data

¹⁹ [MassINC Going for Growth 2009](#) (page 18)

²⁰ In Fall River “[t]here are over 1,100 market rate high end apartments in the process of being developed . . .”, <https://www.heraldnews.com/story/business/2022/10/10/fall-river-towne-house-business-sale-jasiel-jenny-correia-steakhouse/10461189002/>.

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.²¹

Worcester is another booming city, with a new minor league ballpark and many high-end projects with no need for millions of dollars in HDIP credits to attract developers.²² The Worcester Chamber of Commerce website indicates that over 2,300 market rate units in non-HDIP projects have been built, started or proposed since the start of 2019.²³ Yet Worcester has received more HDIP credits than any other Gateway municipality. Its eight projects (1,085 units total) make up 27% of the total HDIP funded units statewide and will receive 16% of the commonwealth's total credit awards and reservations to date. One is a 228-unit project (\$2.25 million in credits) adjacent to Polar Park—a developer magnet.²⁴ The others include a 312-unit project (\$3.8 million in credits), a 371-unit project (\$1 million in credits) and a 7-unit project (\$900,000 in credits). As HDIP tax breaks for luxury housing pour into the city, local residents fall further behind.^{25, 26}

HDIP is doing far less to promote development in more challenged municipalities. Thus far, the majority of HDIP credits have been concentrated in

²¹ [City of Malden Housing Needs Assessment](#), June 2019, pp.3-4

²² https://billshaner.substack.com/p/why-are-we-so-afraid-to-govern?utm_source=substack&utm_medium=email

²³ 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/>

²⁴ “[Worcester Seeking More Tax Breaks for WooSox-Related Development](#)”, <https://www.wbjournal.com/article/worcester-seeking-more-tax-breaks-for-woosox-related-development>; “[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>

²⁵ “[Worcester-area renters need 2 minimum-wage jobs for a two-bedroom apartment](#)”, Worcester Telegram article 8.19.22

²⁶ Marco Cartolano, “[Worcester's Canal District continues boom: 'Polar Park poured some gasoline on the fire'](#)”, Worcester Telegram & Gazette, April 7, 2022 <https://www.msn.com/en-us/money/realestate/worcesters-canal-district-continues-boom-polar-park-poured-some-gasoline-on-the-fire/ar-AAVXCHD>

just a few communities. Three cities (Worcester, Springfield, and Lowell) with large projects account for approximately 48% of HDIP units approved. More than half of the credits (56%) and more than half of the units have been approved for five cities.

2. HDIP rents are generally well above market and often shockingly high—with no limits on increases.

Although HDIP is titled a “market rate” credit, the rents usually exceed prevailing rents and prices, some by 50-70% with no limit on future increases. Rents in many HDIP subsidized developments are excessively high cost as described in current apartment advertisements. A few examples:

Worcester

- Chatham Lofts, a new HDIP-funded development in Worcester’s hot downtown theater district opened to much fanfare in late 2021. In addition to the local HDIP tax exemption, the developers received \$1,750,000 in state credits for this ultra-luxury development, where they advertise that “each apartment marries historic elegance with modern innovation making you feel immediately at home in this sophisticated environment.” Further, the developers suggest that renters “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.” The rents for these 24 luxury apartments are as high end as the building’s self-promotion—**\$3,000 for a luxury studio, as high as \$2,450 for a one-bedroom unit and \$3,600 for a two-bedroom unit.**²⁷ These far exceed the Worcester city median rent for new leases—currently \$1,237 for a one-bedroom and \$1,658 for a two-bedroom.²⁸
- In an HDIP student housing development in Worcester, the Edge at Union Station, (“loaded with character and exposed brick”) **a single bedroom in a two-bedroom shared student apartment is \$1,365**. And there is a possible HDIP development with expected **rents as high as \$3,900 per month for a three-bedroom apartment**.
- 115 Madison in Worcester is a 228-unit luxury development approved for \$2.25 million in HDIP credits. This development will be right next to the new Polar Park baseball stadium (the most expensive minor league ballpark ever built) and has received glowing press for expanding the

²⁷ <https://www.zillow.com/b/chatham-lofts-worcester-ma-964VkW/>

²⁸ ApartmentList.com rental data estimates report for August 2022, <https://www.apartmentlist.com/research/category/data-rent-estimates>

park's footprint.²⁹ In addition to the now standard luxury amenities in many HDIP developments, 115 Madison will include a pool, fire pits and a dog-washing station.

Lowell

- There is another expensive HDIP student development, Edge Merrimack, from the same developer as the student housing in Worcester ("Convenient student housing w/ luxurious amenities in the perfect location near you!"). At the Waterhead **one-bedroom units go for between \$2,115 – \$3,467** ("Luxury Urban Living"), well over the city one-bedroom median rent for new leases of \$1,219.³⁰ And at the Thorndike Exchange a **one-bedroom rents for \$2,100 – \$2,250** ("hip and homey... lifestyle enhancing... ideal place to relax and recharge... rooftop deck, garden fitness center and enclosed dog run").

Malden

- At J Malden Center ("foodie paradise where you can mix and mingle") **studios rent for up to \$3,438, one-bedroom units up to \$4,654 and, two-bedroom units as high as \$5,935.**

Salem

- **The first ever million-dollar condo is in an HDIP building.** "... luxury urban condominium living . . . high end designer finishes . . . first of its kind bringing luxury urban condominium living to the North Shore."³¹

Quincy

- Rents at the Watson are **up to \$2,815 for a one-bedroom and \$3,230 for a two-bedroom**, well over current median rents for new leases for one-bedroom (\$1,902) and two-bedroom units (\$2,402).³²

3. **Although HDIP supports developers, it does not provide equity or direct benefits to lower income families in Gateway Cities and fails to recognize the affordable housing crises they face.**

²⁹ "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>

³⁰ ApartmentList.com rental data estimates report for August 2022, <https://www.apartmentlist.com/research/category/data-rent-estimates>

³¹ <https://www.charlesgaterealty.com/blog/charlesgate-announces-1st-million-dollar-condos-ever-sold-in-salem-at-brix>

³² ApartmentList.com rental data estimates report for August 2022, <https://www.apartmentlist.com/research/category/data-rent-estimates>. The Watson also has "workforce housing" with rents for one-bedroom units as high as \$2,455.

HDIP ignores the desperate need for affordable housing in Gateway Cities as recently described in the 2022 Greater Boston Housing Report Card, which covers a region that includes half (13) of the Gateway Cities:

Lower-income Gateway Cities like Lynn, Lawrence, Lowell, Brockton and Malden all saw [rent burden] increases larger than 10 percentage points . . . Housing costs have increased faster than incomes for the poorest third of families, exacerbating local inequality . . . Pandemic dynamics drove the largest single-year increase in renter cost burden since 2006 . . . Over the past 15 years, renter cost burdens have increased steadily for lower-income households.

Housing cost burdens (percent of income paid for housing) in Gateway Cities are among the highest in the region: Brockton - 50.4%; Chelsea - 52.3%; Everett - 50%; Haverhill 51.7%; Lynn 51.9%; Lowell - 48.8%; Lawrence - 56.2%; Malden - 47.9%; Methuen 55.6%; Peabody 56%; Quincy - 43.9%; Revere - 49.8%; Salem 52.2%. ³³ Local residents in cities like Fall River and New Bedford that will soon have rail service to Boston face increasingly high rents, gentrification pressures, and threats of displacement.³⁴ The Report Card makes recommendations for addressing the housing crisis in Gateway Cities; notably, their recommendations do not include state support for luxury and market rate housing.

Although developers are the immediate beneficiaries of the millions in HDIP credits and local tax breaks, taxpayer support for this expensive housing does not stop with HDIP. Many developers have also received public investments in new or upgraded MBTA commuter rail and T stops, new state-funded infrastructure investments under MassWorks, and state historic tax credits.^{35, 36} For example, to enhance a high rent Lowell HDIP development “the city received \$2.1 million in state grants to widen Thorndike Street to accommodate turning lanes. The Lowell Regional Transit Authority has secured \$2.5 million in state grants to build a 140-foot enclosed walkway connected the Thorndike Exchange [recently sold by the developer] to the Gallagher Transit Terminal and 100 leased

³³ Greater Boston [Housing Report Card 2022](#)

³⁴ 'This Problem is Going to Continue': Experts predict rise in New Bedford evictions"
<https://www.southcoasttoday.com/story/news/2022/11/03/new-bedford-evictions-on-the-rise-as-city-becomes-more-attractive/69609373007/>

³⁵ Thirteen Gateway cities are served by current or planned MBTA rail and 34 of the 61 approved projects are within a half mile of an MBTA rail stop. At most, 26 units out of over 2,600 units in these projects are expected to be affordable.

³⁶ Historic Rehabilitation Tax Credit, GL c.62, §6J (personal income) and c.63, (corporate excise).

parking spaces in the Lowell parking garage.”³⁷

In addition to local and state HDIP tax benefits, several developers also receive a federal tax benefit for building in “Opportunity Zones,” a generous, controversial, and minimally targeted incentive mostly utilized by wealthy investors.^{38, 39} 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 over 10 years, rather than those offering less rapid appreciation. Many researchers note that Opportunity Zone investors, like several HDIP investors, gravitate towards stronger market communities.^{40,41}

Unlike affordable housing tax credit programs, HDIP demands little from developers in return for the millions in credits and additional state assistance. HDIP does not require reasonable rents, fair housing obligations, benefits to and protections for local residents, public input, public reporting or accountability. For example, in the Low Income Housing Tax Credit (LIHTC) program, generally at least 65% of the units in a project must include two or more bedrooms, and at least 10% must be three-bedroom units. In contrast, most HDIP developments are not suitable for families with children, even those that can afford the rents. Of the 58 (out of 61) projects for which MLRI has bedroom data, it appears that at least 70% are either shared suites in student housing, studios, or one-bedroom units; 28% have two bedrooms and just over 1% of the units have three or more bedrooms.⁴²

Two projects, each with \$2 million in HDIP subsidies, are student-only high-

³⁷ <https://www.thedanielrichard.com/thorndike-exchange-sold-to-delaware-real-estatecompany-2/>.

³⁸ <https://massinc.org/research/combining-hdip-and-oz-for-transformative-transit-oriented-development-in-gateway-cities/> for a discussion of how HDIP and OZ investments might be used together.

³⁹ 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.

⁴⁰ Theodos et al., p.31 and p.37

⁴¹ <https://ncrc.org/the-new-york-times-how-a-trump-tax-break-to-help-poor-communities-became-a-windfall-for-the-rich/>

⁴² The bedroom mix estimates come from a variety of sources, including rental listings, press releases and assessing data. DHCD has not yet responded to a public records request for this information. Of the 58 projects (3,622 units) for which MLRI has bedroom information for most units, 6.3% of the units (229) are student housing (one-bedroom or shared suites) and 64.4 % (2,377) are zero or one-bedroom apartments; 27.7% (1,006) are two-bedroom units; Only about 1% of units have three or more bedrooms.

priced housing, with 229 furnished units in suites that rent by the bedroom or by the bed for far (44-83%) above average asking rents in the cities where they are located—Worcester and Lowell.⁴³

- **HDIP does not require equity, direct benefits and economic inclusion for local residents as envisioned in 2009.** In Gateway Cities almost half of all renters are very low-income and many of those are people of color.⁴⁴ Poverty rates range from 6% to 27.5%. Most have low vacancy rates and steadily increasing rents. About half of renter households in these communities are rent burdened, paying more than 30% of their income for housing, indicating an even greater need for affordable housing, rather than exclusively high-priced housing in Gateway Cities.⁴⁵ These are the families that should benefit from revitalization as proposed by MassINC in 2009—yet are excluded from HDIP housing.
- **HDIP provides no protections for lower income and working-class residents who may be adversely affected or displaced by HDIP subsidized developments that might contribute to rent increases and higher costs in their area.** Where HDIP is a gentrifying force, local residents may be forced to move from their homes and communities when they are no longer able to afford the higher rents—precisely what MassINC warned against in 2009.

⁴³ For a look at the well-appointed HDIP student-only housing in Lowell see <https://www.youtube.com/watch?v=bnifNT9jOkU>. In Lowell, units are *rented by the bed* <https://www.edgemerrimackriver.com/lowell/edge-merrimack-river/student/>. The current asking rent for bedroom units is \$1,750 and rents for 2-bedroom suites with 2 or 4 beds range from \$2,350-\$3100. These rents are 44-83% higher than current median rents for new leases for one-bedroom (\$1,219) and two-bedroom (\$1,693) apartments in Lowell as reported by Apartment List.com for August 2022.

In Worcester, the bedroom student units rent for \$1,665 (\$428 or 34% above median rents for new leases for one-bedroom units in August 2022 as reported by ApartmentList.com, <https://www.edgeunionstation.com/worcester-ma-apartments/edge-union-station/student/>). The combined per-bed rent in a two-bedroom student suite is \$2,730 (\$1,071 or 65% above the median rent for new leases for two-bedroom apartments in August 2022). 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.

⁴⁴ <https://commonwealthmagazine.org/housing/blacks-latinos-migrating-from-boston-to-gateway-cities/>. The most recent census data show that people of color comprise more than half the population in 8 Gateway communities and between 40-50% of the population in 6 additional cities.

⁴⁵ 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>

- **HDIP does not require developers to demonstrate if or how a project will meet the state's legal obligation to affirmatively further fair housing.**⁴⁶ It appears that DHCD has not reviewed the results of this multi-million dollar state housing subsidy to determine if the department's HDIP policies work to affirmatively further fair housing—and there are no indications that it has.

4. There is no meaningful monitoring, evaluation or reporting on the results of HDIP awards statewide.

Although the Legislature requires DHCD to submit HDIP reports every year, the department has not done so and HDIP remains mostly unexamined, and its results are not easily available to the public. The program lacks the most basic elements of transparency and critical data is not collected, evaluated, or reported. It is clear what the program has accomplished for developers, but what has it contributed to communities in both strong and weak markets? At various times, some Gateway Cities legislators have called for program reform—prioritize the weakest market cities, increase program transparency and accountability, evaluate program effectiveness, and not award credits to luxury developments.⁴⁷ Those proposals, and several from housing advocates and community groups, have been rejected by the Legislature.

III. RECOMMENDATIONS

COVID-19 exposed and reinforced the critical need for affordable housing in the commonwealth, particularly for working-class households, families with children, and people of color, many of whom live in Gateway Cities. Any increase in state housing expenditures, including HDIP tax expenditures, must consider those most impacted by the pandemic and the skyrocketing rents because of inflation. We cannot distribute HDIP awards each year indefinitely without meaningful affordability requirements, targeting to distressed areas, equity considerations, protections against neighborhood rent increases and displacement, a fair range of bedroom sizes, and more.

Instead of expanding HDIP in its current form, the Legislature and DHCD should pause HDIP awards and revise the program along the following lines:⁴⁸

⁴⁶ For a discussion of the duty affirmatively furthering fair housing see [DHCD's Analysis of Impediments to Fair Housing](#). This MLRI review indicates several fair housing concerns with HDIP which we hope to address in the future.

⁴⁷ [2020 Testimony of Senator Brendan Crighton and Representative Antonio Cabral on H.4529](#).

⁴⁸ DHCD could make several of these program changes without an amendment to the HDIP statute. The HDIP statute, Chapter. 40V, §5(b), allows DHCD the discretion to adopt policies to

- 1. Require a meaningful affordability component.** HDIP projects with more than ten units should be mixed income and include at least 20% permanently affordable units (for renter households up to 60% of HUD Area Median Income and homeowners up to 80% of AMI). Of these permanently affordable rental units, 10% should be reserved for households under 30% of AMI or provide 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. We know this is a feasible approach since several HDIP projects include some affordability or neighborhood balance.⁴⁹ But these local projects are exceptions, not the rule. Although HDIP permits outrageously expensive rents, the program neither requires nor encourages affordable units.
- 2. Require HDIP developers to demonstrate that the development will directly benefit lower income residents** and ensure that they will not be harmed by neighborhood rent hikes and displacement related to the HDIP project.
- 3. Ensure that HDIP credits support a mixture of bedroom sizes** including units with more than two-bedrooms to better accommodate families with children.
- 4. Maximize program benefits by focusing HDIP awards on proposals that best advance state housing goals, will affirmatively further fair housing, and are targeted to distressed areas.** Select projects in communities that need it the most and that will advance other state goals.
- 5. Devise a meaningfully competitive framework for awarding HDIP credits.** A good 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. Credits should be awarded based on factors including affordability, prioritizing to weak market and distressed areas, a range of bedroom sizes, providing benefits to local residents, and other features discussed in this report.

address program weaknesses: “The department may, limit any incentive or credit available to a certified housing development project . . . to a dollar amount *or in any other manner deemed appropriate by the department.*” (emphasis added)

⁴⁹ Although HDIP does not subsidize or give preference to projects with affordable units, several developments have some affordable units. Some of these are required by local inclusionary zoning or zoning overlays. Other municipalities are creating mixed income neighborhoods by co-locating HDIP projects with or near affordable projects. It appears that 12 of the 61 approved projects include a total of 80 units restricted to households with income at or below 80% of area median income (AMI). We have requested information on the affordable units under a public records request.

- 6. Require developers to show that HDIP credits are demonstrably necessary.** HDIP applicants should prove that projects would not be feasible without an HDIP credit and document the amount needed.
- 7. Increase program transparency, monitoring and evaluation** by establishing metrics and issuing an annual report on the results of the program.⁵⁰ The annual report should also include standard demographic information, such as race, ethnicity, gender, age family size, and income of the residents in HDIP developments.
- 8. Require public participation in formulating criteria for HDIP awards.**
- 9. Establish a sunset date for HDIP or require that the program be re-authorized periodically after evaluation, monitoring, reporting and legislative hearings.**

These recommended program revisions are not meant to be detailed solutions, but a starting point to recognize and address the failings of HDIP in its current form and plot a new path forward for a fairer and more equitable program to meet the challenges of our times.

IV. CONCLUSION

The millions in HDIP local and state subsidies for high-priced housing spark division and distrust. A fairer HDIP that provides mixed-income developments with reasonably priced market rate and truly affordable housing could find support among Gateway Cities, legislators, state government, community groups and affordable housing advocates. We hope this report will spark an open and public discussion about HDIP— because we can and must do better for residents of Gateway Cities.

The author of this report, Judith Liben, is a housing attorney and an Access to Justice Fellow at the Massachusetts Law Reform Institute. All comments, corrections, suggestions, and discussion are welcome. Judith's email is jliben@mlri.org. And special thanks to Emma Caviness, AmeriCorps Legal Advocate at MLRI, for her tireless work on this report and Karina Sumano, Program Support Coordinator at MLRI, for her work on formatting this report.

⁵⁰ At a minimum, DHCD should file the annual report required by Legislature described in footnote 6.