Affordable Housing Guidebook for Legislators

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June 2005
Updated from 1999 Housing Guidebook

Table of Contents

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Introduction

This guidebook briefly describes affordable housing needs in Massachusetts and current State programs, including some funded with federal grants, to address these needs.

Why Affordable Housing Matters

Massachusetts has long had high housing costs relative to resident incomes, ranking among the top three states nationwide for several decades, for several reasons. Overall, the housing supply has failed to keep pace with demand, driving up prices for existing units. Additionally, development costs are high because there is little vacant land in the larger cities, and restrictive zoning in most suburbs has raised land costs while limiting development to single family homes.

Relatively little new affordable housing has been built in recent decades in the locations where job growth has occurred and the resulting growth in economic segregation has meant the need for affordable housing is often invisible to residents in those locations.

Economic segregation has made it more difficult to obtain strong support for state affordable housing programs, including funding to preserve the current inventory. While some communities actively seek funds to maintain and expand their affordable stock, many suburbs have done very little to address the housing problems of their residents. At the same time, some cities feel they have provided more than their fair share of subsidized housing. To compound the problem, state operating budget spending on housing programs has declined steadily since 1990, reaching its lowest point in 20 years in FY'04. ***While some funding increases were approved in FY'05, DHCD spending has been cut more than almost any other state agency in recent years***.

High housing costs create the greatest problems for lower income households because they put a greater squeeze on their ability to meet their other basic needs and create housing instability that is disruptive to their children's schooling. They also block access to homeownership and the opportunity to accumulate the equity people have traditionally relied on for retirement and to pay for their children's college education.

Affordable Housing Needs

Housing is the largest single expense most low and moderate income households face. Economists define the maximum households can "afford" to spend on housing as total household income less the amount needed to cover basic needs (food, clothing, transportation and medical care). For simplicity, the federal government (HUD) currently calls housing affordable if it costs no more than 30% of a household's income.

Recognizing that wealthier households can afford to pay more, HUD limits this 30% definition to households with incomes at or below 80% of the area median family income adjusted for household size ($66,150 for a household of four in Greater Boston in 2005). In reality, because the cost of meeting basic needs is relatively fixed, most very low income households can afford to spend even less than 30%. Using HUD's definition, one in five Massachusetts households (21.5%) – just over half of the 40% of Massachusetts households with incomes at or below 80% of area median – had housing affordability problems in 1999.

The most serious affordability problems are concentrated among very low income households (those with incomes at or below 50% of the area median ($41,350 for a household of four in Boston in 2005, $34,600 for a household of 4 in Springfield) and particularly among extremely low income households (at or below 30% of area median or $24,800 for a household of 4 in Greater Boston in 2005). According to the 2000 Census, over 236,000 very low income households in Massachusetts had severe housing cost burdens (paying over half their income for housing) in 1999, including over 147,000 renter households (38,000 elderly), and almost 89,000 homeowners (41,000 elderly). Two thirds of these households (173,000 households) had incomes below 30% of area median income. By contrast, households with incomes at 51-80% of median made up 4% of low income renter households and 22% of low income owner households with severe housing cost burdens.

Massachusetts Households with Affordability Problems – 1999[1]

	Renter Households			Owner Households			Total	
Income as percent of Area Median Income (AMI)*	Total	Paying 31-50%	**Paying >50%**	Total	Paying 31-50%	**Paying >50%**	Paying 31-50%	**Paying >50%**
0-30% AMI	253,370	43,073	118,831	94,629	21,670	54,506	64,743	173,304
31-50% AMI	150,614	60,999	28,466	119,305	29,946	34,479	90,945	62,891
Subtotal	403,984	104,072	**147,297**	213,934	51,616	**88,985**	155,688	**236,195**
51-80% AMI	168,689	43,690	6,748	198,093	57,842	25,752	101,532	32,277
Subtotal	572,673	147,762	**154,044**	412,027	109,458	**114,738**	257,220	**268,471**
>80% AMI	362,452	17,760	1,812	1,096,207	110,718	15,347	128,478	17,159
Grand Total	935,125	165,522	155,856	1,508,244	220,176	130,085	385,698	285,630

*HUD Area Median Family Income adjusted for household size

Given the rise in housing costs since 1999, wage stagnation for most low income earners, and limited growth in housing assistance in the past 5 years, these figures are probably higher today. According to 2003 Census data, 36.6% of renter households (all income levels) in Massachusetts paid more than 35% of their income for housing, up from 32% in 2000.

Renter households with incomes below 30% or 50% of the area median who do not receive housing assistance almost always have severe cost burdens because the amount they can afford to spend at 30% of income is far below going market rents.

- In Greater Boston, for example, a household of four earning 30% of median ($24,800) can "afford" to spend $620 a month for rent and utilities (heat, light and cooking fuel) and a household earning 50% of median can "afford" to spend $1,034.

- *Even if they do receive state or federal housing assistance, low income households are likely to pay more than 30% of their income for housing*. State budget cuts have forced DHCD to raise minimum rent levels for state public housing and several rental assistance programs to 30-35% of income excluding utilities, and HUD policies have forced housing authorities to reduce Section 8 subsidy amounts even as rents have continued to rise.

Affordable Housing Strategies

Government strategies to address affordable housing needs have evolved over time and include programs to both stimulate the construction of units specifically for low and moderate income households and programs to help housing consumers afford to rent or buy private units. Over the

years, development programs have moved from deep-subsidy to shallow-subsidy programs. Until the early 1980s, most state and federal housing programs provided large enough subsidies that developers and housing authorities could build housing affordable to moderate income households using a single program. The construction subsidies were usually supplemented with rent or operating subsidies to make some or all units affordable to very low income households. These programs created 200,000 units of affordable housing in Massachusetts - including just over 80,000 units of public housing – most built between 1940 and 1980 and most or all of the units in these projects were affordable. The major deep subsidy programs ended in the early 1980s (except for two small HUD programs for the elderly and people with disabilities).

Today, most development programs offer only shallow subsidies. The most active programs require lower numbers of affordable units (20-25% of total units at a minimum must be affordable at 50% or 60% or 80% of median depending on the program), and often require density bonuses for financial feasibility. In areas where development costs are high or when deeper affordability is desired, developers must invest considerable time and money in lining up multiple funding sources (a recent study reported that the average Massachusetts project now uses 7 subsidy programs). Cutbacks in one program can have a ripple effect on many projects.

Recognizing that development strategies do not meet all needs, governments developed tenant-based rental assistance programs in the mid-1960s. These programs give households vouchers they can use to help pay rent in the private market. Rental assistance programs expanded dramatically in the mid-1970s and have been the primary strategy for assisting very low income households since the mid-1980s. They too are deep subsidy programs, because in most cases the subsidy amount is based on household income, and by law assistance is limited to very low income households. Currently, about 70,000 Massachusetts households receive tenant-based rental assistance. Tenant-based rental assistance was intended to enable government to respond quickly to rising housing needs (rather than waiting for new construction). It was also intended to give households an opportunity to live in a wider range of communities and permit assistance to continue even as households move, but it has traditionally been hard to use in high cost communities and when the rental market is tight.

As noted in a recent DHCD report, the shift to shallow subsidy programs, combined with lower overall funding levels and a generally restrictive zoning environment, is changing the face of affordable housing.[2] Developers who want to build market rate housing increasingly need to use the Chapter 40B comprehensive permit process to enter the local market. They combine the permit process with one shallow subsidy program. While this has increased the supply of affordable housing, much of the new housing fails to help households with the most severe housing needs. The need to negotiate zoning produces housing that reflects local antipathy to projects that could house school age children, resulting in a growing number of affordable units that have only 1 or 2 bedrooms or are restricted to age 55+ households. In addition, a growing percentage of the affordable units are only affordable to households with incomes in the range of 70-80% of the area median, and fewer units are available to meet regional housing needs, because most programs now allow up to 70% of the units to be reserved for local residents. This shift away from assisting the most needy households may get worse in coming years. Current restrictions on up to 27,000 older, deep subsidy units are ending by 2010, and the Romney administration is proposing to set time limits on its rental assistance programs (even as newer programs allow households to stay in subsidy units until their incomes reach 140% of median).

Current Affordable Housing Inventory

The State Department of Housing and Community Development (DHCD) maintains a Subsidized Housing Inventory (SHI) that lists all projects that include units reserved, under legally binding agreements, for households with incomes at or below 80% of median, and are subject to affirmative marketing requirements.[3] As of February 2005, the SHI listed 226,459 units in developments with at least some qualifying affordable units, up 13,000 from the October 2001. This count includes owner-occupied units that received rehabilitation grants or loans and DMR/DMH group homes as well as projects that have received permits but are not yet built. The actual number of units reserved for low income households is lower, however, because all the units in rental projects count if at least 20-25% are affordable.

In addition, as of February 2005, about 70,000 households had federal- or state-funded "mobile" rent vouchers that they use to rent private housing. A significant, though unknown, number are used to rent units in the developments counted in the Subsidized Housing Inventory.

The state's total number of affordable units and vouchers has risen only slightly in the past decade. (Precise figures on production are difficult to obtain because of the multiple funding sources required today.) Most of the growth in Section 8 tenant based assistance has been offset by drops in state-funded tenant based assistance, losses in state and federal project-based rental assistance, or reductions in the federal public housing inventory.[4]

Increase in Housing Assistance - 1992-2004[5]

	1993	2004	Change
Tenant Based Rental Assistance			
Section 8 - 9/93 allocation; 1/05 available	46,759	68,608	21,849
State MRVP, AHVP – Leased Units 2/93, 11/04	10,493	1,782	(8,711)
MRVP Project Based Units under lease 11/1993, 11/2004	5,001	3,175	(1,826)
Section 8 Moderate Rehabilitation Existing	3,638	1,979	(1,659)
Subtotal	**65,891**	**75,544**	**9,653**
Federal Public Housing 12/92; 1/05	34,132	33,507	(625)
State Public Housing 12/92, 12/01	49,660	49,968	308
Subtotal	**83,792**	**83,475**	**(317)**
Private HUD-Subsidized Housing w/PBA 9/93, 1/05	61,295	63,626	**2,331**
Low Income Tax Credit Units (in service 12/92; 12/02)*	6,107	23,094	17,077
(estimated preservation units)	(2,302)	(13,266)	(10,694)
Net New LIHTC affordable units[6]	3,715	9,828	**6,113**
Other State Assisted (HIF, HSF, etc)			
Other (Federal RHS, NEF, Local)			

*HUD LIHTC data base as of 5/2004

Balancing New Production and Preservation The cuts in federal and more particularly state funding for affordable housing since 1990 have made it increasingly difficult to maintain the current number of subsidized units, let alone expand it to address the unmet need. Many older private developments have reached the end of their 15-40 year use restrictions. In strong markets, funding is needed to persuade owners to extend affordability or to enable a nonprofit to buy the property. These projects also need funding for capital upgrades. Funding is also needed to maintain and modernize the existing public housing inventory, almost entirely built 25-50+ years ago.

Housing Goals beyond Affordability – Smart Growth and Sustainable Development

In July 2003, Governor Romney created the Office for Commonwealth Development (OCD) to ensure that the activities of state housing, transportation, energy and environmental agencies that affect land use support the concept of **"Sustainable Development"**. OCD established ten principles, summarized below[7], to guide decision-making. Sustainable development discourages sprawl and encourages the revitalization of town centers and neighborhoods. It favors creating mixed income housing through infill development and the rehabilitation of existing structures, rather than new construction. It encourages siting near jobs and public transportation to create walkable districts with a mix of residential, commercial, civic and educational uses.

1. Redevelop first
2. Concentrate development
3. Be fair
4. Restore and enhance the environment
5. Conserve natural resources
6. Expand housing opportunities
7. Provide transportation choice
8. Increase job opportunities
9. Foster sustainable businesses
10. Plan regionally.

State agencies, including DHCD, must consider how well projects meet these "smart growth" goals when awarding funds, and the State has reserved some housing funds specifically for sustainable development projects (see pages 49 and 79).

State Funding for Housing Assistance

As detailed in the following pages, DHCD's current budget includes $208 million in state operating ($85 million) and capital ($123 million) for housing and community development activities. The major operating budget expenditures for affordable housing include:

- $33 million to operate almost 50,000 units of state public housing
- $28 million to provide rental assistance for just over 5,500 low income households
- $5.5 million for interest subsidies for about 6,000 units of private housing built in the 1970s
- $2 million to help at-risk households avoid homelessness.

The FY'05 capital budget includes:

- $50 million to modernize existing state public housing, $2 million to create new units,
- $49 million to create or preserve private affordable housing,
- $ 7.5 million to develop or upgrade community-based residences for people with disabilities
- $ 4 million for a mortgage program for first-time homebuyers
- $10 million for infrastructure and related costs associated with older urban renewal projects.

The State also spends about $190 million a year in state funds on emergency shelter programs for homeless families (1,800 units) and individuals (about 3,800 beds) through the budgets of

several Executive Office of Health and Human Services (EOHHS) agencies.

[1] U.S. Department of Housing and Urban Development, 2000 CHAS data (see http://socds.huduser.org/chas/statetable.odb

[2] Massachusetts Draft 2005-2009 Consolidated Plan, DHCD, February 2005, pp. 19-20.

[3] The Subsidized Housing Inventory excludes projects that reserve 100% of the affordable units for local residents.

[4] The increase in Section 8 tenant based vouchers of about 21,900 is part due to the conversion of about 2,000 older HUD project-based vouchers under the Moderate Rehabilitation program to tenant-based assistance. HUD published data on Section 8 awards show Massachusetts has been awarded about 19,600 new tenant-based vouchers since FY'93. About 6,000 are "replacement housing" vouchers, issued to tenants who lost project-based assistance when owners of federally assisted projects converted to market rate housing or when public housing agencies replaced older projects with smaller, mixed income developments, resulting in a net gain of about 13,600 vouchers.. State-funded tenant based assistance vouchers in use dropped by 8,711 since 1993, and MRVP project-based vouchers in use have dropped by 1,914 as owners converted to market rate housing or decided to use Section 8 tenant-based vouchers instead.

[5] Data sources vary. 1993 data for Section 8 TBA and HUD private subsidized housing come from HUD's 1993 Profile of Subsidized Housing. Data on LIHTC low-income units placed in service is from HUD's National LIHTC Database dated 5/28/2004 (see next endnote). State public housing figures come from DHCD reports for December 1992 and December 2001. State rental assistance data is from DHCD. Because most state-assisted projects, including older MHFA projects and SHARP, have HUD subsidies and are counted in the HUD totals, they have not been broken out separately here.

[6] Figures on tax credit projects do not include units placed in service since January 2003, because of a lag in HUD's published reports (nor do they net out projects which have expired in recent years). The most recent release (5/28/2004) reported projects placed in service through 12/2002 and includes corrections to earlier releases. The estimate of preservation units is based on a review of the projects in HUD's list and includes the low income units developed under older HUD, RHS or MHFA programs – and thus largely counted in the other program categories already - which subsequently received tax credits to preserve affordability or finance major capital repairs, including public housing units rebuilt under HOPE VI.

[7] A more expansive description of the Office for Commonwealth Development programs and the ten sustainable development principles is available at OCD's website (see http://www.mass.gov/ocd/)

DHCD Budget Trends

State spending on housing programs fell dramatically when the state went into recession in 1990, and it has remained low ever since.

- At its peak in FY'89, DHCD programs – including non-housing activities – accounted for 2.9% of state-funded budget spending. In FY'04 it accounted for less than 0.5%.
- In FY'89, DHCD state-funded spending totaled $410 million – the equivalent of $625 million in 2004 dollars. In FY'05, its state-funded budget totals $208 million.

Total DHCD Spending All Programs 1989 – 2004 (in millions)[8]
(Not adjusted for inflation)

Fiscal Year	State Operating Funds	State Capital	Total State funded Spending	DHCD Share of Total State-funded Spending
89	208	202	410	2.90%
90	224	156	380	2.50%
91	200	75	275	1.70%
92	196	28	224	1.40%
93	174	33	207	1.10%
94	138	34	172	0.90%
95	136	47	183	0.90%
96	137	65	202	1.00%
97	132	69	201	0.90%
98	132	80	212	0.80%
99	136	83	219	0.80%
00	138	85	223	0.70%
01*	141	77	218	0.68%
02*	140	102	243	0.66%
03*	97	109	206	0.51%
04	68	120	188	0.46%
05 budget*	85	123	208	not available yet
Change FY'89-FY'04	-140	-82	-222	-2.44%
% Change FY'89-'04	-67%	-41%	-54%	

*FY'01-03 and FY'05 are adjusted to include Affordable Housing Trust Fund appropriations.

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[8] Source: Commonwealth of Massachusetts Statutory Basis Financial Reports FY'98-FY'04, Ten-Year Schedule of Expenditures and Other Financing Uses by Secretariat (adjusted to exclude federal grant funds)

Federal Housing Programs and Policies

Federal housing policy and funding trends have a huge impact on the ability of the state and localities to address affordable housing needs – particularly the needs of very low income households – and their importance has grown as state funding for housing programs has fallen. Over seventy percent (70%) of the affordable subsidized units in Massachusetts are federally assisted. In FY'03, HUD spending on key housing and community development programs in Massachusetts totaled $1.7 billion[9], including about $375 million administered by DHCD.

HUD regulations give DHCD and cities and towns considerable discretion in how they choose to use their federal funds and operate their programs, and these choices affect who among those with housing needs is assisted and how.

HUD funds support seven major housing programs that assist more than 163,000 low and moderate income households in Massachusetts:

- Section 8 tenant-based rental assistance (about 68,600 vouchers),
- Long-term rent and/or interest subsidies for almost 800 private multifamily housing developments for families, the elderly and disabled (over 76,000 affordable units)
- Federal public housing (33,500 units),
- Annual block grants to states and larger cities for housing and community development activities ($55 million to DHCD and $117 million to cities and towns in FY'05)
- Grants for new elderly and disabled housing developments (about 80 new units a year).
- Homeless housing and service program grants (about $60 million in FY'04)
- HIV/AIDS housing and service program grants (about $4 million in FY'05).

HUD Deregulation

In recent years, Congress has given state and local governments and housing authorities more say in how they use their HUD funds – within broad federal guidelines – by increasing the use of block grants and rewriting certain laws.

- *Block granting* Much of HUD's funding used to be provided through small programs for very specific activities. In 1992, Congress replaced many programs with a housing block grant (HOME) and consolidated funding for homeless assistance programs.

- *Public housing and Section 8 deregulation* Congress extensively revised the federal public housing and the Section 8 tenant-based rental assistance programs by enacting the Quality Housing and Work Responsibility Act (QHWRA). QHWRA gives public housing agencies (PHAs)[10] greater choice in deciding who receives priority for assistance, the rents they will charge in public housing and the subsidy levels they will provide for Section 8, and how they will spend public housing capital funds to upgrade or even demolish units. Most QHWRA provisions went into effect on October 1, 1999.

To try to ensure HUD funds are used to address the most critical local needs, federal law requires that state and local governments and housing authorities prepare five year plans, with public input, that detail and prioritize housing needs in their jurisdiction and explain how grantees will use their HUD funds to address these needs.

• ***Consolidated Plans*** States and communities that receive HUD block grant funds - including Community Development Block Grant (CDBG), HOME, Emergency Shelter Grant (ESG) and HOPWA funds - must prepare a 5-year Consolidated Plan, *every five years*. HUD must approve the Plan before it disburses funds. DHCD and every Massachusetts community that receives CDBG or HOME funds from HUD (see page 20) has a consolidated plan. DHCD recently completed a draft Consolidated Plan for 2005-2009, available at their website, which describes statewide housing needs.

HUD requires that Consolidated Plans include detailed information on a jurisdiction's housing market conditions, and the major housing needs of residents, particularly extremely-low and very low income households, the elderly, the homeless and people with disabilities. The jurisdiction must also identify the needs it has designated as high priority and describe how its planned use of block grant funds relates to those needs. Agencies must also publish a more detailed One Year Action Plans each year and submit an annual performance report – called the Consolidated Annual Performance Report (CAPER) - that outlines how funds were actually spent.

• ***PHA Plans*** To receive funding for their federal public housing units and their Section 8 tenant-based assistance programs, HUD requires DHCD and local housing authorities to prepare 5-year and annual PHA Plans that detail how they will operate their programs. The plans include a mission statement, goals and objectives, and a description of major program policies and spending plans. PHAs must show that their activities and policies are consistent with the priorities identified in local Consolidated Plans (see above). PHAs must also publish a Section 8 Administrative Plan that outlines their program policies in detail.

Section 8 Rental Assistance (Tenant-Based)

The Section 8 tenant-based rental assistance program–now called the **Housing Choice Voucher Program**-is the largest single federal housing program in Massachusetts for low and moderate income households and is crucial to State efforts to assist extremely- and very- low income households. The program currently (February 2005) assists about 69,000 households in Massachusetts though this figure is expected to fall to about 66,500 by the end of calendar year 2005 due to federal budget cuts in federal FY'04 and FY'05.[11] Many housing agencies, including DHCD, have been unable to issue vouchers for almost a year, though DHCD expects to begin to issue some this Spring. The President's FY'06 budget proposal calls for further cuts starting in FY'07.

Congress created the Section 8 program in 1974 as an alternative to public housing. Program goals included giving low income households geographic choice and avoiding the concentrations of poverty that characterized much family public housing. The program provides vouchers to low income households to help them pay their rent (or in some cases their mortgage). Tenants pay a minimum of 30% of their income toward their housing costs (rent and utilities) and federal funds cover the difference up to a fixed amount. Tenant-based vouchers are "mobile" – if a household moves, they can use their voucher to rent their next unit. They can use the voucher to rent a unit anywhere in the U.S. that meets HUD quality standards as long as there is a housing agency willing to administer the funding.[12] (HUD also has a "project-based" Section 8 program that subsidizes the rent on units in specific developments. Those subsidies stay with the units)

Administration Vouchers are distributed by state and local housing agencies -collectively called public housing agencies or PHAs - that have successfully applied for voucher allocations from HUD over the years. In Massachusetts, DHCD and 125 local housing authorities currently operate Section 8 programs. DHCD administers just over 25% of the vouchers (about 18,000)[1] through a network of regional non-profit housing agencies, and local housing authorities administer another 50,000. Program policies, including subsidy levels and admissions preferences, vary among PHAs. PHAs are responsible for maintaining waiting lists, distributing vouchers to applicants, inspecting units before they are leased, verifying tenant incomes at least annually and mailing the monthly subsidy checks to owners.

Eligibility for Assistance Admission is generally restricted to households with incomes at or below 50% of area median (unless the PHA adopts a policy permitting assistance to households with incomes of up to 80% of median) and since late 1998, federal law has required PHAs to ensure that at least 75% of new voucher holders be extremely-low income (incomes at or below 30% of area median). Because demand for vouchers far exceeds supply, PHAs can set priorities for assistance. Admission priorities must be described in the PHA plan and be consistent with local housing needs and priorities as detailed in the local Consolidated Plan. Some PHAs use a simple first-come, first serve

[1] In the past, housing agencies had a fixed allocation of vouchers. Because of changes in federal budget language and appropriation levels and HUD funding procedures, this is no longer true. The number of vouchers a PHA can administer will fluctuate depending on local subsidy cost trends and any ceilings imposed by HUD.

system, others give applicants in emergency situations or working households priority. PHAs can also give preferences within a priority category and many give local residents a preference. Applicants can apply to any PHA that has a Section 8 program, but PHAs are allowed to stop accepting applications when the number of households on their waiting list exceeds the number of vouchers likely to be distributed in the next 1-2 years. DHCD and more than 50 local housing authorities have created two centralized waiting lists to make it easier to apply to multiple authorities at once (see page 13.)

Rent: The law governing the way subsidy benefits are calculated was revised in 2000. Tenants now pay a minimum of 30% of their adjusted income toward their housing costs (rent plus a allowance for any utilities not covered in the rent) and are entitled to a subsidy for the balance of their rent up to a fixed amount called the "payment standard." Tenants can rent units that exceed the payment standard (and pay the extra cost themselves), as long as their share of rent and utilities does not exceed 40% of their adjusted income when they first lease the unit. The 40% cap applies only to the initial lease; if the rent goes up later, the tenant is allowed to pay more than 40% of income.

Payment Standard The maximum subsidy a household can receive is based on the unit size (1-bedroom, 2-bedrooms, etc) they need. PHAs set payment standards for each unit size based on regional HUD standards called "Fair Market Rents" (FMRs). FMRs are supposed to reflect the going rate for a modest unsubsidized apartment, defined as the 40th percentile rent[13] (i.e. slightly below average) paid by recent movers. The published FMRs are *gross rents* (reflecting the combined cost of the rent paid to owner plus the estimated cost of tenant paid utilities).[14] Because FMRs are based on very large regions and may be higher or lower than gross rents in individual communities, federal law allows PHAs to set local standards at anywhere from 90-110% of the HUD FMRs for their region. If they want to use even lower or higher standards, they must get HUD approval. *When HUD funding is tight, some PHAs lower their subsidy amounts to make their funds stretch, though this may limit housing options*. The actual subsidy provided per household is the difference between their 30% of income contribution and the payment standard (or actual gross rent if lower).

Role in State Housing Policy The Section 8 tenant-based program is crucial to State efforts to assist extremely- and very- low income households because it makes housing affordable for households with extremely low incomes and its importance has grown because most other state and federal subsidy programs now produce housing affordable to households with incomes of 60%, 70% or 80% of median. Section 8 vouchers can make those units affordable to extremely low income households. Over three quarters of voucher holders in Massachusetts have incomes at or below 30% of median, even though 36% work.[15] Section 8 is a critical resource for families with children, because about 20% of all units in subsidized developments have 3 or more bedrooms, and many communities have no subsidized developments for families. Families with children make up 54% of voucher households in Massachusetts (compared to less than one-third of public housing households). It is also a key resource for non-elderly households with disabilities (36% of Massachusetts voucher holders).

Special Purpose Vouchers Most Section 8 vouchers are available to low income households generally, but about 7,800 of the 69,000 in Massachusetts were awarded under

special programs created in the past 10 years and are reserved for specific populations (e.g. homeless individuals, persons with disabilities or families with children in foster care). DHCD's allocation includes more than 4,800 special purpose vouchers, including 1,957 for people with disabilities (including DMR and DMH clients and people with HIV/AIDS), 2,151 for families moving from welfare to work and 700 for families regaining their children from foster care. Local housing authorities have received about 2,500 more vouchers specifically for people with disabilities.

Program Trends

- *Limited Program Expansion since 1995 – Shrinkage since 2004* Prior to federal fiscal year 1995, Congress regularly appropriated funds to expand the supply of Section 8 vouchers nationwide. HUD used a "fair share" formula to allocate the new funds to states and regions based on relative housing need and housing agencies could then apply for a share of their region's allocation. In the early 1990s, Congress also began funding special purpose vouchers and "tenant protection" vouchers for households losing other assistance (due to the demolition of public housing or the conversion of older subsidized developments to market rate housing). From FFY'95 to FFY'98, however, it funded no new vouchers, and increases in subsequent years have been sporadic (none in FFY'03, FFY'04 or FFY'05 except tenant protection vouchers and a small allocation for people with disabilities). Recent budget cuts have forced PHAs to put another 2,800 vouchers on hold, and that figure is expected to rise to 4,800 by the end of 2005.[16] As result, there has been almost no net growth in rental assistance in Massachusetts in the past ten years. While Massachusetts received 19,623 new voucher awards between 1993 and 2003, about 6,000 were tenant protection vouchers, resulting in a net increase of households assisted after deducting 2,800-4,800 vouchers on hold, of about 8,800 – 10,800 vouchers. That gain has been negated by a drop of 10,500 state-funded vouchers during the same period.

- *Recent Funding Changes and Proposed Federal Funding Cuts* In the past, PHAs received annual renewal funding based on the number of vouchers they had been allocated over the years times the average prior year cost per unit plus an inflation adjustment. To maximize voucher utilization, PHAs usually issued extra vouchers (over-issuing), knowing that some would end up unused because the participant did not find a home. If it turned out that more vouchers were used than anticipated, the PHA would adjust by not re-issuing some of the vouchers turned in later in the fiscal year. Alternatively, if average costs were falling, they found they could issue extra vouchers (overlease) in the short run and stay within their annual budget, knowing others would be turned in before the year ended.

However, frustration over Section 8 budget underspending in recent years as tight housing markets and low FMRs made it difficult for tenants to find units, led Congress to change the way it funded the program starting in federal FY'03. It split program funding into two pots - one providing renewal funding to PHAs based on the number of vouchers in use and prior year average costs plus inflation and a second reserve account to cover extra costs as underleased PHAs leased up to their full allocation of vouchers and to fund cost adjustments in areas experiencing rent increases or falling tenant incomes. It continued this approach in FFY'04, but failed to appropriate sufficient funds. This left many PHAs with a huge funding gap and little time to address it (the impact varied depending on

whether their fiscal year ended in July, September, January or April and whether they had any reserves) forcing some to take back vouchers, freeze re-issuance or deplete reserves.

In federal FY'05, Congress adopted language that further restricted renewal funding, by limiting it to vouchers in use in May-June 2004 plus any new tenant protection vouchers, and requiring across the board voucher reductions if the appropriation fell short. Because the appropriation is short, HUD is requiring an across the board reduction in vouchers. Massachusetts PHAs had to put 4% of their vouchers (over 2,800 statewide) on hold immediately and are expected to have to increase that figure to 4,800 by December 2005 (actual reductions will vary, depending on whether PHAs have reserves and whether average costs are rising or falling). Additionally, while the FFY'06 budget proposal appears to allow full utilization of current vouchers, the President is proposing steep cutbacks in future years that could reduce the number of vouchers in Massachusetts by 17% (12,252 vouchers).

- *Recent reductions in fair market rents (FMRs)* As noted above, payment standards (the maximum subsidy a household can receive) are pegged to HUD estimates of the "fair market rents" (FMRs) in regional housing markets. HUD sets new FMRs annually, by applying inflators to the most recent decennial Census data[17] or conducting rent surveys in areas where it believes rents are falling or rising more rapidly. FMR levels have a major impact on the ability of voucher holders to find affordable housing. If they are too low, voucher holders will have difficulty finding a unit within the payment standard – even as PHAs raise their payment standards to 110% of FMR – unless they pay more than 30% of their income towards their housing. This happened during the period of rapid rent inflation in Massachusetts between 1999 and 2001, when many voucher holders could not locate units they could afford, particularly in suburban areas, and success rates (the percentage of households issued vouchers who succeed in leasing a unit) fell below 70% in many areas, compared to 90%+ in earlier years. After HUD raised FMRs in FY2002, success rates rebounded and participants were able to use their vouchers in more communities.

In the summer of 2004, however, as part of an effort to reduce Section 8 costs, HUD proposed steep cuts in FMRs in many parts of the nation, including Massachusetts, primarily by redefining FMR area boundaries. It also decided as a matter of policy to reduce FMRs for large units (3 or more bedrooms) across the board. While it retreated from the area redefinition in response to heavy criticism, the final FY'05 FMRs are 11-20% below FY'04 levels in many parts of Massachusetts, including Greater Boston and the Cape. The two-bedroom FMR in Greater Boston is $1,266 (including all utilities).

- *Project-Based Vouchers* New federal legislation enacted in 2000 has made it easier to project-base tenant-based assistance. PHAs can now use up to 20% of their Section 8 tenant-based funding for project-based assistance, assigning vouchers to specific housing units by entering into contracts with owners for up to 10 years. Tenants retain the flexibility of standard mobile assistance - they must agree to stay in the project-based unit for at least a year, but after that can move as soon as a tenant-based voucher becomes available. Project basing can be used in existing subsidized and unsubsidized housing as well as new housing and can be combined with other subsidy programs such as the Low Income Housing Tax Credit program. The contract can cover no more than 25% of the units in a building, except for elderly, disabled and supportive housing projects. DHCD

has project-based several hundred units to date and hopes to re-start its program to take advantage of the current availability of 2-bedroom and larger rental units if it can free up vouchers under the current funding freeze.

- *Centralized Waiting Lists* The State and many local housing authorities have simplified the process of applying for Section 8 assistance in recent years. In the past, applicants had to apply individually to every LHA and regional nonprofit that operated a Section 8 program and it was difficult for applicants to determine where they could apply because local waiting lists are closed most of the time. DHCD created a centralized waiting list/application for its vouchers in 2000 and the state chapter of the National Association of Housing and Redevelopment Officials (MassNAHRO) created one for interested local housing authorities in early 2003 (50+ LHAs at present). Households can be considered by all LHAs with openings by filing a single application.

- *Section 8 Homeownership* In 1998, Congress passed legislation making it easier to use Section 8 assistance to purchase a home, and HUD issued implementing regulations in 2000 and 2002. The new regulations give PHAs the option of setting up homeownership programs that allow households to apply their Section 8 subsidies to mortgage payments. The program is generally limited to first time homebuyers, and PHAs have considerable discretion in designing their programs. The Section 8 subsidy can be used with other state and local first time homebuyer assistance programs, such as local CDBG funded programs. As of January 2005, 29 Massachusetts PHAs have established Section 8 homeownership programs [18]and 74 households have received homeownership vouchers. However, most housing authorities and collaborating lenders are now in a wait and see period because of the current uncertainty about the long term availability of Section 8 funding. High home sale prices, particularly in eastern Massachusetts, also remain a significant barrier.

Federally-Assisted Private Housing

Massachusetts has more than 76,000 units of affordable housing in more than 800 older, privately owned, multifamily developments built or rehabilitated with federal subsidies to write down development costs and/or assisted with project-based rent subsidies. Almost 1,900 state public housing units were developed using HUD Section 8 rent subsidies as well. The vast majority of households in these developments are elderly households (50%) or non-elderly households with disabilities (35%).

The 76,000+ private units include:

- Almost 37,400 units in more than 240 projects developed between the mid-1960s and the early 1970s under HUD mortgage insurance and interest subsidy programs that restricted rents and limited admissions. About 24,400 also have Section 8 rent subsidies.
- Another 27,000 units in projects developed in the 1980s primarily with Section 8 project-based rent subsidies (about 500 are in rural projects that received low-cost federal Rural Housing Service mortgages.
- About 11,600 units of Section 202 housing for the elderly, including more than 10,300 units with Section 8 project-based rent subsidies, built between 1959 and the present.
- About 700 units of housing for people with disabilities built prior to 1992 under the Section 202 program or since 1992 with Section 811 construction grants and rent subsidies.

Program Trends

The continued affordability of about 27,000[19] of these 76,000+ homes, plus several hundred state-assisted units (under the 13A program), is potentially at risk because owners can end affordability restrictions by December 31, 2010, by prepaying their subsidized mortgages and/or choosing not to renew their Section 8 project-based contracts when they expire. Since 1995, mortgage subsidies and/or Section 8 contracts covering over 10,500 units have been terminated, resulting in a net loss of at least 4,400 affordable homes. The other 6,074 homes retain some affordability because localities negotiated restrictions or owners refinanced using tax credits or other subsidy programs that required some affordability but usually for fewer homes and sometimes for higher income groups than previously served. Over 4,100 of the lost homes had project-based Section 8 subsidies, making them affordable to extremely low income households.

- *Prepayment Eligible and Expiring Mortgage Developments* About 6,000 of these at-risk homes are in projects financed with federal mortgage interest subsidy programs in the 1960s and 1970s (Section 236 and Section 221d3). They are affordable because owners agreed to limit rents and profits in exchange for the mortgage subsidy and to rent only to low and moderate income households. Many for-profit owners were given the option of prepaying their mortgage after 20 years and removing the affordability restrictions and have reached or passed that date. In addition, some of these mortgages have reached or will shortly reach their maturity dates, meaning affordability restrictions will terminate automatically. Many of these projects have project-based rent subsidy contracts under Section 8 or earlier HUD programs for 40-100% of their units as well, some of which end automatically upon prepayment or maturity.

• *Expiring Section 8 Project-Based Contracts* Over 60,000 homes built or rehabilitated between the mid-1970s and early 1980s are affordable because the owners entered into 5-40 year Section 8 project based contracts with HUD for a specified number of homes (up to 100%) in their development. Owners agreed to rent these homes to Section 8 income eligible households and HUD agreed to pay the difference between the tenant's rent (30% of income) and an agreed upon contract rent. The contracts on over 30,000 units expire by December 31, 2010 and owners will have to decide whether to renew them. Some owners are likely to renew because their projects are subject to other long term use restrictions, but almost 15,000 units are in projects without such restrictions.

If owners choose to prepay their mortgages or terminate the project based contracts, displaced low-income tenants are eligible to receive special Section 8 tenant-based vouchers called enhanced vouchers. They can use the vouchers to continue to rent units in the development, as long as the local housing authority finds the new rents to be reasonable (in line with rents for comparable units), or they can use the voucher to move elsewhere.

Federal Public Housing

There are about 33,500 units of federal public housing in Massachusetts owned and operated by 67 local housing authorities (LHAs). Three-quarters of the units are in ten communities, with one-third in Boston alone. As with state-funded public housing, the majority of units (two-thirds) are in developments for the elderly and disabled only. Most of the units were built between the late 1930s and early 1970s, with smaller numbers added through the early 1990s. Expansion options are limited because Congress has generally capped the number of units for which PHAs[20] can receive operating and capital subsidies at the number operated on October 1, 1999.

Because these projects are funded by HUD, rather than the state, they have slightly different admissions rules. They tend to be in better physical condition than state developments because while HUD modernization funding has not kept pace with needs, it has still generally been higher than the amounts the state provides for its stock.

Eligibility and Admissions As with state public housing, admission is restricted to households whose incomes do not exceed 80% of the area median income. Applicants must also pass a background check by the PHA. In an effort to broaden the mix of incomes in federal public housing, HUD reduced low income targeting requirements in October 1999.[21] PHAs are now required to ensure that at least 40% of openings each year go to "extremely-low income" households (incomes at or below 30% of median)[22] but can choose to target higher income households for the remaining units. HUD resident characteristics reports indicate that 81% of the households in Massachusetts federal public housing for whom income data was reported are extremely-low income.[23]

Preferences and Priorities for Admission The admission rules for federal public housing differ from those for state public housing, because Congress has allowed PHAs since late 1999 to set their own rules regarding who gets priority or preference as long as their policy is published, is consistent with local needs as identified in their jurisdictions Consolidated

Plan, meets HUD's income targeting requirements and does not violate civil rights laws. Many LHAs give local residents a preference over other applicants; other groups that commonly receive a preference are working households and households with emergency needs, including victims of domestic violence.

PHAs generally maintain separate waiting lists for their family and elderly/disabled units and can establish "site-based" waiting lists as well that allow applicants to specify the developments they are interested in. These lists are often closed, and households facing the longest waits include non-residents, families, and non-elderly individuals.

Rent is generally set at 30% of a tenant's adjusted income, but PHAs must disregard the first year's earnings of a family member who was unemployed or receiving TAFDC who gets a job, and phase out the disregard gradually over two more years. PHAs can adopt other income disregards and rent incentives to reward work, such as ceiling rents. In addition, each household must be allowed each year to choose between paying rent based on income or a flat rent based on their unit's rental value. PHAs can also set a minimum rent -- not to exceed $50 a month -- even if it exceeds 30% of adjusted income.
Funding PHAs receive annual grants from HUD for operating costs and capital improvements and can apply for supportive services funds under a competitive grant program called ROSS.

- *Operating Subsidies* Because rents are based on tenant incomes, revenues often fall below the level needed to cover operating costs. HUD's approach to funding the shortfall is similar to the state's approach. PHAs are entitled to an operating subsidy if their rent revenues fall below the amount HUD calculates it would cost a *well-managed* PHA to operate its developments. The amount LHAs actually receive depends on their pro-rata share of the national total subsidy need and the total amount of funding available nationally. Except for a period in the mid 1990s, when Congress funded operating subsidies at 89% to 95% of HUD need, PHAs have generally received 100% or close to 100% of their subsidy "need", though many LHAs believe HUD's formula understates needs. HUD has been working with PHA representatives to develop a new formula since 1999 using "negotiated rulemaking".
- *Capital Grants* PHAs currently receive annual formula grants from HUD to address the capital needs of their inventory, consistent with their PHA plan. (Prior to 1999, only large LHAs received formula grants, while smaller PHAs were funded using a method similar to the State approach to funding modernization for state public housing – Congress made a very limited pot of funds available and PHAs competed for funds for specific improvements). LHAs can use their capital funds to develop new units, but HUD will not provide capital or operating subsidies for incremental units, unless they have been built as part of a mixed finance transaction.

Program Trends

- *Recent and Proposed HUD Budget Cuts* Congress has steadily cut funding for public housing subsidies and service programs since FY2001. The President's proposed FY2006 budget would reduce operating subsidies to 89% of need, cut capital grants by 10% compared to FY2005 and almost 20% compared to FY2001 and cut grants for resident services by 50%.

- *Deregulation* In 1998, Congress enacted legislation that significantly revised the laws governing public housing and gave PHAs more discretion in setting spending priorities and policies governing tenant admissions and rent charges. Most of the new provisions went into effect on October 1, 1999. PHAs must publish five-year and annual PHA Plans that outline major program policies and spending plans (see pages 8-9).

- *Mixed finance housing* Since 1999, PHAs have been allowed to develop "mixed-finance" housing by combining their capital grants with other public or private funding sources to develop mixed income housing and to obtain private financing by pledging future capital grant funds as security. HUD must approval transactions in advance.

- *HOPE VI and end of one-for-one replacement* In 1992, Congress authorized HUD to create a program to revitalize "severely distressed" developments by replacing them with smaller, less dense projects on and off the original sites, with funds to be distributed through a competitive grant process. Initially, demolished units had to be replaced on a one for one basis but Congress later dropped that requirement. Over time, the program evolved into a more ambitious neighborhood revitalization program, often creating mixed income neighborhoods by creating moderate and market rate units as well, and providing funds for supportive service and community facilities. HUD also added "demolition only" grants for LHAs choosing not to replace deteriorated units. To date, six HOPE IV projects have been approved for Massachusetts (5 for revitalization). These projects, together with reductions by some LHAs who converted small units into larger units or community facilities and small increases in units by other LHAs, have resulted in a net reduction of about 1,300 units since 1995, in part due to delays in creating replacement units. Displaced tenants generally receive Section 8 vouchers if they choose not to relocate to another housing authority development or there are no vacancies in other developments.

Community Development and HOME Block Grants

Two annual HUD block grant programs are also a significant resource for housing assistance. In FFY2005, they will provide a total of $172 million to DHCD and local cities and towns – an amount that is almost twice the size of DHCD's state-funded operating budget. The amount Massachusetts receives each year depends on the national appropriation for these programs and how local communities compare to all qualifying communities nationwide. Funds are distributed under a statutory formula based on population, age of housing stock, poverty rates and related factors.

States and localities have considerable choice in how they spend the funds, but must certify that their choices are consistent with the priorities identified in their Consolidated Plan (see page 9). They must publish a draft One Year Action Plan before each new program year that details their spending plans and solicit citizen input before finalizing it.

Community Development Block Grant (CDBG) Program The CDBG program, begun in 1974, provides annual grants to states and larger cities for housing and community development activities. Funds can be used for a variety of activities, including housing, economic development and social services. Overall, at least 70% of the funds must be used for activities that benefit households with incomes at or below 80% of median and at least 51% of those benefited by individual projects must be at or below 80% of median.

In FFY'05, Massachusetts will receive $123 million in new CDBG funds – including $84 million distributed by HUD directly to 35 cities and towns that quality as "entitlement communities" (see page 20). DHCD's grant ($39 million in FFY'05) funds activities in non-entitlement communities. DHCD reserves about $2-3 million for economic development activities and distributes the rest through three subprograms:

- the *Mini-entitlement program* receives 20-25% of the annual allocation and provides reliable multi-year funding to16 larger cities and towns with high percentages of lower income households and pre-1939 housing and high population density.
- the *Community Development Fund (CDF) program* receives about half of DHCD's annual CDBG funding ($20 million in FY'05). It makes funds available to non-entitlement communities on a competitive basis once a year for local CDBG-eligible activities. About 75% of the money is reserved for applications from 102 communities (CDF I communities) assigned high community-needs scores based on demographic and other data[24], with the balance used for applications from "CDF II" communities with lower needs scores.[25]
- *Housing Development Support Program* DHCD reserves about $5 million for small housing creation or preservation projects (see page 48).

The amount of CDBG funding used for housing varies. In FY2004, 41% ($19.7 million) of DHCD's CDBG spending went to housing programs, services and staff - with the bulk (70%) used for single-family (one-unit) homeowner rehabilitation programs. Entitlement communities spent another $33 million or 31% of their total CDBG on housing- though the percentage varied significantly by community, ranging from 0% to 70%.[26]

HOME Block Grants The HOME Investment Partnership program, begun in 1992, provides block grants to States and larger cities specifically for housing activities. Funds are distributed by a statutory formula that provides 40% of the national appropriation to state governments. The balance goes to larger cities that automatically qualify for a grant under the HOME formula and to consortia, smaller contiguous cities and towns that have banded together to reach the population threshold needed to receive an allocation. All[27] of the funds must be spent for activities that assist households with incomes below 80% of area median, and 90% of funds for rental activities must assist household with incomes below 60% of median. The FY2005 HOME allocation for Massachusetts was just under $49 million - $16 million for DHCD and $33 million for 11 cities and eight consortia with 79 member communities.[28]

HOME funds can be used for four types of assistance: rent subsidies and security deposit assistance, housing development, housing rehabilitation and first time homebuyer assistance. State and local recipients choose the activities they want to fund, except for a portion designated by Congress specifically for downpayment assistance under the American Dream Downpayment Initiative (ADDI). In FY'05, DHCD plans to spend just under two-thirds of its funds ($10 million) on rental housing development and rehabilitation and just over one-third ($5.3 million) on first-time homebuyer programs (affordable unit development, downpayment assistance). While DHCD's CDBG funds are only available to non-entitlement communities, it makes its HOME funds available to entitlement and consortia communities as well. HOME funds for rental projects are

awarded competitively twice a year (see page 47), while applications for homebuyer programs are accepted on a rolling basis (see pages 54 and 52)

Federal FY2005 CDBG and HOME Allocations

	CDBG	HOME	ADDI**	Total
Arlington	1,476,080			1,476,080
Attleboro	534,949			534,949
Barnstable	402,455			402,455
Barnstable County HOME Consortium		744,399	29,481	773,880
Boston	23,062,500	8,425,982	230,711	31,719,193
Brockton	1,645,684	827,735		2,473,419
Brookline	1,823,713			1,823,713
Cambridge	3,614,262	1,139,647		4,753,909
Chicopee	1,471,358			1,471,358
Fall River	3,406,130	1,230,352		4,636,482
Fitchburg*	1,332,865	670,059		2,002,924
Framingham	610,809			610,809
Gloucester	892,133			892,133
Haverhill	1,178,708			1,178,708
Holyoke*	1,541,381	1,199,746		2,741,127
Lawrence	1,936,494	1,105,201		3,041,695
Leominster	585,539			585,539
Lowell	2,678,834	1,171,666		3,850,500
Lynn	2,844,405	1,076,375		3,920,780
Malden*	1,763,424	2,800,113	86,675	4,650,212
Medford	2,015,524			2,015,524
New Bedford	3,389,322	1,325,363		4,714,685
Newton*	2,543,897	1,631,029	48,905	4,223,831
Northampton	843,817			843,817
Peabody-North Shore HOME Consortium		2,244,798	84,218	2,329,016
Pittsfield	1,696,679			1,696,679
Plymouth	452,376			452,376
Quincy*	2,381,419	795,634		3,177,053
Salem	1,282,141			1,282,141
Somerville	3,269,586	951,220		4,220,806
Springfield	4,725,709	1,794,181	49,988	6,569,878
Taunton*	970,317	925,431	36,779	1,932,527
Waltham	1,215,293			1,215,293
Westfield	510,808			510,808
Weymouth	896,098			896,098
Worcester	5,288,791	1,976,179	60,519	7,325,489
Yarmouth	164,703			164,703
Massachusetts State (DHCD)	38,578,167	15,576,908	681,747	54,836,822
Total Massachusetts	**123,026,370**	**47,612,018**	**1,309,023**	**171,947,411**

*Lead agency for a HOME consortium – HOME allocation includes funds for all consortium members

** American Dream Downpayment Initiative (ADDI) allocations are funded from the national HOME appropriation.

CDBG and HOME Program Trends

- *American Dream Downpayment Initiative (ADDI)* Congress authorized a new first-time homebuyer assistance program in late 2003, but funded it with a set-aside of HOME funds, reducing the formula grant funding for smaller communities and slightly limiting local spending choice. Funds are distributed by formula to states and larger cities (8 in Massachusetts). ADDI funds can only be used for downpayment and closing cost assistance and rehab work on purchased units. Buyers can receive a maximum of the greater of $10,000 or 6% of the purchase price. The program started in April 2004. As of January 2005, 167 Massachusetts households had received assistance.

- *Declining federal funding* The national appropriation for CDBG and HOME formula grants has been falling. Total CDBG allocations to DHCD and localities fell by 6% between FFY2003 and FFY2005 and HOME allocations fell by 5%. The President's FY2006 budget proposal eliminates the CDBG program (see below) and cut HOME formula grants by 7% (to be partially offset by a tripling of ADDI funding nationwide).

- *Proposed elimination of CDBG* The President's FY2006 budget proposal calls for eliminating the $4.9 billion CDBG program and rolling some of the funding into a new mega-program to be set up at the Commerce Department and funded at a total of $3.7 billion. Seventeen other federal programs would also be rolled into the new program, called "Strengthening America's Communities." It is not known if housing activities will continue under the new program, because the legislation needed to create the new program had not been drafted as of February 2005.

"McKinney" Grants for Homeless

HUD has several programs – often referred to as McKinney programs - that specifically fund housing and services for homeless families and individuals. Massachusetts receives about $55 million a year for three programs that support housing, rent subsidies and services. Funds are awarded annually to *"continuum of care"* consortia (state and local groups of public and private housing and service agencies). It also receives about $4.5 million a year in Emergency Shelter Grant (ESG) formula block grants made to the State and larger cities for shelter programs and homelessness prevention. These programs are described in more detail on page 30.

Grants for HIV/AIDS Housing Programs

HUD's Housing Opportunities for People with AIDS (HOPWA) program provides both formula and competitive grants to the State, several large cities and nonprofit housing and service providers in areas with high AIDS incidence rates. Massachusetts has received about $5 million a year in HOPWA formula and competitive grants in recent years.

[9] Consolidated Federal Funds Report: Fiscal Year 2003 – Massachusetts, U.S. Census Bureau

[10] HUD uses the term public housing agency (PHA) to refer to any of the many types of public agencies it contracts with to administer its public housing and Section 8 programs. In Massachusetts, the term encompasses DHCD and LHAs.

[11] Barbara Sard, Peter Lawrence and Will Fischer, "Local Effects of Cuts in Housing Voucher Assistance in 2005 – Massachusetts", February 17, 2005.

[12] Some housing authorities require participants receiving a voucher for the first time to use it in the local jurisdiction for the first 12 months.

[13] When the Section 8 program began, FMRs were set at the 50th percentile rent for new mover rents. To save money, the standard was later reduced. In FY'83, it was cut to the 45th percentile and in FY'96 to the 40th.

[14] Contract rent refers to the amount tenants pay to the owner under their lease. In the vast majority of leases in Massachusetts, contract rents do not include all utilities (e.g. electricity, heat, gas, etc). When comparing FMRs and payment standards with going rents, one must add the estimated cost of utilities to the contract rent to see how it compares with the local payment standard.

[15] HUD Resident Characteristics Report – All Voucher Holders – Massachusetts, February 28, 2005. Overall, income data was missing for 11% of households. The 73% of households reported as extremely low-income represented 79% of all households for whom income information was available.

[16] Sard, et al. "Local Effects of Cuts in Housing Voucher Assistance in 2005 – Massachusetts", February 17, 2005. Available online at http://www.cbpp.org/states/2-18-05hous-ma2.pdf

[17] HUD's method for updating FMRs varies depending on the types of local data available. It uses consumer price index (CPI) rent data or census survey data for metro areas where available. For all other areas, it has divided the country into 10 regions and calculates a rent-change factor each year for each regions based on rent surveys.

[18] A list of participating PHAs is available online at http://www.hud.gov/local/ma/homeownership/hsgvouchers.cfm

[19] "CEDAC Report on Massachusetts Developments with Subsidized Mortgages or HUD Project-Based Rental Assistance, September 28, 2004. Available online at http://www.chapa.org/expiring.html

[20] HUD uses the term public housing agency (PHA) to refer to any of the various public agencies it contracts with to administer its public housing and Section 8 programs. In Massachusetts, the term encompasses DHCD and LHAs.

[21] From mid-1988 until mid-1995, HUD required PHAs to give priority for admission to federal public housing and the Section 8 rental assistance program to homeless households and those paying more than 50% of their income for housing, meaning most new admissions were extremely-low income.

[22] HUD allows PHAs to reduce the required percentage of extremely low income admissions to their public housing to as low as 30% if they choose to targeting more of their Section 8 vouchers to this population (i.e. go above the requirement that at least 75% of the new vouchers go to extremely low income).

[23] HUD Multifamily Tenant Characteristics System – Resident Characteristics Report January 31, 2005. Data reflects LHA submissions over the past 15 months. (Overall, PHAs reported 63% of households were extremely low income, with no information reported on another 23% of households).

[24] Scores are based on based on the percentage of population that is low and moderate income, the percentage paying over 30% of income for housing, local unemployment rates, property values and housing stock age

[25] Communities that received CDF II grants in FY'03 or FY'04 can only apply for housing activities in FY'05.

[26] HUD data on annual CDBG spending activities by entitlement communities and states is available online at http://www.hud.gov/offices/cpd/communitydevelopment/budget/disbursementreports/ma/index.cfm

[27] HOME funds can be used for mixed-income projects but the HOME money can only be used for the affordable units.

[28] A list of participating communities and contact information is available through DHCD's website at http://www.mass.gov/dhcd/components/housdev/want/HOMEentil.pdf

Homelessness

Shelter trends indicate homelessness has been rising in Massachusetts for several years, despite capacity limits and restrictions on entry (for family shelters). The causes of homelessness vary. Poverty is a primary cause – especially for families - with a shortage of housing at rents low income families and individuals can afford, and very little homelessness prevention assistance should financial disaster strike. Most homeless households have incomes far below the level needed to cover basic needs.[29] Insufficient support services for homeless individuals, especially those with disabilities, and poor discharge planning for individuals leaving institutions has also contributed to the problem.

According to DHCD's 2005 Draft Consolidated Plan, "Despite a strong economy for much of the 1990s, the number of homeless families and individuals more than doubled between 1990-2000 and it has continued to increase since the economy turned down in 2000."[30] As detailed in the Plan and other reports:

- Approximately 28,800 unaccompanied individuals spent at least one night in a shelter in 2003, up 6% over the 1999 count and more than double the 1990 count. Shelters for individuals have been filled beyond capacity for over six years. Almost half (46%) of individuals leaving shelters in 2003 returned to the street or moved to another shelter. The State estimates that about 1,400 are "chronically homeless" (including 500 not using shelters), having "long bouts of homelessness, coupled with deep levels of mental and physical disability, including addictions."[31] Many more do not fit this definition. However, an estimated 57% lived in residential treatment programs, medical or correctional facilities in the year prior to becoming homeless.

- An estimated 10,000 families will be homeless at some time this year, but only about 40% can be accommodated by the state's family shelter system.[32] Currently 2,451 families are living in shelters (1,800+) or transitional housing programs.

- Currently, every family shelter in Massachusetts is full, housing more than 1,800 families – double the number five years ago – even as the State continues to increase shelter capacity.[33] Families in shelters are staying longer (6.5 months in FY'03, up from 3.7 months in FY'96)[34] and the percentage who leave shelter for permanent housing has fallen (48% in 2002 compared to 59% in 1995).

State and Federal Spending on Homeless Assistance Programs

Even as study after study, including a recent report by a special commission appointed by the Governor[35], have continued to affirm that investing in homeless prevention services and housing subsidies is far less expensive both in dollars and human toll than providing emergency shelter, the State has largely failed to act on this knowledge.

State spending on family shelters, hotels and motels rose by 84% between FY'00 and FY'03[36] and was only brought under control when the State combined a one-time subsidy program for homeless families in shelter with the creation of more shelter beds. The run up started in 1999, during a period of rapid inflation, when rising family homelessness forced the Department of Transitional Assistance (DTA) to begin using hotel and motel

placements in August 1999 (after stopping in 1996). At the same time, the State cut funding for family homelessness prevention assistance and ultimately ended it in May 2002. Hotel/motel placements continued to rise – even after the State cut income eligibility limits in August 2002 - at a cost of up to $37,000 per family per year (over $20 million in FY'03), peaking at 599 in August 2003. Hotel/motel use ended in August 2004, after an intensive State effort, funded by a one-time allocation, increased shelter capacity by 148 beds in FY'04 and another 133 in FY'05 and freed up existing beds by providing $6,000 payments to help 207 working families lease housing in FY'04 and arranging 60 short-term placements in public housing.[37]

The rise in homelessness led the Governor in February 2003 to create an interagency Executive Commission for Homeless Services Coordination to recommend ways to improve state programs for the homeless.[38] The Commission's report in November 2003 found that State spending on homeless programs would exceed $250 million in FY'04 ($190 million state funded) with the majority going to emergency services,[39] and it concluded that "the state's historic focus on emergency shelter is an ineffective way to manage these resources and services" and recommended that the State:

- Increase access to affordable housing and replace at least some shelter spending with time-limited housing subsidies
- Focus more on prevention
- Improve coordination of services and data collection, and
- Establish an Interagency Council to implement these recommendations.[40]

It also recommended that implementation be guided by cost containment, "contingent upon a re-allocation of existing DTA Emergency Assistance funds"[41] and better targeting of existing housing resources (e.g. encouraging developers and owners to reserve units for extremely low income households) without additional subsidy funds. Unfortunately, as a result, there has been little progress on long term housing solutions. Prevention spending is down, and shelter spending is up.

Appropriations (millions) for Selected State Homelessness Programs / HUD Homeless Grant Awards*

		FY'01	FY'02	FY'03	FY'04	FY'05	FY'01-'05 Change
	State-Funded Programs for Families						
DTA	Family Shelters (EA)	42.0	49.6	70.2	75.7	73.6	31.6
DTA	Prevention (EA Rent Arrearage Program)	$12.0	$9.1	-	-	-	(12.0)
DHCD	Prevention Assistance (RAFT)		-	-	-	2.0	2.0
	Total	*54.0*	*58.7*	*70.2*	*75.7*	*75.6*	*21.6*
	State-Fund Programs for Individuals						
DTA	Homeless Shelters + Services – Individuals	34.9	35.5	30.0	30.0	30.0	(4.9)
DHCD	Individual Self-Sufficiency Initiative (ISSI)	2.5	2.3	-	-	-	(2.5)
DMH	Special Initiative to House Homeless	21.9	22.1	22.2	22.2	22.2	0.3
	Total	*59.3*	*59.9*	*52.2*	*52.2*	*52.2*	*(7.1)*
	HUD Homeless Grants						
HUD[42]	Emergency Shelter Grant	4.5	4.4	4.5	4.8	4.7	0.2
HUD	HUD Homeless Assistance Grants	37.0	45.8	49.7	55.6	*	18.6
	Subtotal – HUD Families and Individuals	*41.5*	*50.3*	*54.5*	*60.4*		*18.6*

* Overall, 50% of total state/federal spending is for individuals, 47% for families and 3% undesignated.

Separate Delivery Systems for Homeless Assistance The types of assistance available to families and to individuals differ, largely because they have different funding sources. Family assistance is provided through the Emergency Assistance (EA) program, which is statutorily tied to the state's welfare program and thus comes with income and other restrictions. EA-funded assistance is limited to families with dependent children under age 21 who have incomes at or below 100% of the federal poverty limit (the limit used to be 130%). Programs for individuals are less restrictive but less comprehensive.

Programs for Families

Prevention Assistance Programs to assist families at risk of homelessness due to financial problems are limited, though the situation has improved slightly in the past year. The EA program, which helped 10-12,000 households a year in recent years, no longer provides prevention assistance. Most assistance – including help with security deposits, moving costs, mortgage arrears and utility bills - was eliminated in 1991 and 1992. Until April 2002, the state continued to fund help with rent arrears (up to 4 months), assisting about 10,000 families a year in the late 1990s (9,795 families in FY'99).[43] Federal resources are also limited. By statute, HUD McKinney grants, except for 30% of ESG funds, cannot be used for prevention programs. A few communities use CDBG funds for small prevention programs.

To begin to fill the gap, the Legislature created a new DHCD program in FY'05 called *Residential Assistance for Families in Transition (RAFT),* funded at $2 million. RAFT provides qualifying families with children with up to $3,000 in flexible funds, allowing them to remain in their homes during a personal financial crisis (e.g., joblessness, ill health) or to cover the cost of moving into a new home (e.g., security deposits, moving costs) when remaining in their current residence is no longer feasible. Assistance is limited to households with incomes at or below 130% of the federal poverty level who show they will be able to stabilize their housing situation with RAFT assistance. The program is administered by nine regional nonprofit housing agencies and assisted 1,250 households before funds ran out at the end of January 2005.[44]

Despite the high level of demand, the Governor's FY'06 budget proposes maintaining RAFT funding at $2 million. CHAPA and the Massachusetts Coalition for the Homeless are recommending changing the income limit from 130% of the federal poverty level to 50% of the HUD area median income (AMI). This change would recognize regional income variations and make it easier to assist families in high cost areas.

Shelters The State's *Emergency Assistance (EA)* program provides emergency shelter and housing search assistance (primarily for shelter residents) to homeless and near-homeless families with children. Only families with incomes at or below 100% of the federal poverty limit ($16,090 for a family of 3 in 2005) and less than $2,500 in assets are eligible for assistance. The income limit was reduced from 130% of the federal poverty limit in August 2002 after being raised in November 1999. The Department of Transitional Assistance (DTA) screens all families seeking shelter. DTA must place applicants within 20 miles of their home communities if openings exist.
As of December 2004, there were about 1,182 slots (3,750 beds) in the family emergency shelter system. Most (72%) are in congregate shelters (usually set in a large house,

housing several families – one per bedroom, 24 hour staff), including 11% in specialized congregate shelters (e.g. substance abuse, transitional). The remaining 27% are in scattered site shelters (are apartments leased by nonprofits for shelter use and house one family per apartment). Family shelters differ from shelters for individuals, tending to be smaller, with private sleeping quarters and on site services. Shelter costs averaged $105/night in FY'04 (lower for scattered site units, higher for specialized shelters) or well over $18,000 per family given the average six month stay. Those same funds would support many months of rental assistance.[45]

Access to Permanent Housing DTA funds a number of nonprofit agencies to help families in shelter locate permanent housing and can help families who receive welfare with the costs of moving to permanent housing (e.g. security deposits, first months rent), if they have been in shelter for more than 60 days. The maximum payment is $1,000. Given the extremely low incomes of families in shelter, however, it is difficult to locate stable housing unless they obtain a rent voucher or subsidized unit.

Programs for Individuals

A recent University of Massachusetts report[46] on the use of individual shelters in the past five years (1999-2003) estimates that 28,800 individuals (unduplicated count) used shelters in 2003, though more than half stayed for less than a week. Most (80%) were male. Forty percent (40%) of shelter users in 2003 reported employment income ($970 a month on average). Asked the cause of their homelessness, 60% of shelter users cited financial problems. Asked about disabilities, one in three reported mental health problems and one in three reported alcohol or substance abuse problems though the report notes clinicians would probably find a higher incidence. The report also found the average age of shelter users has risen, 14% aged 55 and above compared to 8% in 1999.

Prevention Assistance Homeless prevention assistance for individuals is quite limited because there has never been a statewide program offering help with rent arrears or help with housing search comparable to the EA program for families. Some local programs exist, funded through HUD Homeless Assistance Grants, and a handful of communities have used Community Development Block Grant funds for this purpose too. There is also a small program for veterans. The State has also begun an indirect prevention strategy by working to improve discharge planning from state programs and facilities including detox programs, jails and foster care, after a 1997 study found that 57% of individuals in shelters had left a state residential program in the prior 12 months.[47]

Shelters There are 3,800 shelter beds for individuals.[48] Funding is provided primarily by DTA, the Department of Public Health (DPH) and the Department of Veterans Services (DVS). While access to shelters for individuals is generally unrestricted (no income limits, etc), most are closed during the day and do not provide reserved beds. As noted above, most experts divide individuals using shelters into two categories: transitional users and chronic users. Studies have shown that most shelter resources for individuals go to the relatively small percentage who are chronically homeless and the University of Massachusetts study confirmed this. About 18% of shelter users in 2003 stayed for 2-6 months and another 5% stayed longer; together they accounted for 74% of all bed-nights, with the 5% who stayed more than 6 months for 33% of all bed-nights. Many of the

chronically homeless have substance abuse or mental health issues that prevent them from working and functioning independently.

Access to Permanent Affordable Housing For almost all homeless individuals, the lack of affordable housing is a key barrier to leaving shelter. Some, particularly the chronically homeless, also need case management and support services. The high cost of chronic homelessness has led HUD and the State to begin targeting resources to this latter group HUD now requires communities to develop Ten Year Plans to End Chronic Homelessness as part of their application for HUD homeless grants, and the Governor has included $1.25 million for a new initiative for the chronically homeless in FY'06. At the same time, however, HUD has cut funding for the program individuals most commonly use to leave shelter for assisted housing (Section 8), and the State ended one key program for homeless individuals (ISSI) in FY'03 and has level funded its major program for the chronically homeless since FY'02.

As a result, homeless individuals are increasingly stuck in the shelter system. In 2003, 50% of all shelter users came from another shelter, compared to 25% in 2000, and among the 9% of shelter users for whom exit information was available, only one in five (21%) left for permanent housing, about half with housing subsidies. The remainder left for transitional housing programs (28%), other shelters (20%) or the street (2%), moved in with friends or relatives (17%) or entered alcohol, substance abuse or mental health treatment programs or jail. [49]

- The *Individual Self-Sufficiency Initiative (ISSI)* program, begun in FY'00, helped homeless individuals who were working or training programs move from shelters or other settings into private housing. The program had two components. The "resource" component provided financial assistance to individuals after they located a unit, including a small monthly stipend for up to a year to help cover rent plus funds for move-in costs including security deposits and first and last month's rent. The "development" component helped create units for ISSI participants through grants to non-profit and private owners and developers. Between FY'00 and FY'02, ISSI provided rent subsidies to more than 1,200 individuals and helped create 122 housing units. ISSI was funded at $2.5 million in FY'01, cut to $2,326,500 in FY'02, then phased out in FY'03, when it received $667,230 to finish out remaining commitments. No funding has been recommended for ISSI in the Governor's FY'06 budget.

- *DMH Homeless Initiative* This program, sometimes called the Special Initiative to House the Homeless Mentally Ill, began in FY'92 and the Legislature steadily increased funding for the next ten years, giving DMH the capacity to serve or place an average of 2,400 homeless clients with mental illness each year by FY'01. Program funds pay for services for community based services, including counseling, referral and case management both for currently homeless individuals. They also leverage state and federal grants and give clients access to supported housing. Program funding has essentially been frozen since FY'01, however, leaving DMH – as detailed in the 2005-2007 State Mental Health Plan -unable to expand services and "striving to maintain the existing rate of service."[50]

State Programs to create Permanent Housing for Homeless Families and Individuals

Generally, homeless families and individuals compete with all other low income households for mainstream housing assistance (public housing, rent subsidies). Some transitional and permanent housing programs exist specifically for formerly homeless households and many of those provide supportive services either on-site or arranged as needed. (Transitional programs provide time limited housing assistance (6-24 months) to help residents prepare for independent living.)

The State's draft Consolidated Plan (February 2005) reports that Massachusetts currently has 2,949 beds in transitional housing for individuals and 1,244 beds in transitional programs for families and estimates that 400 more beds are needed for individuals and 184 for families to meet current need.[51] The need for permanent housing is even greater. According to the Plan, there are 2,780 beds of permanent housing for homeless individuals and 574 beds for families, but 1,300 more are needed for individuals and 2,400 more (roughly 1,000 units) for families to meet current needs.

HUD is the major funder of permanent housing specifically targeted to homeless households (see page 30) , though the State has several specialized programs for DMH and DMR consumers (see page 67) and the DHCD's bond-funded Housing Innovations Fund (HIF) program is a funding source for specialized housing (see page 45).

With no new public housing being built and state and Section 8 vouchers frozen, it is ever more difficult for homeless households to access permanent affordable housing. Much of the new affordable housing developed in recent years creates units with rents affordable to households with incomes at 60-80% of area median, while most homeless households have incomes below 50% or 30% of area median. The 2003 Executive Commission on Homeless Services Coordination has recommended that the State encourage developers to target more units specifically for homeless households; however, few resources exist to bring rents to affordable levels without Section 8 or MRVP rental assistance. One new program has specifically been developed for this purpose, providing quasi-public and private funds that can piggyback on other subsidy programs to create units homeless families can afford.

- *Home Funders Program* In 2003, local foundations joined with two state quasi-public agencies, the Massachusetts Housing Partnership (MHP) and the Community Economic Development Assistance Corporation (CEDAC) to create the Home Funders program that provides low-cost loans and grants to developers of mixed-income projects that include units for extremely low income (ELI) households. CEDAC provides technical and predevelopment aid, while MHP provides permanent financing (see page 50). The funds also help pay for case management. To date, these groups have raised more than $16 million of the $26 million they estimate it will cost to fund 1,000 ELI units over 10-20 years.[52] As of February 2005, funding has been approved for 271 ELI units.[53]

Current Policy Issues

- *Limits on Access to Family Shelters:* While shelter for individuals is available to anyone who needs it, many low income families with children cannot access shelter and

eviction prevention services because of income limits. After raising the income limits to 130% of the federal poverty guidelines in November 1999, the State reduced it back to 100% of the poverty level in August 2002. This limit (currently $16,090 or $1,341 a month for a family of three) is far below the amount needed to pay for a standard, modest apartment (currently estimated at $1,266 in Greater Boston). Other rules limit access as well. Since 1994, the State has adopted a series of regulations increasing the situations that make families ineligible for family shelters. New categories include families who leave housing after receiving an eviction order, but before being physically evicted, families evicted from subsidized housing for nonpayment of rent and being evicted for destruction of property even though caused by a child with a diagnosed behavioral problem.

- *Need for Preventive Services and Help Moving from Shelters to Permanent Housing:* Studies in 1999 and 2003 by the Executive Office of Administration and Finance found state programs to prevent homelessness were inadequate and that the State should do more to preserve tenancies (through mediation, counseling and help with arrearages) or help tenants locate alternative housing. This led the State to reorganize its delivery system for housing search assistance (now called the Housing Assistance Program or HAP) for EA-eligible families. It also established the Housing Consumer Education Center (HCEC) program in FY'01 to assist non-EA eligible households. These centers, operated by 9 regional nonprofit housing agencies that also administer Section 8 programs and RAFT, provide one-stop information, referral, counseling and mediation to owners and renters of all income levels. It also created several programs that provide financial assistance, including the Individual Self-Sufficiency Initiative (ISSI) to help working individuals in shelters and transitional housing move into permanent housing (see page 27) and RAFT. In FY'03, it established a special one-time program to help pay the rent for homeless families leaving shelter (a proposal for a similar program in FY'05 is pending).

FY'02 and FY'03 budget cuts have largely wiped out these gains, however, as the State eliminated all funding for ISSI and for eviction prevention assistance (which had cost about $12 million a year in recent years) under the Emergency Assistance program and reduced funding for the HCEC program from $1 million in FY'02 to $200,000 in FY'03. The program was funded at $550,000 in FY'04 and FY'05, and the Governor's budget proposed level funding again for FY'06.

- *Few Openings for Permanent Affordable Housing:* The drop in state and federal rent subsidies and long waiting lists for family public housing has limited permanent housing options for homeless households, especially because many local housing authorities no longer give homeless households priority for federal assistance. As result, the average shelter stay exceeds 6 months. In the mid- to late 1980s, when homelessness was rising at a rapid rate, the State expanded its rental assistance programs specifically to reduce the use of shelters and hotels/motels. Rental assistance provides solutions more quickly than new construction programs, particularly when the market is soft, but so far the State has declined to restart that approach with state-funded assistance; however, it plans to use some project-based, federal Section 8 vouchers for that purpose in Spring 2005 as funding become available. The City of Boston has begun addressing this problem by requiring developers of new affordable housing to set aside 10% of the units for homeless households. The Massachusetts Housing Partnership (MHP) and CEDAC have begun a program to create units for extremely low income households. By and large, however,

Section 8 rental assistance and public housing remain the largest resource for assisting extremely low income households.

• *Declining Federal Homeless Assistance:* The federal government (HUD) has been a major funder of housing assistance for the homeless and has shaped the way this assistance is delivered as described below. It requires states and localities to create a "continuum of care" system (outreach, prevention, temporary assistance, transitional and permanent housing, and support services) to address needs comprehensively. Massachusetts received an average of more than $40 million a year in *new* multi-year homeless assistance and shelter grant awards between FFY'94 and FFY'97. Today, however, almost all grants under the program are to renew existing programs. In FFY'04, Massachusetts groups received $12 million for new programs, much of it specifically for people with disabilities.

Federal Grants for Shelters and Homeless Programs

The State and localities currently receive about $60 million a year from HUD for homeless services and housing under four McKinney[54] grant programs created in 1987.

• *The Emergency Shelter Grant (ESG)* program is a small formula block grant. Eleven large cities in Massachusetts receive grants directly from HUD and the State (DTA) receives an allocation for distribution to homeless programs in the balance of the state. Funds can be used for shelter operating and capital costs and shelter service programs. Up to 30% can be used for homelessness prevention activities. In FFY'05, Massachusetts will receive $4.7 million, including $2.5 million for DTA to distribute.

• The other three HUD *McKinney* programs provide 1-10 year grants. The Supportive Housing Program (SHP) provides 1-3 year grants for a wide range of activities, including transitional housing, permanent housing for the disabled, rental assistance and a wide range of services, including outreach, social services, health care, shelter and day programs. The Shelter Plus Care program provides 5- or 10-year grants for project- and tenant-based rent subsidies for households with disabilities and the Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings for Homeless Individuals (SRO) programs funds 10-year project-based rent subsidies that can help finance SRO renovation costs. State and local matching funds are required for some programs, including rental assistance. The programs *can only assist households that meet HUD's definition of homelessness (lacking a fixed permanent residence, living in a shelter, transitional or supportive housing program or institution, or in some cases, being evicted from private housing within a week) – not people who are temporarily doubled up.*

States and local providers apply annually for funds to renew expiring grants and to undertake new activities under a distribution process HUD created in 1994 - called *Continuum of Care (COC)*. The COC process encourages state, regional and local public agencies and nonprofits to form consortia that serve specific jurisdictions (one or more communities), with state consortia serving areas lacking a local consortium.[55] Consortia develop strategic plans which they submit as part of their funding application that detail current emergency, transitional and permanent housing and service resources for their homeless subpopulations, current gaps and plans for addressing unmet need.

The amount of McKinney funding available locally each year depends in part on the federal appropriation for the program nationally. HUD sets funding targets for every consortium based on such factors as housing costs and the incidence of homelessness, but actual local awards may be higher or lower depending on the extent to which applications meet HUD program priorities. In recent years, Congress has required that at least 30% of funding awarded nationally be used for projects that will create permanent housing for persons with disabilities, either through tenant-based rental assistance or the development of new housing units. Localities that successfully apply for new permanent housing receive some extra funding above the formula amount for these projects. Unfortunately, because the total appropriation for HUD homeless grants has increased very little over the past 5 years, the set aside for permanent housing has meant almost no money is available to expand other activities and has reduced the amount available to renew existing contracts and in some cases has forced cutbacks.[56]

[29] Diana Pearce with Jennifer Brooks, "The Self-Sufficiency Standard for Massachusetts", August 2003, prepared for the Women's Educational and Industrial Union. A working single person would need a gross income of $14,600-$21,400 to cover their basic needs in Massachusetts (amounts vary by region), while a single parent with 1 preschooler and 1 school age child would need $34,800-$51,300, if they received no housing, child care or other subsidies. Available online at http://www.weiu.org/pdf_files/MA_Full_Report_Final.pdf

[30] Commonwealth of Massachusetts, "Massachusetts 2005-2009 Consolidated Plan Draft, p.55

[31] Ibid, p.56.

[32] Ibid, page 57.

[33] Ibid.

[34] "Homelessness in Massachusetts: Are State-Funded Resources and Services Allocated and Coordinated Effectively?", Commonwealth of Massachusetts: Executive Office of Administration and Finance, December 1999, Part I, p.1. (FY'96 statistics). Also: "Facts and Statistics: Family Homelessness in Massachusetts 2002", One Family Campaign, Boston, MA (www.onefamilycampaign.org) and "Overview of Family Homelessness", Massachusetts Coalition for the Homeless, Boston, MA (www.mahomeless.org).

[35] See "Housing the Homeless: A More Effective Approach", Governor's Executive Commission for Homeless Services Coordination", Final Report, November 2003

[36] "Changing Family Homelessness", Massachusetts Department of Transitional Assistance, August 2004, p1.

[37] Department of Transitional Assistance, "Changing Family Homelessness", August 2004 and "FY06 Joint Budget Testimony", March 3, 2005. Both available online at DTA's website.

[38] Executive Order 447, February 14,2003.

[39] "Housing the Homeless: A More Effective Approach – Final Report", Executive Commission for Homeless Services Coordination, Commonwealth of Massachusetts, November 2003, Attachment B- page 2.

[40] Executive Order 454, November 20, 2003.

[41] "Action Plan to Increase Affordable Housing – Draft", Executive Commission for Homeless Services Coordination, July 29 2003. Available online at the Commission's website (see www.ma.gov)

[42] HUD grant amounts shown here funds awarded to the State and to localities and reflect amounts awarded during the federal fiscal year; spending tends to occur about a year later.

[43] Commonwealth of Massachusetts, "Homelessness in Massachusetts", Part I, p.3.

[44] "Fiscal Year 2006 Budget Priorities", Massachusetts Coalition for the Homeless (available online at http://www.mahomeless.org/legislative/budgetpriorities06.htm)

[45] Massachusetts Draft 2005-2009 Consolidated Plan, February 2005, p. 39, 101 and Appendix C, page xvi.

[46] "Hard Numbers, Hard Times: Homeless Individuals in Massachusetts Emergency Shetlers, 1999-2003", The Center for Social Policy, University of Massachusetts McCormack Institute, Boston, MA, July 2004. Available online at http://www.mccormack.umb.edu/csp/publications/Hard%20Numbers,%20Hard%20Times-Individuals%20in%20MA%20Emergency%20Shelters%201999-2003.pdf

[47] "Homelessness in Massachusetts", Part II, p.2.

[48] Massachusetts Draft 2005-2009 Consolidated Plan, page 61.

[49] "Hard Numbers, Hard Times", page 9 and 21.

[50] "2005-2007 State Mental Health Plan", Department of Mental Health, Commonwealth of Massachusetts, September 2004, pp. 112-116.

[51] Massachusetts Draft 2005-2009 Consolidated Plan, page 101.

[52] Home Funders . see http://www.homefunders.org/howwework.html

[53] Massachusetts Draft 2005-2009 Consolidated Plan, page 62.

[54] Shorthand for the legislation (the McKinney/Vento Homeless Assistance Act) that authorized these HUD programs as well as a number of other programs (e.g. extra funds for schools serving homeless children) administered by other federal agencies. Statutory authorization for these programs ended in 1994; they are now reauthorized as part of the annual appropriations process. The four HUD programs are collected called HUD Homeless Assistance Grants.

[55] Massachusetts currently has 20 local consortia; EOHHS heads the Balance of State consortium.

[56] To control renewal costs, HUD has limited the term of Shelter Plus Care renewal grants for rent subsidies to one year and Congress now funds SRO renewals through the Section 8 budget account.

State-Funded Rental Assistance

Rental assistance programs use government funds to help low income households pay the rent for private apartments. Participants pay a minimum percentage of their income (generally 30%) toward their rent and utilities, and state or federal funds pay the owner the difference between the tenant share and the total rent up to a fixed amount. Participants can lease units with rents that exceed the subsidy limit, but must pay all of the extra cost in addition to their 30% of income share Participants can only rent units that meet basic quality standards, and rents cannot exceed going rents for comparable unassisted units.

Rental assistance and public housing are the only programs that make housing affordable to extremely-low income households because housing costs are pegged to tenant income; if a household's income falls, the government will increase the subsidy up to the maximum allowed under the program. Rent subsidies take two basic forms:

- Tenant-based subsidies travel with the tenant. Participants can use their voucher to rent a unit anywhere as long as it meets program standards and if they move, can use it for their next unit.
- Project-based subsidies are reserved for specific units in specific developments. A household with a project-based voucher can only use it while occupying that unit. When they move, they lose their voucher and another eligible household fills the unit. Project-based subsidies are often used to finance affordable housing development or rehabilitation by guaranteeing rent levels sufficient to support debt and operating costs. They are also used to deepen the affordability of projects that have mortgage subsidies under other state and federal programs.

There is also a special form of tenant-based assistance called a project-based voucher that combines features of both tenant- and project-based assistance. Federal legislation enacted in 2001 allows housing authorities to use up to 20% of their Section 8 tenant-based funding to assign vouchers to specific units under 5-10 year contracts with owners but also allows tenants to move later without losing assistance (see page 13).

HUD's Section 8 rental assistance program currently assists about 135,000 Massachusetts households. Three state funded programs currently assist another 5,500 households.

Program	Authorized			Vouchers in Use 1/2005			On Hold[57]
	Tenant Based	Project Based	Total	Tenant Based	Project Based	Total in use	
Mass. Rental Voucher Program (MRVP)	3,591	4,266	7,857	1,544	3,171	4,715	2,047
Alternative Housing Voucher Program	350	0	350	238	0	238	112
DMH Rental Assistance	0	827	827	0	578	578	249
Total State-Funded	3,941	5,093	9,034	**1,782**	**3,749**	**5,531**	**2,408**
HUD Section 8	71,411	66,290	137,701	68,608	66,290	134,898	2,833
Total State and Federal[58]	75,353	71,383	146,735	**70,390**	**70,039**	**140,429**	**5,241**

Both the state and federal rental assistance programs are currently operating below authorized levels. As detailed below, the number of state-funded vouchers in use has been below authorized levels for several years because of budget cuts implemented in FY'02 and never reversed. The cuts led DHCD to stop issuing new vouchers as participants left the programs, resulting in a 25% cut in the number of state vouchers under lease in the past two years. More recently, Congress' failure to provide enough funding to housing authorities to support all vouchers has forced local

housing agencies to put about 2,833 of their vouchers on hold, and that figure is expected to rise to up to 4,800 by December 2005.

The Massachusetts Rental Voucher Program (MRVP)

The Massachusetts Rental Voucher Program (MRVP**)** is the state's largest state-funded rental assistance program and the only one not restricted to persons with disabilities.

It began in 1966 as the Chapter 707 program and was renamed MRVP in 1992. It grew rapidly in the mid- to late 1980s as the state increased funding to support new affordable housing development and to help homeless families leave shelter. At its peak in FY'90, it assisted just over 20,000 households. The fiscal crisis of 1990-1991 led the state to take a number of steps to control costs. It stopped funding new vouchers, stopped re-issuing tenant-based vouchers as households left the program, cut income eligibility limits, increased the amount tenants pay toward their rents and cut the tenant- and project-based rent levels it would subsidize. No new tenant-based vouchers were issued between 1990 and late 1999, when the freeze on turnover was lifted – subject to appropriations - for 30 months, nor have any been issued since May 2002. As of January 2005, the number of voucher holders is down to just over 4,700 households (1,300 elderly). There are 1,143 fewer MRVP vouchers in use today than there were on January 1, 2003. The program has two components: tenant-based ("mobile') and project-based**.**

MRVP Tenant-Based Assistance The tenant-based program began in the 1970s. From about 1985–1989, it was one of the state's primary tools for reducing homelessness and moving households out of shelters. In January 2005, 1,544 households had tenant-based vouchers - down from over 14,900 in 1990**.** From FY'90 through FY'99, no new vouchers were issued due to a freeze on turnover. The freeze was lifted in FY'2000 when State budget language authorized DHCD to begin re-issuing MRVP vouchers one-for-one on December 1, 1999 as current households left the program, subject to appropriations. Budget cuts in FY'03 forced DHCD to reinstitute the freeze, and <u>no vouchers have been issued since May 2002</u>.

<u>Eligibility</u> The income limit for initial and continuing eligibility is 200% of the federal poverty limit (which is uniform statewide, rather than varying by region like other state housing program income limits). The 2005 limit for a household of three is $32,180 (equivalent to 43% of the 2005 HUD area median for a household of 3 in Greater Boston). The tenant-based program is administered by local housing authorities (LHAs) and regional nonprofit housing agencies, in communities lacking an LHA-operated MRVP program, under contracts with DHCD. When waiting lists are open, the LHAs and nonprofits take applications on a first come, first serve basis, and tenants are selected using the same priority system used for state public housing. The voucher can be used to rent housing anywhere in Massachusetts.

<u>Rent</u>: Under current rules, participants receive a fixed **voucher** amount (based on their income, household size and geographic location) which they use to help pay their rent. They must contribute at least 30% of their income *plus $50* toward the contract rent. The $50 increase was added in November 2002. If minimum contribution plus the voucher exceeds the rent, the voucher is reduced. More commonly however, the tenants pay more than 40% of income for housing in part because of their out of pocket utility costs and in part because voucher amounts are low relative to rents in Greater Boston. Some disabled individuals saw their cost burden rise above 60% as a result of the $50 increase in the minimum tenant share November 2002.

MRVP Project-Based Assistance The project-based program began in the late 1960s as a way to make some units in private, subsidized developments, including projects financed by MassHousing, affordable to very low income households through long term contracts with owners. Owners agreed to reserve a percentage (often 20-25%) of their units for MRVP-eligible households. The contracts specify the rent the owner can charge and the State pays the difference between that rent and the amount the tenant pays. The subsidies are tied to the units; when a family moves out, they lose their subsidy and the unit is re-rented to another income-eligible household.

Currently, half of the project-based vouchers in use are in MassHousing-financed projects. Most of the others are in projects developed by CDCs and other nonprofits in the late 1980s and early 1990s or in older buildings owned by small landlords. Some of the MRVP contracts require owners to reserve a specific number of units for MRVP voucher holders, while others provide MRVP project-based subsidies on a "back-up" basis, making them available only if the owner is unable to fill the unit with a tenant using a Section 8 or MRVP tenant-based voucher. A significant number of the project-based vouchers are for elderly and handicapped rental developments.

The project-based program has been shrinking in recent years. It peaked around 1992 when it was authorized to assist up to almost 6,000 units, but over time, freezes and cuts in the contract rents led owners to withdraw units. While DHCD still has contracts for up to 4,266 units, utilization rates by owners have steadily fallen as owners choose to rent to households with other rent subsidies. As of January 2005, 3,175 households were using project-based vouchers**.**

MRVP Project Based Units November 2004

Project type	Authorized	Leased
Older MHFA	1,470	1,308
SHARP	364	303
Mod Rehab	1,423	927
RHS (FmHA)	80	42
All other	929	595
	4,266	3,175

Rent and Eligibility: Budget cuts in FY'03 forced DHCD to raise tenant rent contributions in November 2002. Now households with project-based MRVP vouchers pay 40% of their income toward their rent if heat is included or 35% if heat is not included and the voucher covers the balance. Prior to that, the figures were 35% and 30% respectively. Eligibility and admissions procedures are the same as for MRVP tenant-based vouchers

MRVP Program Trends

- *Governor's proposal for time limits and work requirements starting in FY'06* The governor's budget for FY'06 level funds MRVP and proposes dramatic changes to the way the program operates. It would

  - Impose time limits so that people could use MRVP for no more than 36 consecutive months, with a life-time maximum of 5 years. Households that have reached these limits already—an estimated 80% of current recipients—would be eligible for termination on July 1, 2005.
  - Eliminate the language requiring DHCD to reissue mobile vouchers when they are turned in.

- Institute a weekly work requirement of 20–30 hours, depending on the age of the youngest household member, for each adult household member (other than full-time students) in households where the youngest child is at least age one. Adults who are disabled or over the age of 60 may be exempted from obligations that are "unsuitable." Work may include a paid job, supported work program, community service program, education and training activity, and, if currently in emergency shelter, housing search. Households would have to sign an annual contract outlining their obligation.
- Require housing authorities to re-determine tenant incomes every 6 months rather than annually.

The proposed time limits could result in the termination of assistance to an estimated 3,800 households (including 1,300 elderly households) and would create havoc for owners and managers of properties with project-based subsidies, as most of their voucher-holders would become ineligible on July 1. It is not at all clear what other types of housing assistance will be available for these families and individuals. An estimated two-thirds of households with MRVP tenant-based vouchers are seniors or families on fixed incomes (SSI, TAFDC, etc) and about one-third are working poor households. Given current income limits, an individual close to the upper income limit for assistance could only afford housing costs of $475 a month – including all utility costs- at 30% of income. A household of three could only afford to pay $800 a month.

- *Recent budget cuts*: Rising concern about homelessness led the legislature to increase funding for MRVP in FY'01—for the first time in ten years—in order to maintain the program size and update benefit levels. The budget language authorized DHCD to lift the freeze on re-issuing mobile vouchers, meaning the program would not expand but new households could be assisted when current recipients left. Rent caps were eliminated so that tenants could rent higher cost units if they wanted to pay more than 30% of income, contract rents for project-based vouchers were increased and voucher amounts were restored to 1990 levels and then increased.

MRVP Appropriations – FY'01- FY'05

	Appropriation	Annual Change
FY'01	35,298,397	
FY'02	31,768,557	-10%
FY'03	26,668,557	-16%
FY'04	22,688,557	-15%
FY'05	24,283,345	7%

In FY'02, FY'03 and FY'04, however, funding was cut again. The FY'02 cuts forced DHCD to: stop reissuing vouchers, cut subsidies for all mobile voucher holders by requiring them to pay an additional $50 per month toward their rent, cut project-based rent subsidies across the board by $30–60 per month, and raise the tenant share of project-based rents from 30–35% 35–40% of income. As a result of these changes, the number of households fell from 7,300 in January, 2000 to 4,700 in January 2005. While the account was increased slightly in FY'05, that increase was only to cover a deficit. In total, funding for the MRVP account fell 31% (from $35.2 million to $24.3 million) between FY'01–FY'05.

Alternative Housing Voucher Program (AHVP)

The AHVP program was established in 1995 to provide tenant-based rental assistance to people under age 60 with disabilities who choose to relocate from a state public housing development or

are on the waiting list for such housing. It was created as part of a state law that put a cap on the percentage of units in Chapter 667 state public housing developments for the elderly and disabled that are occupied by non-elderly households (13.5%). Because many developments had much higher percentages of non-elderly disabled residents, this meant most new openings in the short run would go to the elderly, resulting in long waiting times for the non-elderly disabled. AHVP provides an alternative to those on the waiting list and assists non-elderly, disabled residents who would prefer other housing options. The assistance is transitional and ends when tenants are able to access other housing assistance (e.g. state public housing, other subsidized housing or federal Section 8 rental assistance).

Recent budget cuts The program was originally funded at $4 million a year, sufficient to serve 800 households. In FY'02 and FY'03, the appropriation was cut to $3 million a year, forcing DHCD to shrink the program and take other cost-cutting measures. Effective June 1, 2002, it stopped re-issuing vouchers as participants left. It also froze the rent levels it will subsidize for participants staying in place and cut the rent levels it will subsidize for participants moving to other units, meaning tenants bear the full cost of any rent increases.

To further reduce program costs, DHCD began transferring 375 longer term AHVP recipients to federal Section 8 rental assistance. It asked local housing authorities with AHVP participants to transition them to the LHA's Section 8 program. LHAs unwilling to give these households priority for assistance were asked to refer them to DHCD's Section 8 program. This strategy reduced the number of households using AHVP vouchers from 700 at the start of FY'03 to 519 as of January 2003. As a result of this "success", the budget was cut to $2.3 million in FY'04. The program has continued to shrink due to the freeze on reissuing subsidies, though the pace has slowed due to HUD cuts in Section 8 funding formulas that left many housing authorities unable to issue new vouchers until a significant number of current participants left the program. In FY'05, the AHVP budget line was funded at $2.3 million again, providing enough money to support 300–350 of the 800 intended households. However, because DHCD has not lifted the freeze on re-issuance, the program was only assisting 238 households as of January 2005.

Given that Massachusetts continues to experience significant homelessness among individuals with disabilities, and given the high cost of providing homelessness assistance, many have called for increasing funding for AHVP. Today, estimates are that it would take $5.5 million to fully fund 800 vouchers for households.

Admissions/eligibility/rent Eligibility is the same as for the Chapter 667 elderly/disabled state public housing: household income cannot exceed 80% of the HUD area median income adjusted for household size. Tenants pay a minimum of 25% of their income toward rent (30% if the rent includes heat and all utilities) and receive a voucher to cover the balance up to a fixed amount. If their rent exceeds that limit, they must pay the excess. *Though no new vouchers have been issued since May 2002*, applications are available through several dozen LHAs that currently administer AHVP vouchers. Participants can use the voucher anywhere in the state.

DMH Rental Assistance

The State has funded rent subsidies for DMH clients since the 1980s. Most of the assistance is project-based (tied to specific units) and tenants receive support services. Funding for this program has been provided at times through DMH's budget and at times through DHCD's

budget, but the program has always been administered by DHCD. Tenants pay 30-35% of their income toward the rent (depending on whether all utilities are included) – up from 25-30% prior to August 2002 - and state funds pay the full balance. Local service providers maintain the waiting lists for assistance and refer clients to LHAs who actually administer the subsidy payments. The program assisted 800-900 clients annually until FY'03.

Recent budget cuts In FY'03, the annual appropriation for this program was cut by 36% to $2.0 million, down from $3,107,550 in FY'02, and the program has continued to be funded at $2 million in FY'04 and FY'05. The Governor's budget proposal for FY'06 proposes keeping the funding at $2 million again. This FY'03 cut forced DHCD to raise the percentage of income participants pay toward their housing costs, and to begin shrinking the program by transferring participants to the federal Section 8 program. In August 2002, DHCD asked LHAs with DMH participants to transfer them to the LHA's Section 8 program (using the process described for the AHVP program above). This effort reduced the number of DMH clients receiving state funded assistance from 788 under lease in October 2002 to 578 under lease as of January 2005.

Key Issues in Rental Assistance

- *Dwindling state commitment to tenant-based rental assistance* The reduction in state funding for rental assistance, particularly the 16% cut in appropriations between FY'02 and FY'03, led DHCD to ask LHAs to transfer over 600 households to the federal Section 8 program. These transfers force other needy households to wait longer for assistance and result in a net reduction in the total number of households receiving rental assistance.

- *Inequity in tenant contribution to housing cost* Budget cuts have led DHCD to require rental assistance households to pay a higher percentage of their income for housing, despite their poverty, than it requires of households assisted under programs that target households with incomes of up to 80% of median (including first time homebuyers). The new rent formulas have no policy basis - they simply reflect the amounts DHCD needs to work within its budget.

- *Long waiting lists* Steady cuts in state funding – including the 31% cut in funding for rental assistance - combined with recent Section 8 cuts and freezes on the issuance of turnover vouchers, *have left many households unable to obtain needed assistance or shelter*. As of March 2005, there were 37,546 households (unduplicated count) on DHCD's statewide waiting list for Section 8. Of these, 87% were extremely low-income households. Two-thirds were families with children (33,534) and one-third were households with disabilities (almost all non-elderly).

[57] "On Hold" indicate vouchers not available for use due to budget cuts (excludes 1,095 project-based MRVP vouchers that owners have decided not to use, choosing instead to fill units with Section 8 tenant-based assistance voucher holders).

[58] Sources: DHCD – Units under lease 1/2005. Section 8 Tenant Based: Center on Budget and Policy Priorities: "Estimated Voucher Funding Shortfalls in 2005, 2006 and 2010 – Massachusetts", February 2005. S8 project based count includes HUD S8 contract units (63,626 as of 1/12/05 HUD data), and S8 Mod Rehab (1,716) and Mod Rehab SRO (948) programs.

State Public Housing

Massachusetts has two types of public housing. State public housing was built primarily with state funds[59] and state laws govern its development and operation. Federal public housing (33,500 units) is funded/regulated by the U.S. Department of Housing and Urban Development.

As of January 2004, Massachusetts had 49,968 units of state public housing--roughly 25% of the affordable housing inventory in Massachusetts. These units are owned and operated by 235 local housing authorities (LHAs) and 4 regional housing authorities. Most were built 10 to 50 years ago. The total number of state public housing units has grown by 172 units in the past decade (December 1993 to December 2003), as modest increases (primarily for elders and people with disabilities leaving state facilities) have been offset by decreases in existing developments (to reduce density, create larger units or to provide community rooms) and the demolition of a 284-unit family development in Lowell. (Another 100-unit family development in Fall River may be demolished in 2005).

About two-thirds (68.5%) of state public housing units are in developments for elders (age 60+) and people with disabilities; the balance are in unrestricted ("family") developments.

Program	Units	% of Total	Unit Change since 1993
Chapter 667 (Elderly/Disabled)	32,310	64.7%	168
Chapter 200 (Veterans/Families)	12,629	25.3%	(444)
Chapter 705 (Family)	3,122	6.2%	202
Chapters 689, 167 (Special Needs)	1,907	3.8%	246
	49,968	100.0%	172

Much of state public housing inventory is old. The oldest stock is the family housing built between 1948 and 1956 under the Chapter 200 program. Most developments are small (<100 units) and low rise (1 or 2 stories). Additional family units were developed in the 1970s and 1980s under the Chapter 705 program which requires that projects be low density and scattered site. Some were created by purchasing units in mixed income ownership developments Many Chapter 667 developments for the elderly and disabled also date from the 1950s.

Eligibility and Admissions Priorities Except for special needs and congregate housing, applicants apply to LHAs in the communities where they wish to live. (Residents for special needs and congregate housing are generally referred by State human services agencies.) Admission is limited to households earning no more than 80% of the HUD area median income adjusted for household size. Applicants must also pass state screening criteria related to criminal history, prior lease compliance, etc. Applications are taken first come, first serve, but applicants in six priority categories are placed ahead of non-priority applicants on the waiting list.

1. Homeless due to natural disasters (fire, flood, etc),
2. Homeless due to displacement by public action (urban renewal)
3. Homeless due to displacement by public action regarding severe safety code violations
4. LHA-defined emergency case (e.g. domestic violence, severe medical emergency, homeless)
5. Living in transitional housing subsidized by the Alternative Housing Voucher Program
6. Transfer for good cause (for tenants already in public housing needing a different unit)
7. Standard applicant (does not fall into any of the above categories)

Residents, Veterans and Affirmative Action Preferences Among applicants within any of the above priority categories, applicants who are veterans or local residents must be admitted before those who are not. The veteran's preference takes precedence over the resident preference and applies to Chapter 200 and Chapter 705 housing. A local resident is defined as someone living or working in the community both at the time of application and admission (homeless households are allowed to qualify as residents under this preference in one community of their choosing). LHAs that have fallen short of minority affirmative action goals must also establish an affirmative action preference for minority households for a percentage of their admissions. This preference is used to select among tenants in the highest preference category within the highest priority category.

Rents In August 2003, DHCD revised its rent formula for family public housing. Prior to that, residents in family and elderly/disabled developments paid the same percentage of income toward their rent. Rents in elderly/disabled developments are set at 30% of a household's "adjusted" income (25% if the rent does not include heat). Rents for households in family housing are now set at 27-32% of a household's adjusted income, depending on which utilities are included in the rent. Adjusted income is calculated by deducting certain medical, educational and child care costs and other expenses from a household's gross income.

Recent Trends

- *Underfunded Operating Subsidies:* Because rents are set as a percentage of tenant income, they often do not cover the cost of operating and maintaining local developments, especially family developments. The operating subsidy account is supposed to fund the gap between the rent revenue local housing authorities receive from their tenants and the cost of operating the housing. DHCD sets local housing authority budgets each year using a standardized cost per unit ("allowable expense level") for various types of developments.

If an LHA's rent revenues do not cover the authorized expense level, DHCD is by law supposed to fund the shortfall. However, the amount LHAs receive also depends on legislative appropriations. In 1986, operating subsidies were funded at $38 million, but funding levels fell sharply in the 1990s in response to the state fiscal crisis and have been erratic since then.

Public Housing Operating Subsidy Appropriations

FY'90:	$26.5 million (actual expenditure)
FY'92:	$23.0 million " "
FY'97:	$27.2 million " "
FY'99:	$31.1 million " "
FY'01:	$34.3 million (appropriation)
FY'02:	$31.9 million " "
FY'03:	$23.2 million " "
FY'04	$25.4 million[60] " "
FY'05	$36.5 million* " "

The need for subsidy varies by housing authority depending on their mix of developments (family vs. elderly) and average tenant incomes. While the number varies each year depending on tenant income trends, overall about half of Massachusetts LHAs receive operating subsidies, including most housing authorities with family developments.

Years of underfunding have resulted in deterioration of the state-aided public housing inventory as LHAs have repeatedly been forced to defer maintenance and other costs. The Massachusetts chapter of the National Association of Housing and Redevelopment Officials (MassNAHRO), a membership organization of local housing authorities and other housing entities, estimates $39.5 million would be needed in FY'06 to fully fund operating costs if DHCD used a formula that reflected current water rates, employee health insurance costs, and other increases. CHAPA and MassNAHRO have hired researchers from Harvard and Abt Associates to prepare a detailed analysis of subsidy needs.

• *Insufficient Funding for Capital Needs:* Funding for more significant repairs (roof replacements, heating systems, upgrading of bathrooms and kitchens, elevator replacements) comes from state housing bond bills. The 1998 bond bill provided $187 million for modernization. The funds are fully committed. The 2002 bond bill provides $350 million for modernization and social services facilities but spending will be spread out over more than 5 years because the bond volume cap prevents housing authorities from accessing funds now. In addition, FY'03 mid-year budget cuts eliminated the public housing modernization funds that were part of the Affordable Housing Trust Fund program. There are a number of steps the State could take to address these needs more efficiently.

- Funding capital reserves and providing a predictable line item for capital repairs would allow LHAs to plan work effectively. HUD uses this approach by providing capital funding to LHAs by formula on an annual basis. Language requiring a pilot program of this type was included in the 2002 bond bill.
- Changing state law to give LHAs greater flexibility in choosing capital priorities and in financing the work, allowing them to leverage private funds, and updating bidding rules, would allow them to use state funds more efficiently.

• *De-funding of Self-Sufficiency Incentives* In FY'99, the Legislature took steps to address the perceived work disincentive of current rent formulas in public housing (i.e. rents increase when incomes go up) by authorizing a pilot rent escrow program. Under it, tenants in family housing programs (Chapters 200 and 705) at five LHAs could have the portion of their rent attributable to work-related expenses, including taxes, put into escrow. State funds were appropriated to fund a $1 match of state funds for every $2 put in into a tenant's escrow account and to reimburse the LHAs for the lost rent revenue. Escrow accounts could accumulate up to a maximum of $10,000 and tenants could use this money to cover the cost of moving to private housing, including homeownership. The program was expanded in FY'00 and authorized to serve up to 5,000 tenants at interested LHAs and appropriations for the program rose to $500,000 in FY'00 and FY'01 and slightly less in FY'02. In FY'03, however, the appropriation was cut to $27,455, and the program was zeroed out in FY'04 and FY'05.

[59] About 1,900 units are funded with HUD Section 8 funds. These units were built or modernized with state bond funds but the State obtained Section 8 rent subsidies for the units sufficient to cover the debt service.

[60] This table shows the $1.65 million supplemental FY'04 appropriation approved in September 2005 in the FY'05 total, since funds were made available in FY'05. The FY'05 amount also includes an additional $4.5 million to cover higher than expected 2004 utility costs approved by the Legislature in February 2005 that is awaiting the Governor's signature.

Older State-Assisted Private Housing

In the past, DHCD's budget included more than $40 million for mortgage interest and operating subsidies for about 10,000 affordable units in mixed income and 100% affordable rental developments built using three state-funded programs between the 1970s and 1990s. Today, spending for such subsidies has dropped to $5.5 million (down $29 million in the past 5 years alone), as some subsidy contracts have ended and the costs of others have been shifted to MassHousing. This money was not reinvested in other DHCD operating accounts.

Appropriations for Older-State Assisted Private Housing

	FY'01	FY'02	FY'03	FY'04	FY'05	% Chg FY'01-FY'05
13A Interest Subs.	8,166,571	7,511,324	7,094,790	6,472,904	5,500,000	-33%
Rental Housing Dev. Loans (RDAL)	2,219,902	1,825,362	1,224,138	--	--	-100%
SHARP Subsidies	24,279,289	18,511,617	8,746,385	--	--	-100%
Total	**34,665,762**	**27,848,303**	**17,065,313**	**6,472,904**	**5,500,000**	-84%

MHFA 13A Interest Subsidies This program provides annual mortgage interest reduction payments to developers of about 60 affordable private rental developments. These developments were built primarily in the 1970s with MHFA tax-exempt financing and 30-40 year mortgages. The interest subsidy is used to reduce rents on about 5,800 units to the level they would be if the mortgage had been financed at 1% interest. Rents are budget based --set at the level needed to cover operating costs, debt service, and a limited dividend. Many 13A developments also receive MRVP project-based rent subsidies to ensure that at least 20-25% of the rents are affordable to low income tenants where the budget-based rents exceed 30% of their income. The number of 13A units has declined in recent years (by about 1,100 since 1997), because some owners have exercised their option to prepay their mortgage after 20 years and terminated the 13A subsidy and associated affordability requirements.

SHARP The State Housing Assistance for Rental Production (SHARP) program was begun in 1984 in response to a severe housing shortage and cuts in federal funding. It was intended to help meet the demand for both market rate and affordable rental housing by stimulating the development of mixed income housing. Developers received 30-year mortgages with tax-exempt MassHousing financing, plus a 15-year "shallow subsidy" state-funded loan to bring financing costs to 5%. In exchange, the developers made at least 25% of the units affordable to low income households (up to 80% of median) in perpetuity. They were allowed to sell the projects at the end of the 15-year loan term to either the state or to another buyer willing to maintain the use restriction. Many SHARP developers also used the federal low income housing tax credit program. Developers providing a higher percentage of affordable units or building in high cost or low-market-rent areas could also receive additional subsidies under the RDAL program described below.

The projects were originally underwritten with the expectation that they would become self-sustaining after 15 years. Market rents were expected to rise, enabling them to cover the debt service on their 30 year MassHousing mortgage and repay the state subsidy. However, overbuilding in the late 1980s, combined with the statewide recession of the early 1990s, reduced market rent revenue and operating costs rose more rapidly than expected. A number of projects fell behind on their debt service and had to obtain operating deficit loans from MassHousing. These unanticipated difficulties have forced many of the owners to refinance, or restructure and extend the terms of their original mortgages and therefore the owners have not been able to repay the SHARP subsidy loans. As a result, most of the affordable units have remained affordable.

Eighty-two (82) projects were developed under the program – including 15 with additional RDAL subsidies, producing about 3,300 units (34%) set aside for low income households using federal or state rent subsidies. The 15-year SHARP contracts began expiring in 2000 and the last contracts will expire by 2007. The Legislature accelerated the savings to the state in recent years by appropriating less than the full subsidy needed. The FY'05 funding requirement was $1 million, but the appropriation was zero.

Rental Development Action Loan Program (RDAL) The RDAL program, authorized in 1987, provided 15 to 20 year declining operating subsidy loans to supplement other funds used to develop or preserve 21 developments (including 15 SHARP developments) with about 1,300 affordable units. The RDAL portfolio includes both mixed income developments and limited equity cooperatives. Most of these projects also have state or federal rent subsidy commitments. The RDAL contracts have just begun to end, with most scheduled to expire 2005 and 2010. As with the SHARP contracts, the State under-appropriated funds for these contracts in FY'04 and FY'05, leaving MHFA to absorb costs.

Program Trends/Issues

Expiring Use Restrictions: Massachusetts has lost affordable housing because owners of some projects assisted under the Chapter 13A program have exercised their option to prepay their mortgages after 20 years, end rent and tenant income restrictions, and convert to market rate housing. To date, owners of eight developments with 1,374 affordable units (including 959 with 13A subsidies) have ended their 13A mortgages or begun the process of prepaying. Some of these homes will remain affordable under new terms because owners of several projects are refinancing under programs that require some affordability; however, the net loss of affordable units will be 1,136 units.

Affordable Rental Housing Production and Preservation

Preserving and expanding the supply of affordable rental housing is critical to addressing the housing problems of Massachusetts' neediest households, because most poor households are renters. The need is great. According to the U.S. Census, more than 147,000 very low income renter households in Massachusetts – including almost 119,000 extremely low income households (up 6,000 from 1990) - *paid half or more of their income for housing* in 2000. These numbers may well be higher today. According to the Census Bureau, the median gross rent in Massachusetts rose 7.5% between 2000 and 2003 and the percentage of households (all income levels) paying 35% or more of their income for housing rose from 31.8% to 36.6%.

As state and federal funding has fallen, DHCD has struggled to balance the need to create new units and to preserve current subsidized units (both those at risk to conversion to market rate housing as their subsidy contracts expire and those in need of refinancing for capital upgrades) by providing acquisition and rehabilitation funding to nonprofit and other buyers who agree to extend their affordability. In FY'05, the Governor directed DHCD to provide preservation funds only to properties at the highest risk of conversion to market rate housing.

As detailed below, there are a number of programs available to help create and preserve affordable rental housing, funded by state bonds, federal grants, tax credits, tax-exempt bonds issued by MassHousing and MassDevelopment, and bank contributions.

State Planned FY'04 and FY'05 Commitments for Rental Housing[61]

State Resources	FY'04 Funding (millions)	FY'05 Funding (millions)	FY'04 Plan	FY'05 Plan	Affordable Units (if specified)
			Total U Created/ Preserved*		
Housing Innovations Fund (HIF II)	$10.0	$10.0	not specified		
Housing Stabilization Fund (HSF)**	10.9	10.9	not specified		
Facilities Consolidation Fund (FCF)	7.5	7.5	not specified		
Capital Improvement & Preservation Fund	4.8	6.2	not specified		
Affordable Housing Trust Fund	20.0	22.0	not specified		
Public Housing Modernization	50.5	50.5	not specified		
Public Housing Development	1.9	1.9	not specified		
Total Capital	**105.6**	**107.0**			
State Low Income Housing Tax Credit	up to 4.0	up to 4.0	not specified		
Federal Resources					
Low Income Housing Tax Credit[62]	116.0	119.0	not specified	1,200	most
CDBG (HDSP)	5.0	5.0	not specified	up to 100	at least 51%
HOME	10.0	10.0	at least 225	at least 285	285
MassHousing (new housing)	250.0	105.3	2,650	866	398 in FY'05
MassHousing (preservation)	100.0	130.0	2,000	2,200	80% in FY'04
MassDevelopment	some	some	some	some	some
DHCD S8 Project Based Vouchers			0	100	100
Mandated Bank Programs					
Massachusetts Housing Partnership		50.0		1,250	
Federal Home Loan Bank AHP	8.2		350	some	

*Most projects use several programs. **Excludes $4 million for Soft Second homeownership program

Most of the programs described below provide *partial* funding for a project. This slows the development process, as developers must seek funding under multiple programs, and has resulted in a proliferation of programs described as "gap filler" funding sources.

State Capital Budget (Bond) Programs

The State's Capital Budget for DHCD has included about $110 million a year in the past two years (FY'04 and FY'05) for housing preservation and creation. Just under half of the funding ($52.4 million) has been allocated to state-aided public housing, primarily to modernize the existing inventory. The remaining $57-$58 million has been allocated to five programs that essentially provide grants for the creation and preservation of affordable housing.

These programs have been authorized on various housing bond bills enacted over the years. Most recently, a $200 million housing bond bill was approved in 2004 authorizing $50 million for the Housing Innovations Fund (HIF), $100 million for the Facilities Consolidation Fund (FCF), $25 million for the Home Modifications Loan Program for persons with disabilities/elders and $25 million for a new housing production program (Olmstead Community Housing) for people with disabilities who are not eligible for FCF units.

• ***Housing Innovations Fund* (HIF)** The HIF program was created in 1987 and was most recently reauthorized in the 2004 housing bond bill. It provides deferred payment loans (essentially grants) for up to 50% of the cost of projects that create or preserve housing for people with special needs as well as innovative housing options such as Single Room Occupancy (SRO) and transitional housing. HIF funds can also be used for the purchase of expiring use properties by residents or nonprofits. At least 50% of the units must be affordable to very low income households. HIF is critical gap filler--supplementing other sources to make a project feasible. It is sometimes used to supplement HUD funding for Section 202 housing for the elderly in high development cost areas. In general, loans do not have to be repaid as long as the project remains affordable.

• ***Housing Stabilization Fund* (HSF)** HSF was created in 1993 and provides funds for the acquisition, preservation and rehabilitation of housing and the production of housing for the elderly. HSF-assisted developments are typically part of a broader neighborhood revitalization plan. HSF offers grants and loans of up to $50,000 per unit in HOME entitlement communities and up to $65,000 per unit in non-entitlement communities. The 2002 bond bill requires that at least 25% of the funding be used for projects that preserve and produce housing for persons with incomes at or below 30% of median income. Units assisted with HSF funds must remain affordable to households at or below 80% of median income for 40 years. .

• ***Capital Improvement and Preservation Fund* (CIPF)** This program, authorized as part of the 1998 Housing Bond Bill and renewed in the 2002 bond bill, provides loans and grants to for-profit and nonprofit entities to preserve state and federally assisted private housing threatened with the loss of affordability due to mortgage prepayment or other causes. It gives a preference to purchases by housing authorities and nonprofits. At least 50% of the project units must remain affordable to households at or below 80% of median for at least 40 years. Since 1999, CIPF funds have helped preserve over 2,600 units at an average subsidy of less than $12,000 per unit. *In February 2005, the Administration announced plans to terminate the program, stating the State should focus on programs that expand the housing supply*.

• ***Facilities Consolidation Fund* (FCF)** This program, begun in 1994 and reauthorized in the 2004 bond bill, provides deferred payment loans for up to 50% of development costs for community based housing for DMH and DMR clients. This amount was increased from 30%

with passage of the 2002 Housing Bond Bill. The facilities are then leased by the state under long term contracts. Legislation included in the 2002 Housing Bond Bill made technical changes to the FCF statute to remove barriers to use. To date, it has helped create 1,253 units. The average subsidy is $31,000 per unit.

• ***Affordable Housing Trust Fund (AHTF)*** In July 2000, the Legislature authorized the creation of a $100 million Affordable Housing Trust Fund (Section 227 of Chapter 159 of the Acts of 2000). The Trust was funded by dedicated income tax revenues ($20 million a year) from the General Fund for five years and was not to be subject to appropriation during this period. However, in FY'03 the allocation was cut to $12.5 million. In June 2003, the Legislature voted to capitalize AHTF via bond allocations over a five year period (FY'04-FY'08) and authorized bonds totaling $70 million for this purpose (DHCD's bond cap was increased concomitantly). AHTF is a flexible funding source that can be used to produce and preserve rental and ownership units for households with incomes of up to 110% of median and provide downpayment assistance. It is generally used in combination with other state and federal housing funds. Units receiving AHTF money units must remain affordable for at least 30 years. The program is administered by DHCD and managed by MassHousing with guidance from a 15-member advisory committee of local officials, housing advocates, lenders and developers. DHCD issued updated program guidelines in October 2003. To date, funds have been committed to develop 5,527 housing units (of which 4,542 are affordable). These are primarily rental developments.

• ***Olmstead Community Housing*** This new program, authorized in August 2004 under the Disabilities Housing Bond bill, helps fund the development of community based housing for persons with disabilities, including the elderly, who are living in institutions or at risk of being institutionalized but who are not eligible for units developed under the Facilities Consolidation Program. No funding is provided for it in the FY'05 State Capital Plan.

Tax Credits

• ***Low Income Housing Tax Credit* (LIHTC)** This federal program, created in 1986, offers the deepest subsidy for affordable housing development but demand far exceeds the volume of credits available for allocation. It makes federal tax credits available to developers who create, rehabilitate or preserve rental housing. The developers sell the credits to investors who want to reduce their tax bill and the proceeds from the sale of the credits provide equity for the project. This reduces project debt and thus debt service and lowers the rents needed to cover costs. There are two types of credits, often referred to as 9% and 4% credits.

- Nine percent (9%) credits are designed to attract equity equal to 70% of qualified project costs (excluding land). The amount available for projects each year is limited by law. States receive annual allocations of 9% tax credit authority based on population. From 1986 through 2000, allocations were frozen at $1.25 per capita. Congress raised the per capita amount to $1.50 in 2001 and $1.75 in 2002, with indexing for inflation thereafter. Massachusetts will receive an $11.9 million allocation in 2005 ($1.85 per capita). Since each annual allocation supports credits at that level for ten years, the 2005 allocation will support $119 million in credits.
- Smaller credits, called 4% credits are available for projects financed with tax-exempt bonds (e.g. by MassHousing or MassDevelopment). These are easier to obtain because

there is no cap on the volume of 4% credits. They are designed to generate equity investments equal to 30% of qualified project costs.

Developers receive tax credit allocations for a specific number of affordable units. At a minimum, at least 20% of the units in a project must be affordable to households with incomes at or below 50% of area median OR at least 40% must be affordable to households with incomes at or below 60% of median income for at least 30 years. Most projects using 9% credits have much higher percentages of "tax credit" units (often up to 100%) and most use the 60% of median income threshold. Many provide more than 30 years of affordability. Except in areas with low development costs, most tax credit projects require additional subsidies as well, such as HOME funds, to make projects feasible.

It is up to each State to decide how it will allocate its limited supply of 9% credits each year, and it must publish an annual Qualified Allocation Plan that details funding priorities. DHCD distributes credits through two competitive funding rounds a year. It can carry forward credits not allocated in one year to the next. In 2005, DHCD plans to allocate about 65% of the $11.9 million allocation to projects that create new affordable units and 35% to the preservation of existing affordable units. About $2.1 million is reserved to support the redevelopment of a public housing development (Maverick) in Boston through the federal HOPE VI program.

- ***State Low Income Housing Tax Credit*** The Legislature created the state low income housing tax credit program in 1999 to supplement the federal program. The state program was created because the demand for federal credits far exceeds the amount allocated to the state.

State credits are limited to developments receiving federal low income housing tax credits that are placed in service on or after January 1, 2001 and remain affordable for at least 45 years. Applications for state credit allocations are taken at the same time as applications for federal low income housing tax credits and are allocated using the same criteria. DHCD awards state credits in lieu of part of the federal credit the project would otherwise receive and thus expand the total credit allocation available. State credit awards are based on the applicant's ability to use them (i.e. investors have sufficient state tax liability to make state credits usable). The program was reauthorized in 2004 for five years (2005-2009). DHCD is authorized to award up to $4 million for new projects each year; because credits are taken annually for 5 years, the new authorization will support new equity investments of $20 million a year ($4 million times 5 years) or $100 million over the life of the program.

Federal (HUD) Grants

- ***HOME*** HUD's HOME program provides annual housing block grants on a formula basis to "participating jurisdictions" (states, large cities, and consortia of smaller communities). Funds can be used for four activities: tenant-based rent subsidies, rental housing production and rehabilitation, first-time homebuyer programs, and homeowner rehabilitation assistance. The participating jurisdictions (PJs) choose the activities they will fund; these choices are supposed to address high priority local needs. By law, PJs must award at least 15% of their funds each year to housing projects owned, sponsored or developed by area non profit housing agencies – often local CDCs in Massachusetts – that meet HUD's definition of a community based housing organization (CHDO). PJs are also allowed to use up to 5% more of their allocation to provide general operating assistance to their local CHDO(s).

In 2005, DHCD plans to allocate about two-thirds ($10 million) of its 2005 HOME grant to rental housing development and rehabilitation, including up to $2 million for projects that create new rental units in suburban communities. (The Massachusetts Housing Partnership will provide pre-development and permanent financing and technical assistance for these suburban projects. Overall, this $10 million is expected to support the development or rehabilitation of 285 units of multi-family rental housing, providing a maximum of $65,000 per HOME unit for projects in non-entitlement, non-consortia cities and towns, and up to $50,000 per HOME unit for projects in entitlement/consortia communities.

• ***Community Development Block Grant Funds*** (**CDBG**) HUD's CDBG program provides annual block grants to states and large cities; recipients choose the activities they will fund among eligible uses (housing, community development, and public services). States redistribute their CDBG funds to communities that do not receive direct allocations from HUD. DHCD distributes its grant based on applications from eligible communities.

In 2005, DHCD plans to allocate $5 million to its Housing Development Support Program which supports small (up to 7 units) housing creation and preservation projects though grants of $100,000 to $500,000. In line with sustainable development goals, new construction projects are limited to downtown or village center locations. In recent years, HDSP has been used for a number of adaptive re-use projects, including converting upper story space in downtown buildings to housing. At least 51% of the units in each project must be reserved for households with incomes at or below 50% of median. Localities can also apply to DHCD for grants to create or preserve affordable rental units through DHCD's Community Development Fund (CDF) program (see page 19).

MassHousing and Mass Development Programs

• ***Tax Exempt Bond Financing*** MassHousing and MassDevelopment offer construction and permanent mortgage financing at slightly below market rates to develop or preserve affordable multifamily rental housing, including assisted living developments. They are able to offer lower interest rates because they obtain their funds through the sale of long-term bonds that are exempt from federal taxes for the purchaser and thus carry lower interest rates. The interest savings, combined with long amortization terms (up to 40 years) reduce debt service costs. Tax-exempt financing offers two other important advantages – it can be used with other federal funding, such as HOME, and projects can receive "4%" federal low income housing tax credits on a non-competitive basis. Both MassHousing and MassDevelopment accept funding applications on a rolling basis.[63] MassDevelopment loans range from $1-5 million. At least 20% of the units must be affordable to households with incomes at or below 50% of median (or at least 40% must be affordable to households with incomes at or below 60% of median) for at least 15 years (or until the bonds are retired if longer). Federal tax-credit projects must be affordable for at least 30 years.

• ***MassHousing Expanding Rental Affordability (ERA) Program*** MassHousing also offers 30- or 40-year multifamily mortgages funded with taxable bond proceeds to developers of projects where at least 20% of the units are affordable to households with incomes at or below 80% of median (at least 25% of the units must be affordable for a project using a comprehensive permit). The income limit for the affordable units is higher because the program is designed to

work without additional subsidies such as HOME or tax credits. Units must remain affordable for at least 15 years or until the bonds are retired if longer.

• ***MassHousing Priority Development Fund*** In January 2004, MassHousing announced it would make $100 million of its revenues (from management improvements, fee income, investments and future mortgage payments) available over the next 3-5 years to provide supplemental funding for projects using MassHousing mortgage loans. The PDF funds (up to $75,000 per affordable unit) will help projects achieve financial viability and/or provide more affordability (by increasing the number of affordable units, reaching lower household income levels, or extending the length of time units must remain affordable). MassHousing expects to offer the PDF funding in the form of a low- or no-interest soft second loan, payable as cash flow permits or deferred until sale or refinancing. At least 20% of the units in each project must be affordable to households with incomes at or below 50% of median. The program is expected to facilitate the creation of about 1,000 new units of affordable housing, primarily rental, in both mixed-income and predominantly low-income projects. Projects that follow smart growth principles will receive priority for funding.

MassHousing has set aside $3 million of the $100 million allocation for grants to municipalities to develop affordable housing plans and strategies, including zoning change, that are consistent with the State's Sustainable Development Principles and smart growth guidelines. It plans to use the remaining $97 million for three types of projects:

- $63 million for mixed-income housing (at least half of each project must be market rate),
- $12 million for largely low-income developments, especially nonprofit projects, and
- $22 million for mixed income housing around transit nodes (mixed-use and ownership projects are also be eligible for funding under this category).

Massachusetts Housing Partnership (MHP) Fund Programs

The Massachusetts Housing Partnership Fund was created in 1985 to fund State efforts to help communities redevelop urban sites and create local housing partnerships to support affordable housing efforts. It was initially capitalized with a one-time $35 million setaside of state funds (from bank excise taxes) and operated within DHCD. MHP was spun off as a quasi-public agency in 1990 after the Legislature passed a law requiring that companies that acquire Massachusetts banks make funds available to MHP at below market rates for loans for affordable multifamily rental housing. In some cases, banks agree to provide some of the money as a grant, rather than a long-term interest write down because grants enable MHP to offer deeper subsidies. Bank transactions such as the 2004 acquisition of Fleet by Bank of America are subject to the statute. The State provides funds to maintain a capital balance equal to 4% of outstanding debt.

MHP has used the bank funds to provide almost $350 million in long-term financing for more than 11,000 units of rental housing since 1990 under several programs:

• *MHP's Permanent and Permanent Plus Programs* offer long-term below-market-rate loans to private non-profit and for-profit owners and developers to create, rehabilitate or refinance multifamily rental housing (5+ units) and SROs. At least 20% of the units must be affordable at 50% of median *or* at least 40% must be affordable at 60% of median *or* at least 50% must be

affordable at 80% of median. Loans have a 20 year term, though amortization schedules may be set at 30 years. Additional subsidies are available in the form of low- or 0% interest deferred payment loans (up to $60,000 per unit for for-profit borrowers and $75,000 per unit for nonprofits) for projects that do not use other subsidy programs.

• *Home Funders Program* MHP has joined with CEDAC and a number of private foundations to offer financing for projects that create units for extremely low income (ELI) families. The Home Funders program combines conventional MHP first mortgage financing with a low-interest (2%) loan of up to $50,000 per unit for each unit reserved for families earning 0-30% of median income. For projects using only MHP and local subsidies, payments on the 2% loan can be interest-only and, if needed for feasibility, projects can also receive a no-interest deferred payment loan of up to $60,000 per ELI unit ($75,000 for nonprofit developers). To qualify, at least half the project units must have two or more bedrooms and at least 20% of the project units must be for ELI households (up to half of the ELI units may be subsidized with project-based Section 8 vouchers as well).

MHP also continues to provide technical assistance to communities, including assistance reviewing comprehensive permit proposals (funded by developer fees), and operates the Soft Second loan program for first-time homebuyers.

Federal Home Loan Bank of Boston Programs

The Federal Home Loan Bank system is a government-sponsored entity created in 1932 to provide local member banks with capital for residential lending (essentially a bank for banks). There are 12 Federal Home Loan Banks serving various regions of the nation. The Federal Home Loan Bank of Boston serves banks in New England. Federal law requires that every Home Loan Bank use some of its income to make funds available at discounted rates for affordable housing programs that serve households with incomes at or below 50% or 80% of median and "community-oriented" projects that serve slightly higher income groups. [64]

• *Affordable Housing Program (AHP)* Since 1989, every Federal Home Loan Bank has been required by law to spend 10% of its annual net income on a program of grants and loans for affordable ownership programs and rental projects, including transitional housing, called the Affordable Housing Program The Federal Home Loan Bank of Boston's AHP program currently provides awards of up to $600,000 per project (up to $300,000 in grants and up to $300,000 in interest subsidies on loans from member banks). Federal regulations require that at least 20% of the units serve households with incomes at or below 50% of median, but most AHP projects have much higher percentages of affordable units. Funds are awarded competitively twice a year. AHP usually serves as gap-filler funding. In 2004, the program awarded $8.2 million in grants and loans for 9 Massachusetts projects with 351 affordable rental units.

• *New England Fund* The Federal Home Loan Bank of Boston (FHLBB)'s New England Fund (NEF) program offers slightly below market rate funding for housing developments that benefit households with incomes of up to 140% of the HUD area median income. NEF is a popular financing source for developers building mixed income rental housing using the comprehensive permit process. When used with a comprehensive permit, at least 25% of the

units must be affordable to households with incomes at or below 80% of median for at least 30 years and projects must meet DHCD marketing, monitoring and other guidelines (see page 75).

Program Issues: *Need for Additional Resources* The competition for funding from the above sources is fierce, and applications exceed available funds. The resource shortage threatens the state's ability to preserve existing affordable housing and fund the creation of new housing, particular for extremely- and very-low income households.

[61] Massachusetts CDBG/HOME One Year Action Plan 2005 and FY2004 and FY2005 capital budget.

[62] The federal tax credit amount is shown at 10 times the annual new allocations ($11.9 million in FY'05) because each year's new allocation supports 10 years of credits. State credits have a 5-year life (every new $1 annually is worth $5 in credits).

[63] The volume of mortgages MassHousing and MassDevelopment can finance depends on several factors. States receive an annual per-capita allocation from the IRS for "private activity bonds", indexed to inflation ($80 in 2005), which can be used for a variety of activities including loans for multifamily housing, mortgage programs for first-time homebuyers, industrial revenue bonds and student loans. The State Executive Office of Administration and Finance determines the amounts it will allocate to various entities or activities, depending in part on projected demand for each activity (annual bond volume cap amounts must be used within three years or are lost). In recent years, it has allocated 30-40% of the volume cap to MassHousing and MassHousing decides how to divide its allocation between multifamily and single family housing.

[64] Every Federal Home Loan Bank is required to offer two programs that provide below market rate funding for community-oriented mortgage lending – one (the Community Development Advance program) for projects that benefit households with incomes up to 115% of area median, and one for projects that benefit households with incomes of up to 140% of median.

Homeownership Programs

High and rapidly rising housing prices in Massachusetts, though beneficial to current owners, have made it difficult for many low-, moderate- and middle- income households to purchase their first homes. According to the Massachusetts Association of Realtors, the median statewide price of a detached single family home was $340,000 in 2004 and for condominiums $259,000. (In Greater Boston, the 2004 median prices were $469,000 and $330,000.) Average statewide prices were even higher - $417,845 and $303,630 respectively. Overall, statewide average sale prices have risen by 45% since 2000 for single family homes and by 70% for condominiums and by 11% and 15% in the past year,[65] far outpacing income growth.

All parts of the state are experiencing price increases. High housing costs have placed many traditionally affordable communities in Greater Boston beyond the reach of first-time homebuyers, forcing growing numbers of first-time buyers to purchase homes far beyond traditional commuting ranges. In addition, growing numbers of 2-4 family homes have been converted to condominiums, and smaller homes replaced by larger homes.

Given that homeownership is key to the ability of low and moderate income households to build assets, the State and HUD have a number of programs to help renters become homeowners. The state has undertaken a broad effort to increase housing production overall to reduce the tightness of supply that is driving up prices even as median incomes remain stagnant[66] (the statewide homeowner vacancy rate was 0.7% in 2000). More targeted efforts include:

- encouraging the development of affordable ownership units through state and federal grants and loans to developers and incentive payments and planning grants to localities
- allocating part of the state's private activity bond cap (see note on page 51) to MassHousing for first time homebuyer programs and supporting programs and policies that improve access to mortgage financing (homebuyer counseling, flexible lending criteria, downpayment and closing cost assistance, interest subsidies and rehab loans).

Development Programs

- *DHCD HOME and HSF Project-Based Homebuyer Assistance* DHCD uses part of its annual federal HOME block grant and part of its State Housing Bond Bill funds through the Housing Stabilization Program to support the creation of affordable homeownership units for first-time homeowners with incomes at or below 80% of median. It does this by providing grants, primarily to nonprofit developers, but also to municipalities and for-profit developers, to build new units or rehabilitate existing properties for resale at a discounted price. The subsidy covers the difference between the total development cost and the resale prices (up to $65,000 per unit). The program can be used for 1-4 unit homes. Buyers must be owner-occupants and are subject to affordability restrictions (15 years when units are funded with HOME assistance, 50 years when units are funded with HSF). If subsidy funds are used for the rental units in such properties, rental units must be reserved for and affordable to households with incomes at or below 60% of median. If owners choose to sell before the use restriction period is up, they may have to repay some of the subsidy if the next buyer is not low income. DHCD plans to allocate $4.3 million in HOME funds to assist about 78 first-time buyers in 2005.

- *DHCD Local Initiative Program (LIP)* LIP is not a financing program but provides technical assistance that allows projects without direct state or federal subsidies to count toward a community's 10% affordable housing goal under Chapter 40B (see page 73).

Private projects built with direct or indirect local subsidies (e.g. density bonuses or town-donated land) but no state or federal financial subsidy, currently account for most new affordable homeownership development. Many are built using comprehensive permits under Chapter 40B, while others are built under local inclusionary zoning ordinances. DHCD created the LIP program in 1990. Projects that follow LIP guidelines qualify for inclusion in the count. Under LIP, affordable units must be restricted to buyers with incomes no higher than 80% of area median (projects can establish lower limits) and to ensure a large enough pool of applicants, units initially must be priced to be affordable to households with incomes at 70% of area median. Localities can reserve up to 70% of the affordable units for local residents and set their own definition of resident (can include people who work in the community, relatives of current residents, etc.). New construction projects must remain affordable for at least 30 years (many localities require affordability in perpetuity).

- *State Affordable Housing Trust Fund* This state bond-funded program provides funding for rental and homeownership developments that include units affordable for households with incomes up to 110% of area median. AHTF monies are usually combined with other state and federal housing funds. While most of the funding awards to date have supported rental housing, the program has been used to support a number of ownership projects. FY2002 and FY2003 awards together supported the development of about 120 affordable homeownership properties.

- *MassHousing Housing Starts* The Housing Starts program, begun in 2001, offers construction financing for ownership projects being developed using comprehensive permits (the funding source is MassHousing's Working Capital Fund). At least 25% of the units must be affordable at 80% of median for at least 30 years. As under the LIP program, prices on the affordable units must be priced at 70% of median. In addition, projects must usually meet program density limits (the greater of 8 acres per unit or four times the surrounding density). MassHousing also offers 30-year fixed-rate mortgages to the buyers of the affordable units. To date, the program has financed three developments with 487 units, of which 123 units are affordable. Housing Starts staff have also issued site approval letters for many other such projects seeking comprehensive permits using NEF.

- *MassHousing Priority Development Fund* Though primarily intended for rental projects, affordable ownership projects near transit nodes are also eligible for assistance (see page 49).

- *Federal Home Loan Bank of Boston New England Fund (NEF)* The New England Fund (NEF) programs offers slightly below market financing for the development of affordable homeownership projects, as well as for rental developments. It is a popular funding source for mixed income ownership projects built with comprehensive permits. Because these projects do not use other subsidies, they rely on the combined effect of density bonuses and relatively high market prices to pay for the affordable units. NEF ownership projects built with comprehensive permits must follow DHCD guidelines (see page 75). At least 25% of the units must be affordable to households with incomes at or below 80% of median.

Homebuyer Mortgage and Downpayment Assistance

• *MassHousing First Time Homebuyer Assistance* MassHousing, formerly called the Massachusetts Housing Finance Agency, uses tax-exempt bonds to purchase mortgages made by local lenders to first time homebuyers at slightly below market interest rates. It offers flexible underwriting criteria and generally requires a 3% downpayment but also offers a no-downpayment option. Borrowers must be within MassHousing income limits ($90,800 for 1-2 person households and $103,200 for a household of 3 or more in Boston, Cambridge Chelsea, Everett, Lynn and Somerville[67] and $82,600/$94,900 in other Greater Boston communities). Homes must fall within MHFA price limits ($381,999 for a 1-unit home, $488,975 for a 2-family and $591,028 for a 3-4 unit home in Greater Boston).[68] MassHousing also purchases mortgages made to slightly higher income groups *without* the first-time homebuyer requirement. In the past five years, MassHousing mortgage programs have assisted an average of almost 1,600 first time homebuyers a year. In 2005, MassHousing expects to spend $200 million to assist 1,300 households.[69]

• *DHCD/MHP Soft Second Program* The Massachusetts Housing Partnership (MHP) Soft Second program helps lower income homebuyers buy their first home (1-4 units) with a 3% downpayment (half can be a gift). The program combines a conventional first mortgage (77% of value) with a subsidized second mortgage (20% of value). During the first five years, public funds can be used to cover the payments on the second mortgage, with the subsidy gradually phasing out over the next five years. Because the conventional loan is less than 80% of value, borrowers avoid the cost of private mortgage insurance. No points are charged on the conventional mortgage. Borrower income cannot exceed 80% or 100% of area median ($66,150 or $82,600 for a household of four in Greater Boston), depending on the community. Maximum purchase prices vary depending on local housing costs.

The program can be used in any community that has lined up a funding source for the interest subsidy. Possible sources include HUD or DHCD Community Development Block Grant funds or an allocation from the Federal Home Loan Bank of Boston. Soft Second mortgages are available in more than 250 communities through more than 40 banks. Participating lenders usually give a small interest rate discount. DHCD, local governments, and the Federal Home Loan Bank of Boston contribute funds that provide loan loss reserves, closing cost assistance and interest subsidies for borrowers. The program has assisted an average of 700 first-time buyers a year over the past five years. In recent years, about 30% of the loans have been made in Boston, with another 30% in Western Massachusetts. A study of borrowers who received loans between 2001-2003 found they had an average household income of $36,000 and 42% were minority households.[70] Because state operating budget dollars are not available, DHCD plans to provide $4 million in state housing bond funds under the Housing Stabilization Fund (HSF) program to support soft second loans to an estimated 1,000 borrowers in 2005.[71]

• *DHCD/HOME Downpayment and Closing Cost Assistance* DHCD uses a portion of its annual federal HOME block grant for a *purchaser assistance* program that provides downpayment and closing cost assistance (up to $10,000) to first-time homebuyers with incomes at or below 80% of area median. The funds are distributed to buyers through programs operated by CDCs, nonprofits, or county agencies. Buyers are subject to purchase price limits, generally set annually by county, at 95% of the median area house value. DHCD plans to use $1.7 million

of its federal FY'05 HOME funds on purchaser-based aid - including $681,000 specifically awarded by HUD for such assistance (see page 21) – for about 270 households.

• *Federal Home Loan Bank of Boston Affordable Housing Program (AHP)* As discussed on page 50, the Federal Home Loan Bank's Affordable Housing Program (AHP) offers grants and loans for the development of affordable housing. AHP regulations allow the regional Banks to set aside up to 35% of their AHP funding for homeownership (25%) and first-time homebuyer programs (10%). The Federal Home Loan Bank of Boston currently reserves 15% of its AHP allocation for these purposes ($1.5 million for New England in 2005). This setaside, called the Equity Builder Program, provides grants to local banks for downpayment, closing cost, homebuyer counseling (including grants to local nonprofits) and rehabilitation assistance for households with incomes up to 80% of area median. Participating banks also offer buyers mortgage concessions, such as lower interest rates, and fee and point waivers or reductions. Funds are awarded through one competitive funding round a year.

Program Trends/Issues

Private Investment: Private banks offer many more options for first time homebuyers than they did five years ago, especially with regard to more flexible lending criteria and downpayment requirements. Much of this activity has come about in response to state and federal Community Reinvestment Act (CRA) legislation that requires banks to report on their lending activity in low and moderate income communities, requires regulators to rate lenders on their performance, and uses these ratings when considering bank requests for various regulatory approvals.

In the past decade, however, the mortgage lending market has changed significantly as the role of mortgage companies has grown and the percentage of home mortgage loans issued by banks covered by CRA requirements has fallen from 78% to 26% in Boston (1990-2001) and 30% in the Boston area overall (2002),. State legislation has been filed to expand CRA type requirements to mortgage companies that make or buy more than 50 loans a year. This would extend CRA coverage to about 60% of all loans in Massachusetts and expand it from 0% to 70% of all loans by subprime lenders.[72]

Homeownership Counseling: Over the past decade, an extensive network of homebuyer counseling agencies have emerged which provide pre-purchase counseling and education to more than 8,000 homebuyers each year. However, it has been difficult to raise enough funds to operate these programs to meet the growing demand for counseling services.

Sustaining Homeownership: Programs have evolved in recent years to ensure that first time homebuyers maintain successful homeownership over the long-term. New initiatives focus on post-purchase counseling and assistance, covering topics such as budgeting, credit, landlord/ tenant relations, maintenance and repairs, foreclosure prevention, and other issues. In FY'01, the Legislature funded a program, called the Housing Consumer Education Center (HCEC) program, to help achieve this. Administered by regional nonprofit housing agencies, the centers provide a variety of services and materials for tenants, first-time homebuyers, homeowners and owners of small rental properties. They provide vital help to preserve homeownership, tenancy, financial stability and self-reliance. Funded at $1 million in FY'02, was deeply cut in subsequent years, before rising to $505,000 in FY'05.

[65] Massachusetts Realtors Association (www.marealtor.com)

[66] The statewide median household rose by 0.8% between 2000 and 2003 in inflation-adjusted dollars (see Massachusetts Draft 2005-2009 Consolidated Plan, p.16).

[67] Buyers in these cities as well as several others do not have to be first-time homebuyers.

[68] Income and purchase price limits by community are available online at www.masshousing.com

[69] Massachusetts Draft 2005-2009 Consolidated Plan, DHCD, pages 54 and 141.

[70] "Study: Average Income of Soft Second homebuyer is $36,000", Massachusetts Housing Partnership, August 3, 2004. Available online at http://www.mhp.net/news_ideas/latest_news.php?function=show&ID=302

[71] Ibid, pages 54 and 142.

[72] Jim Campen, "Metro Boston Equity Initiative: Issue Summary No. 4: The Color of Money in Boston: Patterns of Mortgage Lending and Residential Segregation at the Beginning of the New Century", January 2004, page 2. Available online at http://www.civilrightsproject.harvard.edu/research/metro/Summary_Campen.pdf

Housing for Elders

State and federal housing programs for the elderly have traditionally focused on providing affordable housing; more recently they have begun to address the need for accessible or adaptive housing and access to supportive services. The need for support services and accessible units is expected to grow, given the aging of the state's population and longer life expectancies - the average 65 year old man today can expect to live to 82 and the average woman to 85.[73] State and federal agencies have responded by revising the way they design new affordable housing for seniors and redesigning older complexes (within funding constraints).

The profile of elderly households with affordability problems has changed in recent years. Increasingly, elders with affordability problems are likely to be homeowners. According to the 2000 Census, nearly 172,000 elderly households (age 62+) with incomes at or below 80% of median paid over 30% of their income for housing in 1999, (including almost 76,000 who paid more than half their income for housing). They included 79,000 renters and 93,000 homeowners and represented 43% of all elderly renters and 24% of all elderly homeowners in Massachusetts.
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Current Housing Programs for the Elderly

Almost one-half of all elderly renters in Massachusetts received some form of housing assistance in 1999.[74] State and federal public housing is the largest single source of assisted housing for low-income elderly renters, housing 46,300 elderly households as of March 2000.[75]

- *State Public Housing* The State's Chapter 667 program funds the development of public housing for elderly and disabled households. The state has 32,310 units of Chapter 667 housing; of which about 28,000 units (86.5%) are reserved for elderly households (age 60+) with incomes below 80% of median. About 700 are congregate housing units specifically designed for elders who need supportive services; the State Executive Office of Elder Affairs pays for the service costs.

- *Federal Public Housing* Massachusetts also has about 33,500 units of federal public housing, including more than 15,000 units specifically for elderly (age 62+) and non-elderly disabled households. Some elderly renters also live in family developments. HUD funding supports resident service coordinators for some of the elderly developments.

- *Section 202 Housing* This HUD program provides grants to nonprofit sponsors on a competitive basis to develop rental housing for very low-income elderly households and maintain it as such for 40 years. Admission is generally limited to households with incomes below 50% of median, though some older projects have higher income limits (80% of median). The program began in 1959 and until 1990 provided direct loans from HUD, rather than grants, for development costs. Projects funded after 1992 are limited to frail elders (those in need of assistance with activities of daily living) and must include supportive services. Some pre-1992 developments receive funding for service coordinators as well. There are currently about 10,100 units of 202 housing for the elderly and/or disabled in Massachusetts and most (about 9,500) also have Section 8 project-based rent subsidies.[76]

• *Other Federally Assisted Private Housing* In addition to housing built under the Section 202 program, Massachusetts has about 70,000 units of private, federally assisted housing built between the mid-1960s and early 1980s under HUD interest subsidy programs (Section 236 and 221d3) or the Section 8 project-based rent subsidy program, often with MassHousing mortgages. Many of these developments are partially or entirely reserved for elderly households. The continued affordability of up to one-third of this federal inventory is uncertain for two reasons. First, Congress has lifted restrictions on prepaying the subsidized mortgages covering about 12,000 units and other projects are reaching the end of their mortgage term. Second, the Section 8 rent subsidy contracts will expire on many units between now and 2010, and some owners may decide not to renew their contracts. About 27,000 units are in projects that could convert to market rate housing by 2010. [77]

• *Rural Housing Service Section 515 Housing* The Rural Housing Service division of the U.S. Department of Agriculture also funds the development of affordable rental housing in rural and exurban areas, through funding has largely dried up in recent years. In Massachusetts, the bulk (over 1,800) of the units are in elderly-only developments. Income limits are slightly higher than under HUD programs for units (80% of median plus $5000) without rental assistance. Most projects have some form of project-based rental assistance (Section 8 or RHS rent subsidies; a few have state-funded rental assistance under the MRVP program).

• *Accessible Set Aside Units in MHFA-Assisted Housing* About 2,600 units in MassHousing-financed developments are for persons with mental illness or mental retardation. There are 1,073 units in elderly-only developments and approximately 1,500 in unrestricted("family") or mixed developments. • *Affordable Assisted Living Residences* DHCD, MassHousing and MassDevelopment all offer financing for affordable assisted living developments. MassHousing (through its Elder Choice program) and MassDevelopment both offer tax-exempt financing and low income housing tax credits to developers who reserve at least 20% of the units in a project for very low income households (incomes at or below 50% of median). These agencies funded about 20 assisted living residences between 2000 and 2004, with 1,800 units (600 reserved for low income elders).[78] Several hundred more units have been developed under DHCD's Low Income Housing Tax Credit program. Assisted Living residences have two cost components: housing and services, with latter averaging about $1,000 a month (more for memory-impaired residents). The MassHousing and MassDevelopment programs subsidize the housing cost component and the State (EOHHS) uses the Medicaid-funded Group Adult Foster Care (GAFC) and a recently approved special SSI program to subsidize the service component. Mass Housing and MDFA are expected to finance assisted living projects totaling about 160 units in 2005.[79]

Program Trends/Issues

• *Limited New Production of Housing for Very Low Income Elders*: Production of affordable rental housing has fallen under several key programs in the past decade. Public housing development has virtually ended (168 state elderly/disabled units were added between 1993 and 2003) and new awards for federal Section 202 housing have fallen to 150 units a year, down from 250 a year in the mid-1990s, with further cuts proposed for the FY'06 federal budget. While suburban communities increasingly support the creation of age-restricted housing (limited to households age 55 and above), the affordable units are frequently targeted to households with incomes at 70-80% of median. Nevertheless, outside of large cities, waiting lists for elderly public housing tend to be relatively short, especially for those who qualify for resident

preferences. Currently, there are fewer than 1,600 elderly households on DHCD's statewide Section 8 waiting list, representing only 4% of the total list.[80]

• *Need to Upgrade State Public Housing for Elderly* Most of the State's Chapter 667 developments were built between 1960 and 1985. DHCD reports that some of the older developments are now experiencing high vacancy rates because units sizes are small (sometimes 400 square or less), designs are outmoded and accessibility is limited. They compare poorly in some communities to other affordable options (federal public housing or Section 202). DHCD lacks the funds to address the redesign needs.

• *Aging Population and Need for Support Services*: The elderly population in subsidized housing is becoming older and more frail, creating a growing need to provide support services to these tenants so they can remain independent as long as possible and avoid going into a nursing home. Resources, such as funding for the home care programs, have been cut in recent years and many owners are unable to fund a service coordinator to help residents obtain appropriate services that are available. Some progress has been made. The State has begun a "Supportive Senior Housing Initiative" at some elderly state public housing developments, to create "an assisted living like environment". The Executive Office of Elder Affairs funds the service costs, including 24 hour on site personal care, case management and a daily meal. The program currently operates at 22 Chapter 667 developments with 2,882 units.

Congress has also authorized a program to improve the provision of support services and accessibility in Section 202 housing. Under federal legislation enacted in 2000 and revised in 2002, nonprofit sponsors can now refinance their old mortgages to take advantage of lower interest rates. HUD uses some of the savings to reduce its rent subsidy costs but allows borrowers to retain some to increase funding for supportive services and finance capital improvements. After refinancing, they continue to operate like 202 projects under use agreements with HUD until the date when their original 202 mortgage would have ended and they retain their rental assistance contracts. To date, 11 developments with more than 700 units have refinanced their Section 202 mortgages through a special MassHousing program, reducing interest costs by an average of 3 percentage points, and 900 more units are expected to be refinanced this year.[81]

• *Assisted Living:* Assisted Living provides an important alternative to nursing homes for elders who do not need intensive medical help, but who need high levels of support services, such as meal preparation, assistance with taking medication, and homemaking services. There are approximately 10,800 assisted living units in Massachusetts, but with the average cost of an unsubsidized one-bedroom unit in Massachusetts ranging between $3,500-3,700 a month,[82] relatively few are affordable to low and moderate income elders. As noted above, several State programs are beginning to partially address this gap. At least one community, Lexington, has also used an inclusionary zoning ordinance to create affordable assisting living units.

HUD also has begun two small programs to create assisted living units in existing elderly developments. It has an "Assisted Living Conversion Program", begun in 2001, to fund the brick and mortar costs of converting a few older HUD 202 and other HUD elderly subsidized housing projects (Section 8, Section 236 and Section 221d3) to assisted living facilities and create new developments. Owners arrange for other funding, such as GAFC, to cover service costs. To date, Massachusetts received funding to convert or create 191 units at 4 developments.

Congress has also provided funds for an initiative to provide assisted living in federal public housing and at least two local housing authorities (Fall River and Fitchburg) are in the process of converting projects to assisted living.

[73] Massachusetts Draft 2005-2009 Consolidated Plan, DHCD,February 2005, p.65.
[74] "A Profile of Housing in Massachusetts", the University of Massachusetts Donahue Institute, Boston, MA, December 1998, page 23.
[75] Commonwealth of Massachusetts Consolidated Plan for the Years 2000-2004, Department of Housing and Community Development, Boston, MA, page 4-5.
[76] HUD Section 8 Project Based Contracts database as of 1/12/2005. This count excludes 202 developments exclusively for persons with disabilities.
[77] CEDAC Report on Massachusetts Developments with Subsidized Mortgages or HUD Project-Based Rental Assistance, September 28 2004. Available online at www.chapa.org. Count adjusted to exclude Section 202 and 811 projects.
[78] Massachusetts 2005-2009 Draft Consolidated Plan, February 2005, DHCD, page 69.
[79] Ibid, page 142.
[80] Ibid, page 66. Also DHCD Draft Streamlined Five Year PHA Plan for FY2005-2009, page 10.
[81] Massachusetts 2005-2009 Draft Consolidated Plan, February 2005, DHCD, page 69.
[82] Study of Long Term Care Costs, conducted for Genworth Financial in July-October 2004. Available online at www.genworth.com/press/releases/20050113_costofcare.html

Housing for People with Disabilities

A number of state and federal programs fund housing assistance for people with varied types of disabilities. Some address the need for accessible or adaptable units for people with physical disabilities. Others assist people with disabilities in need of support services. Assistance for the elderly disabled tends to be provided through housing programs for the elderly, while assistance for the non-elderly disabled is more diffuse. Many of the programs described below largely serve non-elderly disabled households. Overall, people with disabilities face long waits for housing assistance. The $200 million Disabilities Bond Bill passed in 2004 could help address this if DHCD's bond cap is increased and the funds are spent.

Overview

For many years, the primary sources of affordable housing for people with disabilities were institutions, including state hospitals and nursing homes, and federal and state elderly/ handicapped housing programs. In the past 20 years, however, new programs have been developed "to serve more people with a wider range of disabilities and to provide more integrated housing options."[83] This change is the result of reductions in older resources (e.g. the closing of state hospitals), the extension of fair housing and civil rights law to people with disabilities, and litigation to enforce these rights.

Federal law has played a key role in shaping access to housing by people with disabilities. As it has evolved, the definitions of disability and accessibility have also changed.[84]

- The Architectural Barriers Act of 1968 was the first law to require that residential structures constructed on behalf of the federal government be accessible.
- *Section 504* of the Rehabilitation Act of 1973, implemented in 1977, makes it illegal for programs that receive federal funds (including states, localities and housing authorities) to exclude people with handicaps from participation in their programs or discriminate against them (i.e. provide unequal benefits). It requires that programs make "reasonable accommodations" to ensure the participation of otherwise qualified disabled individuals and provide programs or services in the most integrated setting possible. It also established design and construction standards for accessibility. Section 504 applies to all federally funded housing programs (public housing, Section 8, HOME, CDBG, etc) and covers all facets of operation, including outreach, admissions procedures and policies, etc. All federally funded public and private housing agencies are required to take steps to bring their programs and housing into compliance. [85]
- The *Fair Housing Amendments Act of 1988 (FHAA)* extended protection against housing discrimination to people with disabilities and required that all multifamily dwellings with 4 or more attached units first occupied after 3/13/91 – be in compliance with the FHAA Design & Construction requirements. . This included private and publicly funded housing. It also requires landlords to make reasonable accommodations or modifications for disabled tenants.
- The *Americans with Disabilities Act (ADA)*, enacted in 1990, expanded the definition of disability, and essentially extended the requirements of Section 504 to housing built with <u>state or local funds</u> by requiring that federal, state and local programs and new public facilities, including homeless shelters, be accessible to people with disabilities under Title II. Under Title III, private housing that has public accommodations such as a manager's office or other such facilities open to the general public must have such facilities in compliance

with ADA.

- A 1999 Supreme Court decision, Olmstead v. L.C. and E.W., ruled that ADA requires states to "place persons with mental disabilities in community settings rather than institutions when ... community placement is appropriate". Olmstead covers persons with all types of disabilities and mandates that such individuals be placed in the least restrictive setting. States must develop a plan to comply with Olmstead.

It is important to remember that a residential development or a multifamily building may be simultaneously governed by more than one federal accessibility mandate as well as the MA accessibility code.

Key Definitions[86]

Disability Definitions differ depending on whether one is talking eligibility for protection under civil rights (ADA) and fair housing law or eligibility requirements for state and federal housing programs.

- For civil rights purposes, ADA defines an individual with a disability as "a person having a physical or mental impairment which substantially limits a major life activity." Major life activities include but not limited to self-care, performing manual tasks, walking, hearing, seeing, speaking, breathing, learning and working. Covered impairments include but not limited to orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, certain learning disabilities, HIV, tuberculosis and alcoholism. *Persons using alcohol or illegal drugs are not protected* when their *current* alcohol or illegal drug use violates housing program eligibility rules, presents a direct threat to the health or safety of others or would result in substantial property damage. Persons, in recovery from addiction, are considered persons with disabilities and therefore covered by ADA, Sec. 504 and FHAA.
- Many State and federal housing programs for the disabled use a more restrictive definition, generally limiting assistance to people with physical, mental or emotional impairments expected to be of long continued and indefinite duration that substantially impedes the individual's ability to live independently and could be improved by more suitable housing conditions.[87] Some programs serve persons with specific types of disabilities. However, some programs do serve people with disabilities who may be ineligible for mainstream housing assistance. For example, some HUD Homeless Assistance programs specifically target *people with serious mental illness and chronic problems with alcohol and/or drugs*. Housing can only be restricted to a specific disability when there are support services specific to that disability attached to that unit. Eligible residents with disabilities would be restricted to only those in need of those specific services.

Accessible: Accessibility is defined by the covering laws and regulations of the specific civil rights laws such as FHAA, Sec.504 and ADA. Each defines accessibility and the manner in which accessibility is achieved differently. General accessibility includes an accessible route to an accessible primary entrance, accessible common-use/public accommodations, doors, accessible interior routes, environmental controls, wall reinforcement plus kitchens and bathrooms.

Construction standards for accessibility to meet federal requirements vary – separate guidelines exist for ADA compliance (ADAAG or UFAS), and Section 504 compliance (Uniform Federal

Accessibility Standards or UFAS). The FHAA has eight different access standards, labeled as Safe Harbors. Massachusetts has its own specialty accessibility code, the MA Architectural Access Board (MAAB) regulations. Although in some specifications the MAAB establishes a higher level of accessibility it is not substantially equivalent to the FHAA. This means that some of the MAAB standards mandate a lower standard of accessibility than FHAA. MAAB covers new construction of multifamily dwellings that has three or more units. It also covers rehabilitation and conversions.
Reasonable modifications refers to the right for persons with disabilities to ask permission to make physical alterations to their housing for greater use and accessibility of the premises by a persons with a disability . If the housing is federally subsidized, under Sec. 504 and ADA, physical alteration are considered to be reasonable accommodations with the cost of the alteration borne by the housing provider. Under the FHAA tenants are responsible for the cost of modifications (e.g. a ramp.) The property owner can request that the unit be restored to its original state if possible when the resident vacates the premise. This is only true of reasonable modifications made to the interior of the unit. Under Massachusetts's fair housing law, Chapter151B, the property owner is responsible for the cost of reasonable modifications in a building of 10 or more contiguous units.

Reasonable accommodations refers to right of persons with disabilities to request changes in "rules, practices, polices, procedures and/or services" so as to have an equal opportunity to "use and enjoy" a residential unit, including public and common areas (e.g. waiving the no-pet policy for an assistive animal). Owners do not have to make "unreasonable" accommodations, including those that impose an undue financial and administrative burden or fundamentally alter the nature of the housing program.

Co-Occurring Disabilities and Overlapping Housing Resources

The following pages describe the needs of specific subpopulations of the disabled (e.g. those with physical disabilities, cognitive disabilities, mental illness, HIV/AIDS, and substance and alcohol addictions). However, it should be noted that there is some overlap between these subpopulations (e.g. some people living with HIV/AIDS have psychiatric disabilities or addictions, some people with cognitive disabilities also need accessible housing).

Housing assistance for people with disabilities is available through a variety of programs, including some for people with specific disabilities, some for the disabled generally and "mainstream" housing programs, such as HOME or Section 8, which can be used for both the disabled and non-disabled. HUD programs for the homeless are also an important funding source for people with disabilities who are homeless or living in institutions or shelters.

Housing for People with Physical Disabilities

According to the U.S. Census, almost 209,000 *non-elderly households* in Massachusetts included a person with mobility and self-care limitations in 2000. Over half (106,000) are low-income, including 65,000 households who pay more than 30% of their income for housing (43,815 renters and 21,500 owners).

As mentioned previously it is possible for a multifamily development to be covered by more than one federal accessibility mandate as well as MAAB. For instance, new housing construction of 4

or more units first occupied after 3/13/91 is subject to FHAA. If that facility is also directly subsidized by the federal government, Sec. 504 will be triggered as well. If it has public accommodations on site, ADA Title III will cover it. Finally if it is built in MA and the building permit was issued after 9/1/96, MAAB requirements will need to be addressed, also.

Because most of Massachusetts' housing was built prior to the passage of laws requiring the development of accessible units, the supply of accessible units is limited. Units are being added, however, in response to federal requirements of the past decade and the State has a loan program to help owners finance modifications to their homes. Currently, approximately 3,900 units of state-funded public housing of all types[88] and just under 2,800 units in projects with MassHousing financing (2,596) or MassHousing-administered Section 8 contracts (183) are accessible – including 1,073 units for the elderly – though not all meet current accessibility standards.[89] In addition, some individual units are being retrofitted to accommodate the disabled as reasonable modifications are requested or as funds are available. (Some cities and towns provide CDBG funds to local housing authorities for this purpose.) Additional units are being created in new CDBG- and HOME-assisted new construction projects, as well as new construction projects financed with tax-exempt bonds.

Architectural Accessibility Assistance The State has two programs specifically created to help people locate accessible units or finance home modifications and local HUD-funded housing rehabilitation loan programs also can used for modifications. In addition, low-income people needing accessible units are also eligible for mainstream housing assistance programs (see page 69).

- ***Mass Access Housing Registry*** The State, through the Massachusetts Rehabilitation Commission (MRC), established a central registry (Mass Access) in 1995 that maintains information on affordable and unsubsidized accessible and adaptable units to help match them with persons who need them. There is no charge to owners or consumers. The program is based at Citizens Housing and Planning Association (CHAPA) and listings can be posted or viewed online at www.chapa.org. People can also contact their local Independent Living Center (ILC) to learn about available apartments.

- ***MRC Home Modifications Loan Program*** The State's Massachusetts Rehabilitation Commission (MRC) Home Modifications Loan Program (HMLP) provides low cost loans to help homeowners finance accessibility improvements. After fully spending an earlier allocation of funds, it received $25 million in new bond authorization when the Legislature passed a Disabilities Bond Bill in July 2004. The program offers no-interest and 3% deferred payment loans of up to $25,000 to homeowners who have a disability, a disabled household member or a disabled tenant. Elders with an accessibility need are also eligible for this program. The 0% loans are available to homeowners with incomes at or below 100% of area median, and 3% interest loans are available to owners with incomes up to 200% of area median. The 3% loans are amortizing; the no-interest loans do not have to be repaid until the property is sold or transferred. The previous $10 million bond allocation (1993) funded more than 300 loans. The amount of bond funding available for the program each year depends on how the State allocates funds under DHCD's capital plan. The FY'05 budget included $2.5 million for HMLP.

- ***Local Homeownership Rehabilitation Loan Programs*** Many communities operate affordable housing rehabilitation loan programs for homeowners and small landlords using

federal CDBG or HOME block grant funds they have received from HUD or DHCD. These loans can be used to fund modifications for accessibility. Frequently, the loans are forgivable over time (i.e. do not have to be repaid) or repayment is deferred until the property is sold.

• ***Accessible units in federally-subsidized developments*** Since 1988, federal law (Section 504) has required that *at least 5% of the units* (not less than one unit) in newly constructed federally assisted multifamily housing (4+ units) be accessible to persons with physical disabilities and that another 2% (not less than one) be accessible to persons with visual or hearing impairments,. Owners must also meet this 5%/2% standard in projects with more than 15 units when making substantial alterations (costing at least 75% of replacement cost). Section 504 also requires accessibility modifications when undertaking less extensive work to *the maximum extent feasible*, and when major renovation of an individual unit is undertaken, the entire unit must be made accessible.[90] In addition, tenants can request modifications as a reasonable accommodation, with the cost borne by the housing provider. The actual number of accessible units in a project varies - some projects have higher percentages because they were built specifically to serve elderly and/or disabled households and some federal programs require that at least 10% of new units be designed for mobility impaired. Some projects that are also covered by the FHAA can have up to 100% of their units accessible if there is an elevator in the building or just the ground floor units in non-elevator buildings. Others have no accessible units.

• ***Accessible units in state-subsidized and private unsubsidized developments*** The federal Americans with Disabilities Act (ADA) requires that all new multifamily housing built for occupancy after January 26,1992 include specific accessible and adaptable features. The specific requirements vary depending on property size, date of original construction and whether it includes an elevator. At a minimum, ADA requires

- at least one building entrance on an accessible route
- accessible public and common use areas (including parking)
- doorways into and throughout the building wide enough to allow passage via wheelchair
-

States and localities can impose more stringent requirements as well. In Massachusetts, state *Architectural Access Board (AAB)* regulations[91] require accessible units in all new multiple dwellings (3 or more units) receiving building permits after 9/1/96 and in all multiple dwellings undergoing significant renovation (cost over 3 years equal to at least 30% of value). For new and significantly renovated state-aided rental housing developments with 20 or more units, at least 5% of the units must be accessible. DHCD sometimes exceeds this minimum based on local needs. State and locally funded housing will also be covered by FHAA. If there are 4 or more units in a multifamily building, first occupied after 3/13/91 with an elevator, all units must be accessible. If it is a non-elevator building, than only the ground floor units are mandated to be accessible

Housing for Persons with Cognitive or Psychiatric Disabilities

The state's Department of Mental Retardation (DMR) and the Department of Mental Health (DMR) are responsible for addressing the housing and service needs of people with serious developmental or psychiatric disabilities. While efforts to address the residential service needs of DMR and DMH clients through community-based housing have long been stymied by underfunding, recent court decisions have put legal pressure on the State to do better. The

recognition that housing can be funded separately from services (i.e. rather than relying on provider agencies to create all housing opportunities, clients can use rent vouchers, housing groups can set aside units, etc) has expanded housing options and made it easier to comply with Olmstead. Once housing is located, services can be arranged.

The Olmstead Decision A 1999 Supreme Court decision, Olmstead v. L.C. and E.W., ruled that ADA requires states to "place persons with mental disabilities in community settings rather than institutions when ... community placement is appropriate…and can be reasonably accommodated taking into account the resources available to the State and the needs of others with mental disabilities."[92] It "gave disabled people of all ages the right to live in the community, outside of an institution, in the least restrictive setting possible".[93]

The decision led the federal government to order all state Medicaid directors to develop a working plan to comply with Olmstead and "move at a reasonable pace" to reduce waiting lists for community-based housing.[94]. Massachusetts established an interagency working group for this purpose and published Phase One of its plan ("Enhancing Community Based Housing") in July 2002. That plan concluded that the State could afford to fund the addition of 650 beds for DMR clients and discharge over 150 adults in overly restrictive DMH facilities in FY'03, though subsequent budget constraints slowed implementation. A draft Phase Two plan ("Transforming Long-Term Supports in Massachusetts") issued in September 2003 did not make specific recommendations but suggested ways to bring services to people in non-institutional settings, with a primary focus on services for the elderly. The State plans to seek a federal waiver that would expand its ability to use Medicaid funding for home and community based services.

Housing Needs of People with Cognitive Disabilities The State Department of Mental Retardation (DMR) assists more than 27,000 low income adults with a variety of services, including housing, transportation, day programs and family support. An estimated 80% have incomes below the federal poverty limit. In FY'02, there were 9,015 people living in community residential programs, ranging from group homes to independent apartments, but several thousand more are on waiting lists for such assistance.

DMR works with non-profit service providers and housing agencies to develop community based housing, including group homes, independent apartments in private developments and homes rented or owned by the State. It is phasing out some of its older, poorly located 6-8 person residences. It is currently subject to two court orders that require it to place over 500 clients a year in community-based housing services and reduce its waiting list. A 1999 settlement agreement under Rolland v. Cellucci requires it to end the inappropriate placement of 1,600 DMR clients in nursing homes and provide residential services to 1,175 through new placements of 150-175 clients a year. A December 2000 agreement under Boulet v. Cellucci, a lawsuit brought by families of 2,227 persons on the waiting list for DMR residential services as of July 2000, requires DMR to reduce that waiting list to zero by June 30, 2006 by creating 375-400 new residential placements a year, at a projected cost of $85 million. The settlement requires the State to appropriate specific dollars amounts each year for five years (FY'02-FY'06) and to fund the interim service needs of this class as they await a residential placement.

While DMR has been meeting its settlement agreement targets, it needs to continue to grow as about 450 young adults ("Turning 22") a year become eligible for residential services and as more caregivers for family members living at home reach age 60 or above.

Housing Needs of People with Psychiatric Disabilities Almost 47,000 adults in Massachusetts are estimated to have serious and persistent mental illness and severe dysfunction and 26,000 adults and children are involved with the Department of Mental Health (DMH) services system.[95] Most of these adults are extremely low income, with many relying on SSI as their only source of income and thus need help with housing costs; many need support services as well to live independently.

The housing needs of DMH clients vary widely, depending on their "diagnosis, age, stage of recovery and desire for peer support or privacy".[96] Since the early 1990s, DMH has emphasized more independent housing options. It is shifting away from group homes and single room occupancy (SRO) housing, and has begun reducing the density of existing residences. It currently uses two service models. S*upported housing* consumers live independently in their own homes or apartments and receive services as needed from DMH vendors. *Structured housing* residents live in a supervised setting.

DMH currently serves about 8,400 adult clients through its Residential Services programs – 42% in group homes, 45% in independent living settings in the private market and 14% in housing affiliated with DMH but not receiving formal Residential Services.[97] Another 3,000 people are on the waiting list for DMH residential services, including 530 homeless individuals.[98] Two thirds of those on the waiting list require help with housing costs and services, 25% need help with housing costs only and 8% needed residential services only (that is, they live in units staffed 18-24 hours and are ready to move to housing with fewer services).

Housing Assistance Programs for DMR and DMH Clients

There are three state housing assistance programs specifically for DMR and DMH clients. DMR and DMH also use a number of other state and federal programs to create housing for their clients as well, including programs for people with disabilities, programs for the homeless and programs for low income households generally. Those programs are described on page 69. Relatively small numbers of new units are being produced relative to need.

- The State *Facilities Consolidation Fund (FCF)* program uses bond funds to finance 30-year deferred payment loans to developers of community based residences for DMR and DMH clients who are leaving state facilities, living in inappropriate or unsafe housing or who are homeless. FCF can finance up to 50% of development costs. Created in 1993 and reauthorized at $100 million in the 2004 Disabilities Bond Bill, FCF has helped create or upgrade more than 1,250 units to date. In FY'04, $4.6 million was used to create or preserve 71 units. DHCD's FY'05 capital budget includes $7.5 million for FCF.

- *MRVP Project-based rental assistance for DMH clients* DHCD's Massachusetts Rental Voucher Program (MRVP) includes funding for primarily project-based rent subsidies for DMH clients. The program served 800-900 households a year for many years but has shrunk steadily since May 2002 when the State stopped re-issuing vouchers as participants left (many were transferred to the federal Section 8 program). In January 2005, it served 578 households.

- *MassHousing DMR/DMH set-aside units* Since 1978, all developers receiving MassHousing financing[99] have been required to set aside 3% of their subsidized (low or moderate income)

units for DMH and DMR consumers. MassHousing assigns specific units to each Department and DMR and DMH select tenants for units as vacancies occur. There are more than 500 set-aside units in MassHousing developments.

Housing for People with HIV/AIDS

About 15,000 state residents are known to be living with HIV or AIDS, according to the Department of Public Health (DPH), and about 7-9,000 more are believed undiagnosed or unreported. DPH is the lead state agency for addressing the medical and support service needs of these residents through its HIV/AIDS Bureau. It reports that there are currently about 1,200 units of transitional and permanent housing for low-income persons with HIV/AIDS statewide, 2,200 units less than are currently needed. Some geographic regions are much more under-served than others, with the Brockton, Lynn-Gloucester and Holyoke-Springfield areas having the biggest shortages (supply meeting less than 10% of need). [100]

It also notes that the housing assistance needs of people with HIV/AIDS have changed as newer drug treatments allow them to live longer and more independently. There is less demand for programs that provide on-site services and more demand for supported housing (independent units with services arranged as needed). Longer life expectancies are expected to increase the overall need for housing assistance over time.

Housing Programs for People with HIV/AIDS HIV/AIDS housing resources include 152 units of transitional housing for either persons not yet ready for permanent housing or waiting for a permanent slot (42 scattered site, 110 in SROs) and 1,009 permanent units (349 in SROs, 660 scattered site).[101] Scattered site programs generally use tenant- or project-based rent subsidies to create affordability. HIV/AIDS housing programs use multiple funding sources, including one specifically for people with HIV/AIDS.

- HUD's *Housing Opportunities for Persons with AIDS (HOPWA)* program, created in 1990, provides flexible funding: eligible activities include housing information and referral, housing search assistance, shelter, rental assistance and housing development. HUD distributes 90% of the annual HOPWA appropriation as formula grants to 38 states and 79 metropolitan areas with high numbers of people living with HIV/AIDS. The remaining 10% is awarded to states and localities that do not receive formula grants and to nonprofits carrying out projects of national significance. HOPWA formula grants for Massachusetts have fallen steadily in recent years, as the national appropriation failed to keep pace with the growth in HIV/AIDS cases. In FY'05, six areas in Massachusetts received a total of $3.6 million in formula grants, down from a peak of $4.9 million in FY'01 when only 3 areas were eligible for assistance. Massachusetts also receives an average of $1-2 million a year in competitive grant funding.

Other key funding sources for HIV/AIDS housing include Section 8 rent subsidies (including a set aside of 100 DHCD vouchers), set-aside units in public housing and HUD McKinney grants. Additional resources include HUD Section 811 housing for the disabled, DHCD HOME funds and about 40 project-based Massachusetts Rental Voucher Program (MRVP) vouchers. Not all funding programs are usable for all clients. Some largely exclude clients with prior histories of illegal drug use while others (e.g. HUD McKinney grants) can only be used to serve homeless individuals and families.[102]

People Dealing with Substance Abuse

In FY'03, the Department of Public Health Bureau of Substance Abuse Services (BSAS) recorded almost 113,000 adult admissions to alcohol and substance abuse treatment services in Massachusetts, including over 64,000 admissions to residential treatment programs, including 9,500 to programs lasting more than 30 days. Almost 90% of people admitted to residential programs were unemployed, and almost one third (20,331) were homeless.[103]

The housing needs of BSAS clients vary, depending on their stage of recovery, income and household composition (individuals vs. families with children). As of 2002, BSAS had about 2,800 beds in permanent and transitional housing for individuals and families in recovery. It also funds some short-term housing (shelter beds and resident treatment programs). Longer-term resources include 150+ units of alcohol and drug free housing in 20 houses for people in recovery, 175 beds of supportive housing and 73 units of permanent housing for homeless recovering women. BSAS has also obtained rent subsidies (Shelter Plus Care) and support service funding through HUD McKinney grant programs for the homeless. [104]

Other Housing Assistance Programs for People with Disabilities

In addition to the specialized programs described above, DMH, DMR, DPH and MRC use a variety of programs to subsidize the housing costs of their consumers, including state public housing, HUD Section 811 housing for people with disabilities (600+ units), the bond-funded Facilities Consolidation Fund program and state and federal rent subsidy programs. The most important resources include the following.

- ***Section 8 Vouchers for People with Disabilities*** In the late 1990s, Congress began to fund Section 8 rental assistance vouchers specifically for non-elderly people with disabilities, recognizing (1) that this population had long been underserved, (2) that their situation was worsening since Congress passed a law allowing public housing agencies and private owners of subsidized elderly/disabled developments to convert them to elderly-only housing, and (3) that Section 8 would give people with disabilities a wider housing choice. Since the late 1990s, HUD has awarded 4,423 Section 8 vouchers to Massachusetts housing agencies, including DHCD, specifically for the non-elderly disabled. Most of the vouchers (3,586) have been awarded under the "Designated Housing and Certain Development" program to replace units lost when elderly/ disabled subsidized developments, including public housing, converted to elderly-only. Another 692 Mainstream vouchers, which represent new assistance, were funded from HUD's Section 811 program for people with disabilities (budget language allows up to 25% of the annual appropriation for Section 811 to be used for such vouchers).[105] Massachusetts also received 320 vouchers for the disabled under various one-time programs, including one in FY'01 and FY'02 that gave LHAs priority for regular Section 8 vouchers if they agreed to reserve some for people with disabilities, and another specifically for homeless individuals with disabilities.

DHCD has allocated its 1,957 vouchers for people with disabilities to a number of specific programs, including housing for people with HIV/AIDS (297), housing for homeless people with disabilities (364), MRC clients with head injuries (130) and DMR clients moving to community based housing. It is possible that some vouchers awarded to local housing agencies are not being used by this group now, however, because HUD waited until 2005 to advise PHAs that as current

participants leave, their voucher must be reissued to another disabled household. People with disabilities are also eligible to apply for regular HUD Section 8 vouchers (see page 10). Voucher holders with disabilities having trouble locating a unit can ask for reasonable accommodations – including a longer time to search, a higher subsidy or search assistance - if needed to find a unit that meets their needs.

• ***Alternative Housing Voucher Program (AHVP)*** DHCD has a state-funded rent subsidy program called the Alternative Housing Voucher Program (AHVP) for persons with disabilities. The program was established in 1995, when a new state law was passed setting a cap on the number of non-elderly disabled households that could live in state elderly/disabled public housing developments, and funded to serve 800 households. However, no new vouchers have been issued since 2002 due to budget cuts (see page 36).

• ***HUD McKinney Homeless Assistance Grants*** HUD has three programs which fund housing assistance for homeless families and individuals, including supportive services, supportive transitional housing and rental assistance. HUD gives projects that create permanent housing for people with disabilities priority for funding. One program, Shelter Plus Care, funds both tenant- and project-based rental assistance and is specifically for people with disabilities (see page 30).

• ***HUD Section 811 Housing for People with Disabilities*** This program provides construction grants to nonprofits to develop housing for non-elderly persons with disabilities, along with long-term rent subsidy contracts that keep rents affordable and help pay for supportive services. Residents pay 30% of their income toward their housing costs. Funds are awarded annually through a national funding competition. To date, 700 units have been developed under the program. In the past four years (FY'01-FY'04), Massachusetts has received funding to create or upgrade about 24 units a year, primarily for DMR and DMH clients. Section 811 funds are frequently combined with FCF or other state funding sources.

• ***State Housing Innovations Fund (HIF)*** HIF is a bond-funded program that provides deferred payment loans (essentially grants) for up to 50% of the cost of developing housing for people with special needs, victims of domestic violence and innovative housing options such as Single Room Occupancy (SRO) housing and transitional housing. It has helped finance more than 8,500 units of housing since 1987. At least 50% of the units in HIF-funded projects must be affordable to households with incomes at or below 80% of median, and of those, at least half must be affordable to households with incomes at or below 50% of median. In FY'04, $10 million in HIF funds was committed to projects with 600 affordable units of varied types. The FY'05 capital plan includes $10 million for HIF.

• ***Community Based Housing Program (Olmstead Housing)*** In 2004, as part of the Disabilities Bond bill, the Legislature authorized a new program to provide long-term deferred payment loans for up to 50% of the cost of developing new community-based housing for people with disabilities, including elders, who are institutionalized or at risk of institutionalization, but not eligible for residences developed under the Facilities Consolidation Fund program. The bill authorized the expenditure of up to $25 million for this program. The FY'05 capital budget included no funding for this program.

• *CDBG, HOME, State Affordable Housing Trust Fund* State and local programs for affordable housing development and rehabilitation can be used to fund housing for the disabled.

Program Trends/Issues

- *Disabilities Bond Bill* Legislation was enacted in August 2004 that authorizes the State to issue up to $200 million in bonds to fund four housing programs for people with disabilities, including $25 million for the Home Loan Modifications program, $100 million for the Facilities Consolidation Fund, $25 million for Olmstead community based housing and $50 million for the Housing Innovations Fund (HIF) program. The success of these programs is contingent upon DHCD having an adequate bond cap.

- *Flexible Supports/Supported Housing Models*: During the last decade, there has been a shift in the delivery of services and the development of housing for people with disabilities from a predominately congregate setting to a supported housing model. This has resulted in increased consumer satisfaction, greater flexibility, and greater cost-effectiveness. The supported housing model enables people with disabilities to select, acquire, and maintain housing linked with a variety of individualized support services. Services can range from basic social support to weekly case management to 24 hour staffed residences.

- *Shifts in Housing Resources* While new housing models give people with disabilities greater choice in housing options, it is unclear that the number of units available to the non-elderly disabled has significantly increased in recent years. Congress has permitted owners of federally subsidized elderly/handicapped developments to designate the projects as elderly-only and offers Section 8 vouchers for people with disabilities to replace the lost units for that population but does not track conversions nor require owners and PHAs to apply for replacement vouchers, so it is unclear how many have been lost in Massachusetts. The majority (3,600) of the 4,400 Section 8 vouchers allocated to DHCD and local housing authorities specifically for non-elderly disabled households were issued to replace units lost as projects converted to elderly-only.[106] The remaining gain (700) has largely been offset by cuts in state-funded rental assistance for the disabled since FY2002 (the State has shifted about 800 of the 1,600 people receiving state-funded assistance through the AHVP and DMH Rental Assistance programs to the Section 8 program since the start of FY2003 and stopped issued new vouchers in May 2002).

The State is studying other ways to increase the supply of community based housing by increasing the supply of accessible units. Options include providing incentives to developers of affordable housing to include set-aside units for the disabled and offering funds to private landlords for accessibility modifications

- *Lack of Service Dollars*: In addition to cutbacks in funding for housing production, there is also a shortage of service dollars for supportive housing. These services include job training, peer support, daily living skills training, and other supports.

- *Savings from Closing of State Hospitals* In FY'03, DMH closed one state hospital (Medfield State) and units at two other hospitals, reducing inpatient capacity by 179 beds. DMH used some of the savings to expand community based services, including $10.2 million to develop 255 community placements. In FY'04, it proposed downsizing and consolidating other inpatient programs, replacing them with hundreds of community placements instead, and replacing two of its hospitals with one new facility. A special legislative study commission is expected to report on their assessment of the proposal in April 2005.[107]

[83] Massachusetts Draft Consolidated Plan 2005-2009, DHCD, February 2005, p. 63.

[84] "Accessible Housing for People with Disabilities", Opening Doors, Issue 10, June 2000, pp. 3-6, available online at http://www.c-c-d.org/od-june00.htm

[85] Detailed information on Section 504 requirements is available at http://www.hud.gov/offices/fheo/disabilities/504keys.cfm . Section 504 applies to program operators (e.g. housing authorities) but not the ultimate recipient of funds (e.g. a landlord who receives rent payments through the Section 8 voucher program)

[86] Korman, Henry "Getting In and Staying In: Common Issues of Disability Discrimination", 1997 and "Opening Doors", op. cit., pp.6-7.

[87] See Henry Korman, "Getting In and Staying In: Common Issues of Disability Discrimination", Cambridge and Somerville Legal Services, Cambridge, MA 1997. Available online at http://www.vlpnet.org/legalresources/LandlordTenantLaw/GettinginIssues/tenantselection.htm

[88] Massachusetts Accessible Housing Registry (Mass Access), March 2003.

[89] Conversation with MassHousing staff, March 2004.

[90] "Section 504 – Frequently Asked Questions: Physical Accessibility", U.S. Department of Housing and Urban Development Available on line at http://www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor275219

[91] Available online at http://www.mass.gov/aab/aab_regs.htm

[92] Massachusetts Draft 2005-2009 Consolidated Plan, page 63 and "Enforcing the *Olmstead* Decision", The Center for An Accessible Society (http://www.accessiblesociety.org/topics/ada/olmsteadoverview.htm)

[93] Massachusetts Draft 2005-2009 Consolidated Plan, page 63 and "Enforcing the *Olmstead* Decision", The Center for An Accessible Society (http://www.accessiblesociety.org/topics/ada/olmsteadoverview.htm)

[94] "Enforcing the *Olmstead* Decision", The Center for An Accessible Society (www.accessiblesociety.org)

[95] "Massachusetts 2005-2007 State Mental Health Plan", Massachusetts Department of Mental Health, September 2004, pages 48 and 25. Available online at DMH's website.

[96] Massachusetts Draft 2005-2009 Consolidated Plan, p. 70

[97] Ibid, pp. 64, 70-71.

[98] Ibid, p.70

[99] Except Elder Choice

[100] Massachusetts Draft Consolidated Plan 2005-2009, pp. 74-77.

[101] A detailed listing of current programs is available online from the AIDS Housing Corporation at http://www.ahc.org/publications/2004_Housing_Directory.pdf

[102] HOME, HOPWA and HUD McKinney funded projects do not require exclusion based on criminal histories.

[103] "Substance Abuse Fact Sheet: Statewide Adult Admissions – FY2003", Massachusetts Department of Public Health Bureau of Substance Abuse Services, available online at http://www.mass.gov/dph/bsas/data/factsheets/2003/statewide03.pdf

[104] Ibid. page 4-14.

[105] "Section 8 Problems Negatively Affect People with Disabilities", Opening Doors, Issue 25, September 2004. pages 9 and 16. Available online at http://www.tacinc.org/index/admin/index/_uploads/docs/ODissue25.pdf The authors note that nationally many PHAs have failed to request "Designated Housing" vouchers when converting projects and that HUD used the extra funds to fund new vouchers requested under the Mainstream program when Mainstream funds ran out. Thus these figures may overstate the split between replacement and new assistance in Massachusetts.

[106] PHAs have been allowed to designate such mixed developments as elderly-only since 1995.

[107] "Massachusetts 2005-2007 State Mental Health Plan", p, 19, 34-35.

Expanding Housing Opportunities in Suburban and Rural Communities

The State has long had an interest in expanding the supply of affordable housing in suburban and rural communities, both to increase housing opportunities for urban residents and to meet the needs of low-income residents in those communities.

- A zoning law (Chapter 40B) enacted in 1969 makes it easier to develop affordable housing in suburban and rural communities, and a 2004 law (Chapter 40R) offers financial incentives to communities that adopt smart growth zoning districts with an affordable housing component.
- Planning grant programs encourage municipalities to create land use plans that balance affordable housing, open space, transportation and economic development goals and set out strategies to achieve them. It also has provided several tools to implement these strategies, including the authority to create local funding sources through community preservation programs and housing trusts. Cities and towns that make progress on affordable housing gain more control over Chapter 40B housing proposals and priority for some state grants.

Chapter 40B

In 1969, the state enacted legislation (Chapter 40B) to make it easier to develop affordable housing throughout the state and especially in communities where less than 10% of the year round housing stock is subsidized. Chapter 40B offers a streamlined and consolidated local approval process for developers of subsidized housing. Rather than having to obtain separate approvals from various local boards and commissions, they can apply to the local Zoning Board of Appeals for one "comprehensive permit" and request waivers of specific local zoning and other requirements. Most importantly, in communities below 10%, Chapter 40B allows the state to overturn local zoning board decisions that deny permission to develop subsidized housing or impose conditions that would make a project uneconomic (some exceptions exist, as detailed on page 76, including one for communities making progress toward the 10% threshold).

Chapter 40B has played a critical role in the production of affordable housing in Massachusetts over the years, and its importance has grown as funding for subsidized housing has fallen and local zoning has become more restrictive. When Chapter 40B was first enacted, most affordable developments were financed under deep subsidy programs, and Chapter 40B made it possible to use that funding more widely, especially in communities with large lot requirements and little or no land zoned for multifamily housing. *Today, it has become an important funding source for affordable housing and an important driver in the production of market rate housing*, giving developers of market rate housing an incentive to include affordable units in order to be able to build any housing at all. Chapter 40B reduces per-unit development costs by allowing higher density and imposing profit limits; these cost reductions make it possible to rent or sell some units at prices affordable to households with incomes at 70% to 80% of median. (Direct financial subsidies, however, are needed to produce units affordable to the extremely low income and very low income households who have the greatest housing needs).

While many developments are still built using state and federal subsidy funds, many others rely on Chapter 40B alone or almost entirely. The 2003 Greater Boston Housing Report Card found that units developed using Chapter 40B accounted for almost 30% of all new rental housing built in Greater Boston between 1997 and 2002 and more than 70% of the affordable units. *In communities below the 10% threshold, units built using Chapter 40B accounted for almost half of all new production and 96% of the affordable units.*[108] Projects using state or federal funds

with or without 40B accounted for 55% of the affordable units created in the region in 2003, while projects using Chapter 40B but no state or federal funds accounted for 37%.

Key Definitions under Chapter 40B

Subsidized housing To use Chapter 40B, projects must meet the statutory definition of subsidized housing. The same definition is used to determine whether a community's supply of subsidized housing is below 10% of its year round housing supply. Subsidized housing is defined as a development that:

- uses a federal, state or local subsidy for low or moderate income housing;
- in which at least 25% of the units are reserved for households with incomes at or below 80% of the area median income (or at least 20% are reserved for households with incomes at or below 50% of median) at affordable rents or sale prices[109]; and
- is subject to a legally binding use restriction for at least 30 years (15 in the case of rehab projects). Prior to 2001, the minimum restriction periods were 15 and 5 years respectively.

In addition,

- units must meet the affirmative marketing requirements of the subsidy program;
- there must be a regulatory agreement in place to enforce the affordability requirements; and
- developers must be a public agency, a nonprofit or a limited dividend organization and must agree to limit their profits (the limit varies by subsidy program but is capped at no more than 10% a year for rental developments, a maximum of 20% for ownership developments).

Subsidy DHCD maintains a list of the state and federal funding programs that meet the definition of subsidy under Chapter 40B.[110] Community residences for the mentally ill or mentally retarded also qualify. Starting in August 2002, accessory apartments also count if occupied by persons at or below 80% of median. Most subsidy programs are administered by public agencies with long-established standards for determining project fundability and a built-in system for monitoring post-construction compliance with affordability requirements. In recent years, however, several new funding sources have been approved as subsidy programs and DHCD has had to create a regulatory framework for projects using those subsidies. It has established two sets of guidelines for such projects:

- The Local Initiative Program (LIP) was created in 1990 to make local projects developed with the approval of local officials (often called "friendly 40Bs") but without direct cash assistance from the state or federal government eligible to use the comprehensive permit process and countable toward a town's 10% housing threshold. DHCD provides technical assistance to the community, which counts as a subsidy under Chapter 40B, and projects must follow DHCD guidelines regarding affordability, profit limits, affirmative marketing, etc. (see page 53).
- DHCD established guidelines in February 2003 for projects using a Federal Home Loan Bank of Boston (FHLBB) financing program called the New England Fund (NEF). NEF provides discounted financing to local member banks for loans to projects serving households within certain income limits.[111] In 1999, NEF was found to meet the definition of a government subsidy program, meaning it could be used with Chapter 40B. It has become a popular funding source, but because the FHLBB did not provide standardized oversight regarding siting, design, affirmative marketing and post construction monitoring, initially ZBAs had to negotiate these items case by case. DHCD's guidelines set basic standards and require

preliminary and final review of projects by MassHousing.

Comprehensive Permit The law permits developers of subsidized housing as defined above to apply for a single comprehensive permit (CP) to speed up the approval process. Developers can also request waivers of local requirements, including zoning, if needed to make the proposed project economically feasible. *The comprehensive permit does not apply to State requirements, including Title 5, the State Building Code and the Wetlands Protection Act and local agencies enforcing those regulations make their permit decisions separately*, though the ZBA can waive local requirements that exceed the State requirements. Rather than receiving separate approvals from the various local permitting agencies, developers apply for a single permit from the local Zoning Board of Appeals (ZBA). Because the CP process offers flexibility to the local approval process, many communities above the 10% threshold routinely use it.

Calculating the 10% Threshold DHCD maintains a Subsidized Housing Inventory to determine the percentage of a community's *year round*[112] housing stock that counts toward the 10% threshold under Chapter 40B. Affordable units that do not meet the Chapter 40B definition (e.g. lack a legally binding use restriction or limited to local residents only) do not count. DHCD uses the most recent decennial U.S. Census count to determine the total year round housing units (currently the 2000 Census), though parties involved in an appeal to the Housing Appeals Committee may introduce more current information on a community's total housing supply.[113]

Generally all the units in a subsidized rental project, including market rate units, count toward the 10% threshold; however, in the case of Local Initiative Program (LIP) rental projects where less than 25% of the units are affordable, only the affordable units count. For homeownership projects, only the affordable units count. Historically, units did not count until construction was complete. Under regulations adopted in 2001, units that receive a CP count as soon as the permit becomes final and remain on the inventory as long as the building permit is issued within a year of the CP.

40B Application and Local Review Process

Prior to applying for a comprehensive permit, developers must obtain a Project Eligibility or Site Approval letter from the agency expected to subsidize the development, stating the project has been found eligible for the subsidy program. In the case of NEF projects, MassHousing provides the site approval letter. The State encourages developers to meet with local officials before requesting a site approval letter and formally filing a comprehensive permit application, to identify items that may be of concern to local officials and ideally to resolve those concerns. The Massachusetts Housing Partnership offers grants to localities to hire consultants to help with negotiations.

When a subsidy agency receives a request for a site approval letter, it must notify local officials and give the community at least 30 days to submit comments. The subsidy agency must visit the site as part of its review. It can only issue a site approval letter if it finds that the proposed project generally meets its program guidelines and that the design is generally appropriate for the site and location, including any program density guidelines.[114] It must also find that the project appears financially feasible (based on review on an initial pro-forma), that the proposed financing complies with profit limitations, and that the developer is financially responsible. Some agencies also consider the impact of other pending applications for housing development.

Once a site approval letter is issued, the developer may file a formal application with the ZBA for a comprehensive permit, including a list of any zoning and other regulatory waivers sought.[115] The ZBA must notify DHCD and the local chief elected official when it receives the application and must schedule a public hearing on it within 30 days.[116] The ZBA notifies all applicable relevant local boards and requests their recommendations. Hearings typically last several months as local concerns are explored and addressed. The ZBA must issue a decision no later than 40 days after it ends the public hearing. It can approve the application as submitted, approve it with conditions or changes or deny it entirely. If the ZBA denies the application or imposes conditions that the developer believes will make the project "uneconomic", the developer may be able to appeal the decision to the State Housing Appeal Committee (HAC).

Developer Ability to Appeal Adverse Decisions to the State Generally, in communities where less than 10% of the year round housing is subsidized as defined above, developers can appeal the ZBA denial or approval with conditions to the State's Housing Appeals Committee (HAC). However, developers *cannot* appeal in communities where:

- low and moderate income housing sites equal at least 1.5% of the total land area on which residential, commercial and industrial uses are allowed.
- the project would result in the start of construction in one calendar year of subsidized housing on sites totaling more than 10 acres or 0.3% of the city or town's land area if larger

In addition, under regulations adopted in 2001 and 2002, to recognize communities making progress toward the 10% threshold and protect others where multiple or very large subsidized developments have been proposed , developers *cannot* appeal if:

- the project is very large (150-300 units depending on the size of the community or 2% of total housing units in larger communities) or
- they sought a permit for the same site within the past year to develop something other than subsidized housing, or
- in the 12 months prior to the permit application, the community has increased its subsidized housing supply[117] by a number at least equal to 2% of its total housing units *or* 0.75% of its total housing supply in accordance with a state-certified long term "planned production" plan (the plan must increase the local subsidized housing count by a number equal to 0.75% of its total housing every calendar year until it reaches the 10% threshold).[118] Currently 24 communities have approved plans.[119]

State Appeals Process The Housing Appeals Committee can overrule the local ZBA decision unless it finds the proposed development presents serious health or safety concerns that cannot be mitigated. Under the law, absent such a finding, the Committee must overturn denials. In cases where approvals were issued with conditions, the Committee reviews the impact of those conditions on the economic feasibility of the project and generally must reject uneconomic conditions. In practice, the Committee encourages negotiated settlements between the developer and the community so that it does not have to overrule the ZBA decision. Of the 415 appeals concluded between 1970 and 2002, almost half (45%) were withdrawn, dismissed or settled, another 24% were negotiated between the town and the developer and just under a third (31%) were decided by the HAC (of those, 84% overruled the local decision and 16% upheld it).[120]

Accomplishments Under Chapter 40B More than 35,000 housing units have been developed using the comprehensive permit process since 1970. As of February 2005:

- 39 communities were above the 10% threshold – up 16 since 1985 and up 8 since October 2001 as 12 more reached 10% and four fell below.

- 32 more communities are at or above 8% (including 11 at or above 9%).
- 18 communities below 8% have state-approved planned production programs to reach 10%.

Chapter 40B has helped Massachusetts broaden housing opportunities. In 1972, almost three quarters (70%) of the state's subsidized housing was located in its 15 largest cities. Even though those cities have doubled their subsidized inventory, they now account for only 53% of the state's subsidized housing as smaller cities and towns have also added units.[121]

Cities and Towns with at least 10% Affordable Housing – February 2005[122]

	Community	2000 Census Year Round Units	Total Development Units	CH. 40B Units	40B Units as % of 2000 Housing
1	Amherst	9,020	999	951	10.6%
2	Andover*	11,513	1,488	1,331	11.6%
4	Aquinnah	155	41	41	26.5%
5	Beverly	16,150	1,768	1,759	10.9%
6	Boston	250,367	48,585	47,383	18.9%
7	Brockton	34,794	4,357	4,357	12.5%
8	Burlington*	8,395	904	893	10.6%
9	Cambridge	44,138	7,036	6,972	15.8%
10	Canton*	8,129	891	828	10.2%
11	Chelsea	12,317	2,176	2,171	17.6%
12	Chicopee	24,377	2,556	2,526	10.4%
13	Fall River	41,757	4,730	4,634	11.1%
14	Fitchburg*	15,963	1,617	1,616	10.1%
15	Framingham	26,588	2,676	2,676	10.1%
16	Gardner	8,804	1,364	1,364	15.5%
17	Georgetown	2,601	369	357	13.7%
18	Greenfield	8,274	1,134	1,124	13.6%
19	Hadley*	1,943	261	261	13.4%
20	Holbrook*	4,145	451	451	10.9%
21	Holyoke	16,180	3,457	3,402	21.0%
22	Hudson*	7,144	885	714	10.0%
23	Lawrence	25,540	3,777	3,777	14.8%
24	Lowell	39,381	5,206	5,174	13.1%
25	Lynn	34,569	4,452	4,451	12.9%
26	Malden	23,561	2,756	2,713	11.5%
27	Marlborough*	14,846	1,557	1,509	10.2%
28	Middlefield	229	26	26	11.4%
29	Montague*	3,826	421	389	10.2%
30	New Bedford	41,403	4,963	4,932	11.9%
31	North Adams	7,061	909	909	12.9%
32	Northampton	12,282	1,470	1,435	11.7%
33	Orange	3,236	436	436	13.5%
34	Raynham*	4,197	591	476	11.3%
35	Salem	18,103	2,311	2,309	12.8%
36	Springfield	61,001	10,911	10,594	17.4%
37	Ware*	4,285	443	443	10.3%
38	Westborough*	6,729	718	680	10.1%
39	Worcester	70,408	9,438	9,430	13.4%

* Communities first reaching 10% after October 2001

Chapter 40R

Proposals to provide payments to localities that expand their housing supply to help cover the cost of municipal services, including school costs, have been circulating since 2001. In June 2004, after considering more expansive proposals – including multi-year funding to hold school districts harmless financially, the Legislature adopted a program that provides one-time

payments for units created in "smart growth" zoning districts. The Legislature also directed DHCD, the Department of Education and the Department of Revenue to report to it on the impact of this new law on the school systems of participating cities and towns by July 1, 2006.

The new law, called Chapter 40R,[123] allows the state to make two types of payments. Cities and towns can receive a one-time "zoning incentive payment" ranging from $10,000 to $600,000 when they create DHCD-approved smart-growth zoning districts that increase the number of units that can be developed as of right. They can receive a second "density bonus" payment of $3,000 for each bonus unit that receives a building permit. Chapter 40R also established a Smart Growth Housing Trust Fund to pay for these incentives. According to Section 548 of Chapter 26 of the Acts of 2003, as amended, the trust is to be funded with certain proceeds raised by the expedited sale of state surplus properties and may receive up to $25 million a year.

To qualify, municipalities must create zoning overlay districts (special provisions imposed on existing zoning districts) that allow as-of-right development of high-density housing and mixed-use development. The districts must be located near transit stations or areas of concentrated development (e.g. existing city and town centers, commercial centers) and must require that at least 20% of the housing units created in the district be affordable to households with incomes at or below 80% of median for at least 30 years.[124] The overlay must allow densities of at least 8 units per acre for single family homes, 12 units for 2- and 3-unit buildings and at least 20 units for multifamily housing of right (this can be waived for towns under 10,000). Municipalities must submit the proposed zoning to DHCD prior to adoption. Communities which already have zoning that meets these standards also qualify for payments.

Executive Order 418

To address the general shortage of housing throughout the state, former Governor Cellucci issued Executive Order 418 in 2000. EO418 encouraged communities to take steps to increase the supply of housing affordable to a broad range of incomes (up to 150% of median), first by providing grants to develop housing strategies in the context of other land use goals and then by giving participating communities priority for a range of state discretionary grants.

The grant program offers municipalities grants of up to $30,000 so they can create a community development plan that addresses 4 elements: housing, economic development, open space and resource protection, and transportation. As of June 2004, 229 communities had received grants.

EO418 also rewards communities that take steps to increase their supply of housing affordable to "a broad range of incomes" by giving them priority for certain discretionary state grants for environmental, transportation and housing activities. Initially (FY'01, FY'02, and FY'03), communities could be "EO418 certified" if they demonstrated that they had created a positive atmosphere for housing development (e.g. through zoning changes or by removing regulatory barriers). Starting in FY'04, they had to demonstrate an increase in the number of units affordable to households with incomes up to 150% of the area median (units with assessed values of up to $375,000 or rents up to $1,855). Communities are certified one fiscal year at a time. As of mid-March, 135 communities had been certified for FY'05 (some only request certification in years they are seeking grant funds).

In FY'05, the State modified its use of EO418 certification to more closely align it with sustainable development goals. Many discretionary environmental and transportation grants are subject to a new scoring procedure under the Commonwealth Capital program, in which EO418 certification has a smaller impact (see below). DHCD has also dropped it use for the Low Income Housing Tax Credit program. While DHCD still gives EO418 certified communities extra points when scoring applications for Community Development Block Grant (CDBG) and other programs, it has also added a requirement that CDBG applicants submit a community strategy that describes their smart growth policies.

Commonwealth Capital

In June 2005, the Romney administration announced a new policy giving communities whose land use policies promote ***sustainable development*** an advantage when they apply for certain discretionary bond-funded grants. Starting in FY'05, funding awards under 9 transportation, infrastructure, environmental and housing programs are based in part on how well municipalities are using their powers to promote "redevelopment of previously developed areas, sustainable housing production, protection of farms, forests and other priority open space, and public drinking water supply protection." An interagency group at the Office for Commonwealth Development reviews information submitted by the municipality and assign a "community capital score" good for that fiscal year that accounts for 20% of its overall score on applications for any of the nine programs. As of March 2005, 157 communities had been assigned scores. This procedure applies to DHCD's Community Development Action Grant (infrastructure grants) and Transit Node Grant programs. Other covered programs include the Public Works Economic Development Program (grants for road improvements), DEP Brownfields funding, EOEA Self-Help and Urban Self-Help (grants for open space and recreational land acquisition) and the Agricultural Preservation Restriction program.

Other Planning and Technical Assistance Programs

The State has several programs to help municipal agencies and local nonprofits create housing strategies and carry out pre-development activities. Both the Massachusetts Housing Partnership (MHP) and the Community Economic Development Assistance Corporation (CEDAC) have had longstanding programs for this purpose. In June 2004, the State announced the creation of a new $100 million fund to support affordable housing development and planning consistent with sustainable development principles (see page 5). The fund, called the Priority Development Fund (PDF), is financed MassHousing revenues (see page 49). It includes $3 million in funding for grants of up to $50,000 to municipalities to planning and predevelopment activities ranging from zoning revisions to site identification, feasibility studies and RFP development. Applications are accept on a rolling basis.

Community Preservation Act

The Community Preservation Act (CPA), Chapter 267 of the Acts of 2000, allows cities and towns to adopt a property tax surcharge of up to 3% to raise funds for three activities:

- Acquisition and preservation of open space
- Creation and support of affordable housing
- Acquisition and preservation of historic buildings and landscapes

A minimum of 10% of the annual revenues of the fund must be used for each of the 3 allowed uses. Of the remaining 70%, 5% may be used for administrative expenses, and 65% can be allocated for any combination of the three uses, or for land for recreational use. Communities that adopt the surcharge are eligible for state matching grants that currently equal 100% of amount raised by the local surcharge. The voters of that city or town must approve the surcharge. There are two ways to get CPA on the ballot – either by a vote of the local legislative body (Town Meeting or City Council) or by a petition signed by 5% of the voters. Localities choose the percentage of surcharge and can create exemptions for low income households, for the first $100,000 of value and in some cases for nonresidential properties. As of March 1, 2005, 122 communities have put CPA on the ballot and 75 communities (61%) have passed it, with surcharges ranging from 0.5% to 3%. As of March 2005, another 21 communities have scheduled votes for 2005.

State matching grants are funded from a fixed allocation of state funds (Registry of Deeds and Land Court fees deposited into a statewide Community Preservation Trust Fund) and distributed every October 15th starting in 2002 (for communities that adopted the CPA in 2001). To date there have been three distributions (2002, 2003 and 2004) with a 100% match rate each year – providing $1 for every dollar communities raised through their local surcharge – or a total of $75.7 million. Observers expect the 100% match rate to continue for several more years.

As of July 2004, local communities have allocated about $115 million of their CPA for specific projects, of which 41% has been for affordable housing development, 36% for land protection, 17% for historic preservation, and 6% for public recreation.[125] CHAPA has developed, as part of the Community Preservation Coalition, a web site with comprehensive information on the communities that have passed or rejected CPA, the structure of their surcharges and the types of activities communities are funding. It can be found at www.communitypreservation.org.

2004 State Matching Grants for CPA

TOWN	STATE MATCH
Acton	$ 534,467
Acushnet	$ 81,176
Agawam	$ 313,190
Amherst	$ 154,264
Aquinnah	$ 46,034
Ashland	$ 499,082
Ayer	$ 89,962
Bedford	$ 870,283
Boxford	$ 403,714
Braintree	$ 406,556
Cambridge	$ 5,563,415
Carlisle	$ 262,655
Chatham	$ 503,006
Chelmsford	$ 189,483
Chilmark	$ 122,711
Cohasset	$ 254,690
Dartmouth	$ 342,981
Dracut	$ 502,489
Duxbury	$ 941,841
Easthampton	$ 174,773

TOWN	STATE MATCH
Easton	$ 560,666
Georgetown	$ 205,817
Grafton	$ 173,731
Hampden	$ 31,117
Harvard	$ 119,516
Hingham	$ 483,468
Holliston	$ 269,739
Hopkinton	$ 513,429
Leverett	$ 47,522
Lincoln	$ 220,879
Marshfield	$ 705,842
Medway	$ 389,821
Mendon	$ 156,374
Nantucket	$ 1,096,276
Newburyport	$ 369,341
Newton	$ 1,830,295
Norfolk	$ 309,790
North Andover	$ 1,021,824
Norwell	$ 534,732
Peabody	$ 490,281
Plymouth	$ 1,081,593
Rockport	$ 299,695
Rowley	$ 226,855
Scituate	$ 686,222
Southampton	$ 85,347
Southborough	$ 188,653
Southwick	$ 140,911
Stockbridge	$ 72,980
Stow	$ 302,236
Sturbridge	$ 213,239
Sudbury	$ 1,090,722
Tyngsborough	$ 310,487
Upton	$ 177,832
Wareham	$ 349,938
Wayland	$ 447,456
Wellesley	$ 559,717
Westfield	$ 224,236
Westford	$ 1,005,454
Weston	$ 1,122,336
Westport	$ 296,150
Williamstown	$ 125,877
TOTAL	**$ 30,795,168**

[108] Bonnie Heudorfer, Barry Bluestone, Stein Heimlich, "The Greater Boston Housing Report Card 2003", prepared by The Center for Urban and Regional Policy (CURP), Northeastern University, April 2004, pp. 31-33.

[109] The actual income limits and price limits are set by the state or federal subsidy program used for a given project. One older HUD program and one federal rural housing program use income limits slightly above 80% of median, and some state programs – including state public housing and the project-based Massachusetts Rental Voucher Program – now set gross rents at levels above 30% of income.

[110] Information on eligible subsidy programs is available online at http://www.mass.gov/dhcd/ToolKit/shi.htm

[111] NEF can be used for projects that primarily serve households with incomes of up to 140% of median, but NEF projects using comprehensive permits must meet all Chapter 40B eligibility requirements (including making at least 25% of the units for households at 80% of median). NEF became very popular after 1998 because it was one of the only programs that gave developers of condominium and homeowner projects access to Chapter 40B. MassHousing began a program in late 2001.

[112] Year round housing is defined at the Census Bureau's count of total housing units minus its count of "seasonal, recreational and occasional use" units.

[113] See 760 CMR 31.04 (1) (b).

[114] MassHousing has established a general density guideline for NEF homeownership projects of 8 units per acre or four times the allowable zoning, whichever is greater. In notes, higher densities are often appropriate for transit-oriented development.

[115] Details on all aspects of Chapter 40B can be found online at CHAPAs website (www.chapa.org).

[116] The regulations governing comprehensive permit applications are available online at http://www.mass.gov/dhcd/components/hac/default.htm ((760 CMR 31.02), as well as model rules.

[117] The plan must result in an annual increase in units qualifying for inclusion in the Subsidized Housing Inventory equal to at least 0.75% of the community's total housing units.

[118] Communities that add affordable units equal to 1.5% of their year round stock in a year get a two-year period of protection.

[119] Communities with approved Planned Production plans include Abington, Barnstable, Bedford, Bolton, Boxford,Bridgewater, Dracut, Falmouth, Kingston, Lakeville, Mansfield, Marshfield, Nantucket, Peabody, Sandwich, Shrewsbury, Stown, Tyngsboro, Wakefield, Wareham, Westford, West Newbury and Wilmington.

[120] Bonnie Heudorfer,"The Record on 40B", prepared by Citizens Housing and Planning Association, Boston, MA, June 2003, p. 10. Available online at http://www.chapa.org/TheRecordon40B.pdf

[121] Massachusetts Draft 2005-2009 Consolidated Plan, DHCD, page 33.

[122] "Analysis of the 2005 Subsidized Housing Inventory", prepared by Citizens Housing and Planning Association, Boston, MA, February 2005, provides extensive information on trends by community (see http://www.chapa.org/0540banalysis.pdf)

[123] M.G.L. c40R, added by Chapter 149 of the Acts of 2004

[124] Chapter 40R allows individual projects in an eligible district to have higher or lower percentages of affordable units but all projects of 13 or more units must be at least 20% affordable.

[125] Statistics on CPA votes, matching grants and uses from http://www.communitypreservation.org/index.cfm

Fair Housing

Fair housing laws ban discrimination in the sale or rental of housing on the basis of race, ethnicity, disability, household composition and certain other characteristics and seek to increase access to housing opportunities for populations likely to face discrimination. Despite these laws, it is generally acknowledged that housing discrimination is widespread, particularly against some racial and ethnic groups, people with disabilities, households with rental assistance, and households with children – particularly children under age 6 due to lead paint law concerns. Nationally, fewer than 2% of all housing discrimination incidents are reported to state and federal agencies. Local policies, including the elimination of multifamily zoning and the growing tendency to limit new developments to projects that only have 1 or 2 bedrooms or restrict occupancy to age 55+ households, also limit housing opportunities.

Fair Housing Laws

Federal laws prohibit a variety of types of housing discrimination and require recipients of federal housing funds to affirmatively try to overcome conditions that limit housing opportunities on the basis of race, color, or national origin. Massachusetts law provides additional protections against housing discrimination and some municipalities also have local fair housing ordinances.

The lead agency for enforcing the federal fair housing laws and promoting fair housing is HUD's Office of Fair Housing and Equal Opportunity (FHEO). However, HUD generally delegates fair housing investigations to state and local agencies with fair housing laws/ordinances that are deemed "substantially equivalent" to HUD, where available. In Massachusetts, there are three such agencies - the **Massachusetts Commission Against Discrimination** (MCAD) and the fair housing commissions of Boston and Cambridge. MCAD handles most fair housing investigations in Massachusetts (340 in 2001) and is also responsible for enforcing state fair housing laws.[126] The Boston and Cambridge agencies can investigate FHAA complaints that have allegedly occurred in their municipality. HUD provides funds to substantially equivalent agencies for these investigations. HUD also funds several private nonprofit agencies in Massachusetts to promote fair housing education and outreach through its Fair Housing Initiatives program (FHIP).

The federal Fair Housing Act First enacted in 1968 and amended in 1988, the Federal Fair Housing Act prohibits discrimination in public and private housing on the basis of (1) race, (2) color, (3) national origin, (4) religion, (5) sex, (6) familial status (including children under 18, pregnant women), or (7) disability. These seven categories are called protected classes. The Act applies to most housing, although there *are some very limited exemptions* for small owner-occupied properties, single family housing sold or rented without using a broker, and housing operated by organizations and private clubs that limit occupancy to members. State law further restricts these exemptions.

State Fair Housing Laws The State's Anti-Discrimination Act (M.G.L. c.151B) parallels the federal Fair Housing Act, but *bans some types of discrimination not covered by federal fair housing law*. The *additional* prohibitions under state law include discrimination on the basis of (1) age, (2) marital status, (3) military status, (4) sexual orientation, (5) source of income including receipt of public or rental assistance, and (6) refusing to rent to families with children due to the presence of lead paint. Owner-occupied two family dwellings rented without a broker

are exempt from *some* provisions of the state fair housing law but *the bans on discriminatory advertising, including discriminatory statements, discrimination against recipients of public or rental assistance (e.g. Section 8) and lead paint apply to* <u>*all*</u> *housing*.

<u>Practices Prohibited Under Fair Housing Law</u> State and federal fair housing laws prohibit a wide range of practices in the sale and rental of housing, including lying about the availability of units, setting different terms and conditions under a lease, such as charging a higher rent for a unit for households with children and using different screening criteria for some types of applicants. They also ban discriminatory mortgage lending, appraisal and loan purchase practices, blockbusting, redlining and threats against people exercising their fair housing rights. For *all* housing, they prohibits ads or statements, including verbal statements, that indicate a limitation or preference related to race, color, national origin, religion, sex, familial status or disability.

Reasonable Accommodation The Federal Fair Housing Act provides special protections for people with disabilities, including but not limited to physical, cognitive and psychiatric disabilities, AIDS and chronic alcoholism (though it does not require owners to make housing available to people who currently use illegal drugs or are a direct threat to the health and safety of others). It requires owners to take reasonable steps to accommodate disabled tenants/applicants. Under it, owners:

- Must allow tenants with disabilities, at the tenant's expense, to make reasonable modifications to their dwelling or common areas if needed to enable the tenant to use the housing. In some cases, the tenant must agree to restore the alterations to the interior of their unit when moving.

- Must make reasonable accommodations in rules and policies if needed for greater accessibility and use of the building by a tenant with a disability (e.g. allow a visually impaired tenant to keep a guide dog despite a no-pets policy).

- Must provide accessible units in new multifamily buildings (4 or more units) first occupied after March 13, 1991 and make public and common areas accessible to persons with disabilities. Under MAAB, coverage begins at 3 or more units in a multifamily building (see page 65).

Americans with Disabilities Act of 1990 (ADA) and Section 504 Under Title II, ADA requires public agencies to operate housing programs in ways that make them accessible and that do not discriminate against persons with disabilities. Under Title III, areas of housing developments that are used as public accommodations must be accessible. It also requires that homeless shelters be accessible. Many of the requirements under ADA flow from earlier legislation, Section 504 of the [federal] Rehabilitation Act of 1973, which applies to programs, entities and businesses receiving federal funds of more than $2,500. Section 504 bans discrimination on the basis of disability in the provision of services, requires reasonable accommodation and established accessibility standards for physical and sensory impairments (see Housing for People with Disabilities, page 61).

Obligation to Affirmatively Further Fair Housing As a condition for receiving federal housing and community development funds, HUD requires states and localities to certify that they will affirmatively further fair housing. Public housing agencies are also required to take

affirmative action to overcome conditions that result in limiting participation based on race, color, or national origin.

Analysis of Impediments (AI) States and localities that receive HUD housing and community development block grants must periodically analyze the impediments to fair housing that exist in their jurisdiction – including local policies and practices that restrict housing opportunities, outline the strategies they will pursue to address major impediments, and report to HUD, as part of their annual plans and annual performance reports to HUD, on ways in which they have addressed the impediments.[127] DHCD plans to issue an updated AI in 2005.

Skinner Consent Decree Court-ordered remedies in the settlement of a 1978 suit the *NAACP, Boston Branch v. HUD* ("the Skinner decision") also shape State and City of Boston fair housing policies and activities. The consent decree, signed by HUD and the City in 1991, requires metropolitan-wide remedies to ensure greater housing opportunities for low income people of color in Boston and surrounding communities. This led to the creation of **Metrolist**, a clearinghouse operated by the Boston Fair Housing Commission, to provide Boston residents with information on state and federal subsidized housing opportunities in 106 communities in the Boston metropolitan statistical area as well as city-assisted properties.

Local Fair Housing Agencies and Organizations Many Massachusetts cities and towns have local fair housing and/or human rights committees or commissions that work to promote fair housing. In addition, there are several larger private nonprofit fair housing groups in Massachusetts, including the Fair Housing Center of Greater Boston, the Lawyer's Committee for Civil Rights Under Law of the Boston Bar Association, and the Anti-Discrimination Project in Holyoke, that work actively to reduce discriminatory practices, helping people file fair housing complaints and working with local fair housing groups. The Fair Housing Center of Greater Boston maintains a listing of local commissions on its website, as well as copies of recent studies of discrimination in rental housing in Greater Boston.[128]

Fair Housing Trends and Issues

- *Massachusetts Fair Housing Advisory Panel* The Governor created an advisory panel in March 2004 to analyze fair housing issues in Massachusetts and recommend steps to advance fair housing objectives. Members include representatives from state housing agencies, advocacy groups and the development community. The panel began meeting in October 2004 and is reviewing a variety of topics, including how to update DHCD's 1998 Analysis of Impediments, ways to improve affirmative fair marketing and create universal access to subsidized housing, residency preference issues[129] and data needs to ensure affordable housing programs attain fair housing objectives. It expects to issue a report in 2005.

- *Data Collection for Affordable Housing* Currently DHCD does not comprehensively collect, compile, and publicly distribute information on the characteristics of the housing it subsidizes (locational characteristics, accessibility and bedroom sizes) and the households its programs serve, including race, family size, disability status and income. As a result, the State is unable to assess the effectiveness of its programs in addressing racial and economic segregation. State legislation has been filed which would require DHCD to gather and distribute such data and report annually to the Legislature on the results of this data collection.

• *Declining federal support for fair housing enforcement* HUD fair housing investigations have fallen by more than 50% in the past two years and it has shown little interest in monitoring the extent to which states and localities affirmatively further fair housing. Funding for private fair housing initiatives has also been cut.[130]

[126] MCAD's website offers extensive information on fair housing law and the complaint/investigation process - see http://www.mass.gov/mcad/forms.html

[127] HUD defines fair housing impediments as (1) actions, omissions and/or decisions which have the effect of restricting housing opportunities on the basis of race, color, national origin, religion, gender, disability and familial status and (2) policies, practices or procedures which have the effect of restricting housing choice due to race, ethnicity, disability status and for families with children.

[128] See http://www.bostonfairhousing.org Other studies on trends in housing choice in Massachusetts can be found at http://www.civilrightsproject.harvard.edu/research/metro/residential_choice.php

[129] Most DHCD housing programs now allow communities to establish local residency preferences (often extending for former residents as well) for up to 70% of the affordable units, including units funded with HOME funds.

[130] "2004 Fair Housing Trends Report", National Fair Housing Alliance, April 2004.

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