

December 3, 2013

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DHCD

100 Cambridge Street,
Suite 300, Boston, MA, 02114,
Attn: Office of the General Counsel, Marguax LeClair

RE: MA Analysis of Impediments to Fair Housing Draft Comments

On behalf of The Fair Housing Center of Greater Boston, please accept these comments on the Massachusetts Analysis of Impediments to Fair Housing Draft. For the past 13 years, The Fair Housing Center of Greater Boston has worked to eliminate housing discrimination and promote open communities throughout the regions. We have provided education and outreach, enforcement, policy advocacy, and research in the communities of Norfolk, Suffolk, Essex, Middlesex and Plymouth counties of Massachusetts.

Section IV.5

We applaud DHCD's adaption and use of HUD's Sustainable Communities Regional Planning Tools (p. 139) for measuring access to housing as it relates to race and economic factors, and specifically in the difference between affordability and the actual disbursement of racial and ethnic populations in Massachusetts.

Section V.1

**Racially/Ethnically Concentrated Areas and Impact on Opportunity:
Racially/ethnically concentrated areas of poverty ("impacted areas") have suffered from disinvestment and face challenges in providing housing choice that offers meaningful access to opportunity.**

We would like to encourage data collection and analysis on newly formed, young households of color and other protected classes to examine their attitudes and perceptions regarding housing choices. By gathering data from young households of protected classes, the state can better anticipate new or rising challenges in the fair housing arena. Some research questions on this topic might include:

- Where are young households of color moving to and why? What are the factors in their decisions?
- Where would they like to move?
- What are their perceptions of their housing choices?
- How are they uniquely perceived by public and private actors in the housing market?

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Data collected on such topics would ensure our measures of success in fair housing are well-rounded and comprehensive.

Section V.2

Access to Areas of Opportunity and Perpetuation of Residential Segregation: Areas that generally offer high quality education, economic opportunity and excellent public health outcomes (“non-impacted areas”) are not accessible to many persons of color and with disabilities, thereby perpetuating residential segregation.

Is public transportation adequate enough to induce people to move to “high-opportunity” areas?

Need an analysis of the fact that most people of color and low income people are transit-dependent.

We believe the AI should call for an MBTA/RTA expansion and upgrade as a way to provide greater access to areas of high opportunity to households in protected classes. However, any expansion or upgrade must be strategically oriented to serve the needs of populations that experience discrimination or lack of access to opportunity. Therefore, the AI should call for an examination of the Housing + Transportation Cost Index as a predictor of housing access to protected classes. Such an analysis could guide an MBTA expansion or enhancement toward a more equitable outcome.

In addition, there needs to be a true resolution of the current MBTA financial crisis. Recent attempts at resolving the MBTA financial crisis did not fully accomplish this objective.

Section V.3

Restrictive Local Zoning and Multifamily Housing: Restrictive local zoning impairs achievement of fair housing objectives and benefits throughout Massachusetts, including insufficient by-right permitting for multifamily housing.

We commend DHCD on addressing the important topic of restrictive local zoning. We believe restrictive zoning is rightly interpreted as a exclusionary, and therefore warrants active enforcement from the state. For example, we suggest an consistent independent review of local zoning changes by the Attorney General, the Massachusetts Commission Against Discrimination (MCAD), or other third party to actively guide local municipalities away from exclusionary policies. The Fair Housing Center of Greater Boston stands ready and willing to fill such a role.

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Many obstacles constrict the supply of new housing development, such as the fact that soft costs and costs of building materials associated with development are rising faster than labor costs. We suggest the AI call for state-initiated innovations to lower these costs, such as streamlined development processes or cooperative buying programs. A decrease in the cost of development could lead to an increase in the supply of affordable housing.

Lastly, we suggest the AI call for a state plan for a more equitable distribution of economic development and jobs so all households, including those in low-opportunity areas, can benefit from aggregate economic growth in our state.

Section V.4

Effectiveness of Fair Housing Laws in Addressing Restrictive Local Zoning: Current state and federal fair housing laws have advanced fair housing rights in various respects but have not sufficiently prevented or remedied the fair housing effects of restrictive local zoning.

We suggest the AI call for the passage of legislation that calls for judicial review of all foreclosures and makes mediation a mandatory component in all foreclosure cases as a part of the "Right to Cure" provisions. Such a mediation process should be monitored by a party with appropriate authority, such as the Attorney General, the MCAD, or HUD- Certified Housing Counselors.

Section V.8

Development with Rental Subsidies for Extremely Low Income Households: There is inadequate funding of units with rental assistance or deep subsidies critical to serving extremely low-income households and persons with disabilities.

It is our belief that every city and town should write its own AI, even if an AI is not required by current HUD regulations and/or the municipality is covered geographically by a Regional AI. A need for local AIs is demonstrated by the fact that fair housing complaints have been filed in 195 different cities and towns in Massachusetts. Impediments to Fair Housing issues clearly exist in all corners of our state, and local municipalities should be strongly encouraged to examine these impediments.

Toward this end, the FHCGB has researched fair housing infrastructure of Eastern Massachusetts, and receive funds to provide technical assistance to localities in creating AIs.

We suggest that this section bring attention to "source of income" as a Massachusetts protected class. Discrimination based on this class is often a proxy for racial discrimination. Often housing providers or developers will exclude Section 8 vouchers or other subsidies, not knowing that source of income is a protected class, in

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an effort to attract what is perceived to be a more desirable tenant. This is a key protected class that interrelates with other state and federal classes, particularly race and color, and warrants further discussion.

Section V.9

We suggest the AI call for more funding from HUD to expand fair housing testing, particularly in high opportunity areas. Testing has been proven in practice and in the courts to be an effective method of discovering and battling discriminatory practices.

We suggest the AI call for more mandatory training and education on fair housing issues for public entities in Massachusetts that receive federal funds.

Section V.11

The AI does a wonderful job of addressing best practices in responding to the foreclosure crisis by outlining the Five Point Foreclosure Prevention Plan (page 268), and even sites the Fair Housing Center of Greater Boston FHIP lending grant. However, although they mention the option of the lending community using a "self-testing program," we would suggest that a "self-compliance program," whereby the analysis is conducted by an independent, neutral third party would better ensure fair housing practices by removing bias in the analysis. The FHCGB stands ready to offer such services, and indeed already has a functioning testing program. An additional benefit of a third party analysis is that a standardized report card could be issued to show potential areas of improvement.

Appendices

We commend DHCD for the Fair Housing and Civil Rights Evaluation Criteria for discretionary Grants. The criteria are well constructed. The FHCGB is particularly pleased that zoning and land use laws are addressed in Tier 1 of the criteria structure. We believe these criteria can and should also serve as a set of proactive guidelines for future Analyses of Impediments drafted by cities, towns, and regions across the state. These criteria would make good content for local AIs in addition to the HUD requirements.

There needs to be better affirmative marketing plans from developers. Developers need fair housing training so that they learn how to write better affirmative marketing plans. The Fair Housing Center of Greater Boston stands ready to give training in that area.

A statewide standard should be set for matters related to local preference when federal funds are used in a development project. The line between serving one's own constituents and ensuring an open and accessible community under state law is

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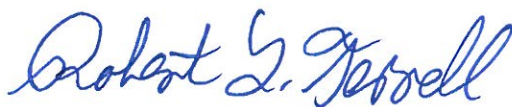
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blurry. Cities and towns stand to benefit from a clarification regarding local preferences, and what is permissible under federal and state fair housing laws.

Lastly, we call for a better description of the Fair Housing Center of Greater Boston, what services we provide, and how we can assist the state and its partners to affirmatively further fair housing in the Commonwealth. We are happy to supply this content upon request.

Sincerely,



Robert L. Terrell

Executive Director

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