MHP 40B COMPLIANCE FREQUENTLY ASKED QUESTIONS

1. General 40B Program Overview

What is Chapter 40B?
A- Chapter 40B is a Massachusetts law that promotes affordable housing by allowing developers to override certain local zoning restrictions if a percentage of units are affordable.

Who oversees 40B compliance?
A-The subsidizing agencies (EOHLC, Mass Housing, **MHP**, or MassDevelopment) administer the program, monitors compliance, and enforces guidelines.

Which properties fall under 40B?
A- Any development approved under a comprehensive permit with affordability requirements.

What is the affordability requirement?
A-Typically, at least 20–25% of units must be affordable to households earning ≤80% AMI.

2. Income & Rent Limits

Question- Where can we find MHP annual income and rent limits?

Both income and rent limits are posted yearly around April in the MHP internet under resources https://www.mhp.net/resources

Is there a rent increase approval process; does MHP approve rent increases?
A- There is no formal rent increase approval process as MHP publishes the rent limits as guidelines, setting the maximum rents owner/agent must comply with.

Does MHP provide or issue utility allowances information?
A- No. Owner/agents must reach out to the respective regional agency, or Public Housing Authority (PHA) to obtain utility allowance information for the property.

Are rent increases allowed in 40B restricted units?
A- During the initial term of the lease, the owner may not increase the rent. Rents are increased at annual lease and re-certification review.

3. Lease & Compliance Requirements

Does 40B Program require a 12-month lease?
A- Yes, and the lease renewal must align with the annual recertification effective date.

Are MHP 40B properties subject to compliance, which document outlines such restrictions?
A- Yes, such restrictions are outlined in the respective Affordable Housing Agreement.

Are 40B affordable tenants allowed to have a guarantor and/or co-signer?
A- 40B Guidelines do not allow guarantor and/or co-signer.

4. Annual Recertification & File Review

Are MHP 40B property subject to compliance and file review?
A- Yes, 40B properties subject to 40B Regulatory Agreement must comply with annual rent roll and file review, conducted by MHP and third-party consultant Spectrum.

What is a recertification?
A- Recertification is the process of confirming that tenant households meet income and occupancy requirements. This step is vital for ensuring compliance with program regulations, such as those under 40B /CFR 24

When should you notify the household about their annual recertification package?
A- Households have the obligation to recertify annually as such owner/ agent must notify them of it at move in and provide the subsequent annual notice at least 120 days prior to the recertification due date.

What if a tenant fails to comply with 40B annual recertification requirement or does not complete the annual recertification?
A- A tenant who does not complete the annual recertification or fails to provide necessary documentation by the deadline risks termination from the 40B rent restriction.

What if the household gross annual income increases over 140% for the respective AMI?
A- The 40B program allows for a cushion after the household initial move in certification; in which the household total gross income must be within the 140% limit of the respective AMI (50% or 80%). A household that exceeds 140% is considered over income and no longer eligible for the rent program restriction.

What happens if a family becomes over-income?
A- Owner/agent must provide the proper notice to the household indicating the unit is no longer eligible for the program rent restrictions and the rent will be increased to market rate accordingly.

Do over-income households have to move out of their unit?

A- No, if the property has enough vacant, same size, comparable units that can be swapped into affordable and the unit is not an accessible or ADA unit. Management should review the property affordable unit mix and reach out to MHP to request approval of unit swap.

Does MHP make determination in terms of income certification or re-certification?

A- In its role of lender and monitoring agency, MHP does not make any determination in terms of household income certification or re-certification. It is up to the owner (borrower) and the assigned agent (management /consultant) to gather, review households' income and make final income eligibility determination. In our role we monitor to certify the owner/agent comply with the 40B regulatory requirements, through review of certified rent roll and annual 40B audit review.

Can owner/agent use the Section 8 verification form approved by MHP to verify a subsidized household income with the respective Public Housing Authorities?

A - Yes, the recommended MHP Section 8 Verification form is acceptable with some exceptions at initial move-in as outlined in the MHP Income Eligibility & Verification Guidelines. In absence of the PHA annual verification, the applicant must provide the owner/agent with the required income/assets information to complete the income certification. 40B guidelines do require yearly income verification. The verification is valid for 6 to 12 months.

How should income be calculated for someone that works for the school system and then gets unemployment in the summertime?

A-The correct approach is to pro-rate the income. Include the employment income for the school year and unemployment for the summer in one certification. This is also the correct approach for other forms of known seasonal employment.

How often are audits conducted?

A- Typically, annually, or as directed by the subsidizing agency.

What happens during an audit?

A- Review of tenant files, income calculations, and lease compliance.

What if our TIC (Tenant Income Certification) template is outdated?

A - Use the latest version recommended by Spectrum or MHP.

Which profit & loss statement should we use?

A - Owner/agent form or Spectrum versions may be acceptable.

How do we correct audit findings?

A - Submit corrections via Spectrum Portal under the correction folder.

5. HOTMA Compliance

Question: When is the compliance deadline for HOTMA?

A- HUD has issued Notice officially extending the compliance deadline for HOTMA full implementation now scheduled for January 1, 2027, rather than January 1, 2026. Although the deadline has been adjusted, the underlying HOTMA requirements remain unchanged. MHP has made revision to the Income verification guidelines and implemented since 1/2025.

Question: **What is the Passbook Rate for 2025?**

A-: It will be increased to 0.45%. and owner age should review the HUD website Annual Inflationary Adjustments and Passbook Rate | HUD USER to obtain the yearly rate.

Question: **What is the Passbook Rate for 2026?**

A-: for 2026 the passbook savings rate, used to calculate imputed income from assets, is going back **to 0.40%.**

The U.S. Department of Housing and Urban Development (HUD) has released the inflation-adjusted values and the revised passbook rate for 2026. These adjustments are effective from January 1, 2026, and are essential for compliance with Sections 102 and 104 of the Housing Opportunity Through Modernization Act (HOTMA).

2025 Asset threshold is - $51,600.

2026 Asset threshold is - $52,787.

Glossary & Definitions

Area Median Income - **Area Median Income (AMI**) is a metric calculated by the U.S. Department of Housing and Urban Development (HUD) to determine the income eligibility requirements of federal housing programs.

The estimated median income, adjusted for family size, by metropolitan area (or county, in nonmetropolitan areas). AMI is updated annually by the US Department of Housing and Urban Development (HUD) and used as the basis of eligibility for most housing assistance programs. www.huduser.org

Accessible Housing - Housing is accessible when public or shared areas of the building can be approached, entered, and used by someone with a physical disability. Accessible housing may have ramps, elevators, and wider doorways to accommodate people with mobility improvements. Other accessibility features include wheelchair-accessible bathrooms and universal design features like lever door handles.

AFHMP- An **Affirmative Fair Housing Marketing Plan** is a marketing and outreach plan that housing providers use to strategize how they will target outreach to minority groups in their local community that are least likely to apply for housing opportunities. The goal is to "achieve a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, religion, sex, handicap, familial status, or national origin. (24 CFR 200.610)

Affordability - The extent to which there are enough rental units at different costs in an area to meet the housing needs of each household renter, paying 30 percent of their income for rent.

Affordable Housing - According to the federal government, housing is affordable when rent or mortgage payments (principal, interest, taxes, and insurance) plus utilities are no more than 30% of the occupant's monthly income. Regardless of income, policymakers consider households contributing more than 30% of their income towards housing as cost burdened.

Americans with Disabilities Act (ADA) -The 1990 Americans with Disabilities Act (ADA) is a broad civil rights law guaranteeing equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services and telecommunications.

B

Bedrooms - The number of bedrooms in a housing unit includes those rooms that are used mainly for sleeping or designed to be a bedroom even if used for other purposes.

C

Chronically Homeless Individual - A homeless individual with a disability who lives either in a place not meant for human habitation, a safe haven or in an emergency shelter, or in an institutional care facility if the individual has been living in the facility for fewer than 90 days after being without shelter. To be considered "chronically homeless," the individual must have been living without shelter as described for 12 continuous months or at least four separate occasions over the past three years, where the combined total of time without shelter was at least 122 months.

Cost Burdened- Policymakers and advocates consider household cost burdened if more than 30% of their income goes towards housing costs. Being housing cost burdened is an indicator that a household may be unable to afford other critical and nondiscretionary costs such as health and childcare, food, and transportation.

D

Debt Service - Required payments for principal and interest. Payments are made with respect to a mortgage secured by real property. Real property consists of land and housing.

Default- A failure to comply to make any payment or to perform any other obligation under a mortgage, and such failure continues for a period of 30 days. Default is typically the trigger for foreclosure proceedings to begin.

Disability - A physical or mental impairment that substantially limits one or more of the major life activities of an individual. Disabled persons qualify for Section 8 and public housing waiting list preferences. HUD's Section 811 Supportive Housing for Persons with Disabilities program provides accessible and affordable apartments for low-income people with disabilities.

Discriminatory Effect - Practice has a discriminatory effect when it actually or predictably results in a disparate impact on a group of people. A discriminatory effect also occurs when a practice creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.

Domestic Violence - Includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child, by a person who is cohabiting with or has cohabitated with the victim as a spouse. It also includes crimes of violence committed by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Dwelling - Any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more households. Dwellings may be single-family homes or multifamily structures, occupied by either renters or owners.

E

Elderly Person Household - A household composed of one or more people, at least one of whom is at least 62 years of age at the time of initial occupancy. Also referred to as Elderly Household or Senior Household.

Emergency Shelter - Any facility where the primary purpose is to provide temporary or transitional shelter for people experiencing homelessness. Emergency shelter may serve the general population of homeless people or specific populations of homeless people, such as veterans, youth, or victims of domestic violence.

Extremely Low-Income Household - Households with incomes below 30 percent of area median income. Most federal affordable housing programs serve households earning up to 80% of area median income.

F

Fair Housing Act -1968 Act (amended in 1974 and 1988) providing the HUD Secretary with fair housing enforcement and investigation responsibilities. It prohibits discrimination in all facets of the homebuying and renting process. Specifically, it prohibits housing discrimination based on race, color, national origin, religion, sex, familial status, or disability.

Fair Market Rent- Commonly abbreviated as FMR, the Fair Market Rent is the average rent and utility costs for newly leased, non-luxury rental units with basic amenities. Fair Market Rents are used to set rental assistance payment standards for federal housing programs.

Fair Market Value - The amount of money that would be paid for a property in a sale between a willing seller, who does not have to sell, and a willing buyer, who does not have to buy. In real estate transactions, fair market value is estimated through the appraisal process. This involves property research and market analysis by a professional appraiser.

Family- All people living in the same household who are related by birth, marriage, or adoption. In HUD-assisted housing, all people sharing a dwelling unit are referred to as a family, whether related or not.

Family (HUD Definition)- HUD defines a family as a 'single person or a group of persons,' including a household with or without children. A family may include unrelated individuals. HUD would also consider a single person without children as a family.

Family Income -Reported income from all sources for the Head of Household and other household members. Income earned by minors under 18 years old is excluded.

Federal Housing Administration (FHA) - An agency within HUD that provides mortgage insurance on loans by approved lenders throughout the U.S. and its territories. FHA insures mortgages on single-family, multifamily, and manufactured homes and hospitals. The mortgage insurance compensates lenders for losses when borrowers default on their loans.

G

Gross Annual Income- The total income received by all members of the tenant's household. This is the amount before taxes and deductions are subtracted.

H

Homeless- An individual who lacks a fixed, regular, and adequate night-time residence. Additionally, an individual who has a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations, an institution that provides a temporary residence for individuals intended to be institutionalized or a public or private place not designed for, or ordinarily used as, regular sleeping accommodation for human beings.

Household- All the people who occupy a housing unit. A household includes the related family members and all the unrelated people. Unrelated people may include lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also counted as a household.

Housing Assistance Payment (HAP)- The monthly dollar amount a Public Housing Authority (PHA) would pay, directly to the landlord, on behalf of the Section 8 Voucher holder. The amount of HAP is the difference between the unit rent and the tenant contribution. The tenant contribution in the Section -8 voucher program is 30% of monthly income.

Housing Authority - General term used for a Public Housing Agency (PHA), which is a government entity authorized to administer HUD housing programs. Most of these agencies have the term "Housing Authority" in its title, but not every agency does so.

Housing Choice Voucher- HUD's major tenant-based rental assistance program, Section 8 Housing Choice Vouchers allow low-income households to receive rental assistance in a home of their choice. Housing Choice Voucher tenants pay 30% of their monthly income for rent and the federal government pays the landlord the remainder through a local housing authority. Payments to landlords are restricted by the area's Fair Market Rent (FMR). This is called the Housing Assistance Payment, or HAP.

Housing Finance Agency (HFA)- State or local agencies responsible for financing and preserving low- and moderate-income housing within a state. State HFAs are often the agency administering federal Low-Income Housing Tax Credits (LIHTC). HFAs also typically administer bond financing programs and affordable homeownership financing programs.

Housing Quality Standards - HUD guidelines used to determine if a unit meets the HUD definition of decent, safe, and sanitary housing. Units eligible for the Housing Choice Voucher program must meet Housing Quality Standards.

I

Income-Based Rent - Income-based rent is set so that an eligible household would pay no more than 30% of their adjusted income toward housing costs, including utilities, each month. Unlike units with flat rents, the amount a household contributes towards housing costs may fluctuate with changes to household income, size, or circumstances.

Popular housing programs that offer income-based rents include Public Housing, Project-based Section 8, and Section 8 Housing Choice Vouchers.

L

Lead Based Paint - Paint used to paint house interiors and exteriors which contain lead and is considered hazardous. Banned in the United States in 1978.

Lease- A written agreement between an owner and a household for the leasing of a decent, safe, and sanitary dwelling unit to the household. The lease typically includes the amount of rent, downpayment requirements and length of lease term. It may also contain other conditions of use, such as occupancy limits, restricting pets or prohibiting smoking.

Live-In Aide - Person living with an elderly or disabled person to provide care. A live-in aide is not obligated to financially support the person and would not be living there, otherwise.

Local Public Agency- The official body empowered under State law to plan and undertake a local urban renewal program with Federal assistance. It may be a city, county, or other governmental agency. It may also be a redevelopment agency or local housing authority.

Low-Income Household - A household whose combined income does not exceed 80% of the median family income for the area. This is the income eligibility threshold for most federal affordable housing programs.

40B Lottery – property owners/agent open lottery system process for a development, in which prospects fill an application, once thoroughly reviewed, the application is notified of the lottery date and time. When the lottery drawing takes place applicant will receive a number within a week after the lottery is held. Once all drawing and selection is final the applicant is invited to view the units. After a final certification of income eligibility if the applicant qualifies a unit is offered.

Metropolitan Area - A large population center that is a combination of adjacent communities. There is a high degree of economic and social integration within that nucleus.

Micropolitan Statistical Area (MSA) - An area with at least one urban cluster of at least 10,000 but less than 50,000 population, pulse adjacent territory that has a high degree of social and economic integration with the core. This integration is measured by the strength of commuting ties.

Moderate Income Household - Households whose incomes are between 81% and 95% of the Area Median Income, as adjusted for household size. Some state and federal affordable housing programs can serve moderate-income households as well as those with low incomes.

O

Owner- The person or entity having the legal right to lease or sublease dwelling units. The owner can be either a private person or entity (including a cooperative), or an agency of the federal government (including a Public Housing Agency).

P

Prohibited Bases- Civil rights statutes establish the demographic categories by which discrimination is prohibited. Under the Fair Housing Act, the prohibited bases are race, color, religion, sex, national origin, familial status, and disability.

Project Based Section 8 - Federally funded rental assistance program that guarantees rental payments to private landlords who rent to low-income households.

With Section 8 Project-Based Rental Assistance (PBRA), tenants pay 30% of monthly income for rent, with HUD paying the owner the remainder up to the area's Fair Market Rent (FMR). Unlike the Section 8 Housing Choice Voucher program, the assistance is tied to the unit. Households only benefit from assistance during their tenancy.

Project Based Housing Assistance- When government housing assistance is tied to the unit, not the tenant. When a tenant moves out, they do not take the rental assistance with them. New tenants moving into the unit will benefit from the rental assistance attached to the property.

Project-Based Vouchers (PBV)- A component of a public housing authority's housing (PHA) Section 8- Housing Choice Voucher program. A PHA can attach up to 20% of its voucher assistance to specific housing units if the owner agrees to either rehabilitate or construct the units, or the owner agrees to set aside a portion of the units in an existing development.

Protected Class- Demographic categories of persons established by civil rights statutes against whom discrimination is prohibited. The protected classes under the Fair Housing Act are race, color, religion, sex, national origin, familial status, and disability.

Public Housing - Housing assisted under the provisions of the U.S. Housing Act of 1937 or under a state or local program having the same general purposes as the federal program. Distinguished from privately financed housing, regardless of whether federal housing subsidies or mortgage insurance are features of such housing development.

Public Housing Agency (PHA)- Any state, county, municipality or other governmental entity or public body, or agency or instrumentality of these entities that is authorized to engage or assist in the development or operation of low-income housing under the U.S. Housing Act of 1937. PHAs generally own and manage public housing properties and administer Section 8 Housing Choice Voucher programs. They may also own other types of affordable housing and administer other programs that help their residents, such as the Family Self-Sufficiency (FSS) program.

R

Real Estate Assessment Center (REAC)- Provides and promotes accurate information assessing the condition of HUD's portfolio. It compiles and ranks information on the physical and financial condition of HUD-assisted housing, including scores for building inspections. NOW using the **NSPIRE model** a New Inspection Model – **National Standards for the Physical Inspection of Real Estate (NSPIRE)**

Reasonable Accommodation -Change to a policy, within reason, to allow a person with a disability to participate fully in a HUD housing program. Reasonable accommodation can range from services to assist blind applicants applying for assistance, to reasonable modifications in apartments to accommodate people with mobility impairments.

Reasonable Modification- Under the Fair Housing Act, reasonable modification is a structural change made to existing premises, to be occupied by a person with a disability. The modifications are made to allow such person full enjoyment of the premises.

Redlining- Discrimination based on location is often referred to as redlining. Historically, some lending institutions were found to have maps with red lines delineating neighborhoods where they would not do business.

S

Section 8 - A federally funded rental assistance program that pays private landlords the difference between what a low-income household can contribute and the fair market rent.

Section 8 Housing Choice Vouchers (HCV) provide rental assistance for households to use renting in the private market. Section 8 Project-Based Rental Assistance (PBRA) is attached to a specific home or apartment community. In both programs, the tenant pays 30% of monthly income for rent with HUD paying the owner the remainder, up to the area's Fair Market Rent (FMR).

Subsidized Housing – There are two general types of housing subsidies: 1) development subsidies (supply side) to help construct or acquire housing, and 2) operating subsidies (demand side) that supplement the amount that residents can pay.

T

Tenant Based Section 8- HUD funded rental assistance for low-income households administered by a Public Housing Authority (PHA) which also offers a portability feature. The Section 8 Housing Choice Voucher (HCV) program allows households to rent from private landlords. The tenant pays 30% of monthly income for rent, and the PHA pays the landlord the remainder, up to the area's Fair Market Rent (FMR). The units must meet HUD's Housing Quality Standards (HQS).

Tenant-Based- Tenant-based housing assistance, as opposed to Project-based, is a broad category of affordable housing programs where the rental subsidy is tied to the tenant. Households receiving the benefits of a Tenant-based housing assistance program may be able to keep the benefits when moving.

Transitional Housing- Transitional Housing is temporary housing for homeless individuals and families in anticipation of entry into permanent affordable housing. Transitional Housing is typically an apartment or a room in a shared residence that is combined with or close to supportive services.

U

Unit - A housing/dwelling unit is a house, apartment, group of rooms or single room that is either occupied or intended for occupancy as separate living quarters. The specific definition of a unit differs between various affordable housing programs.

Utility Allowance - An amount used by a Public Housing Authority (PHA) to determine average utility bills for a specific area. It is used to calculate the tenant's portion of the monthly rent.

V

Violence Against Women Act (VAWA) - The Violence Against Women Act (VAWA) was originally passed in 1994. It is a federal law intended to protect people from domestic violence, assault, and stalking.

Voucher Portability - Feature of Tenant Based Section 8 Housing Choice Voucher (HCV) program that allows households to use their rental subsidy to lease a unit outside of the original Housing Authority's jurisdiction. This allows households to move to other cities, counties or states and take their rental assistance with them.

W

Waiting List - An ordered list of households who have applied for housing assistance through a Housing Authority or private landlord. Waiting lists are used when affordable housing demand exceeds the supply of available assistance. The waitlists may be open or closed to new applicants.