



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

November 15, 2010

Ben Metcalf
Office of the Deputy Secretary for Multifamily Housing Programs
Federal Housing Administration
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Re: Comments regarding HUD's Proposed Section 811 Reform Act of 2010

Dear Mr. Metcalf,

The CCD Housing Task Force is pleased to provide the U.S. Department of Housing and Urban Development (HUD) with written comments regarding HUD's Proposed Section 811 Reform Act of 2010. The Consortium for Citizens with Disabilities (CCD) Housing Task Force is a coalition of national organizations representing people with disabilities, their family members, providers of housing and supportive services and advocates. Among the groups that are part of the CCD Housing Task Force are Easter Seals, the United Spinal Association, United Cerebral Palsy, the National Disability Rights Network, the American Network of Community Options and Resources, the National Alliance on Mental Illness, The Arc, and Lutheran Services in America.

As you know, for the past three years, the CCD Housing Task Force has been working with Congress on bi-partisan legislation (HR 1675 and S 1481) to modernize, reform, and reinvigorate the Section 811 program. We are extremely hopeful that this important legislation will become law before the end of the 111th Congress. Thus, our comments regarding HUD's proposed Section 811 Reform Act must be considered within the context of that pending legislation. Should these bills not become law, the CCD Housing Task Force is prepared to work collaboratively with you and other HUD officials to ensure that essential reforms to the Section 811 program are enacted as soon as possible.

Reforming this program is critical to HUD's efforts to prevent and end homelessness as well as to HUD's Community Living Partnership with the U.S. Department of Health and Human Services. Currently the Section 811 program produces fewer than 1,000 units per year while our nation faces an acute housing crisis in terms of the availability of supportive housing for people with the most severe disabilities. For example, recent *Olmstead*-related legal settlements involving the U.S. Department of Justice require that more than 19,000 new supportive housing units be created in four states (Illinois, New Jersey, Georgia and New

York) over the next few years. These 4 lawsuits represent the “tip of the iceberg” in terms of the identified need for supportive housing across the nation.

The National Council on Disability 2010 report on housing found that more than 400,000 non-elderly adults with disabilities reside in nursing homes, and thousands of other people with disabilities reside in substandard Board and Care facilities. According to HHS data on nursing home utilization, the number of younger people with mental illness admitted to nursing homes increased by 40% (from 89,000 to 125,000) during a four year period from 2002-2006. HHS’s Money Follows the Person Medicaid (MFP) Demonstration program intends to transition more than 22,000 people into the community in the next few years – and the lack of supportive housing has been the major barrier to accomplishing HHS’s MFP goals. Currently, more than 700,000 adults with intellectual and other developmental disabilities continue to live at home with aging parents, and will need supportive housing when their parents can no longer care for them.

It is our expectation that when HR 1675 and S 1481 become law, the Section 811 program will have the statutory structure to create as many as 5,000 new supportive housing units per year without any significant increase in appropriations. The CCD Housing Task Force urges HUD to adopt the same aggressive goals within its vision for the future of the Section 811 program.

The following are specific comments on HUD’s Section 811 legislative proposal:

The CCD Housing Task Force strongly supports replacing the 811 capital advance with gap financing to be used in coordination with other financing and grants including housing tax credits, commercial loans, local and state government assistance or other public and private sources of financing.

The CCD Housing Task Force would also like to express strong support the following provisions of HUD’s Section 811 proposal:

1. the 25 percent limitation for multifamily projects that receive gap financing,
2. the proposal to award funding to projects that are further along and more ready to proceed,
3. utilization of up to 5 percent of the 811 appropriations for planning activities,
4. the use limitation of 40 years,
5. the proposed project selection criteria which incentivizes integrated housing models,
6. utilization of the HOME development cost limits,
7. the tenant selection provisions, and
8. the proposed “Miscellaneous” provisions.

As you know, HR 1675 and S 1481 propose a continuation of the Project Rental Assistance Contract (PRAC) approach to providing rental assistance. Should these bills become law, and subsequently legislation such the Preservation, Enhancement, and Transformation of Rental Assistance Act of 2010 (PETRA) is enacted, the CCD Housing Task Force would also consider supporting the conversion of the PRAC funding approach to Project Based Contracts (PBCs) as proposed under PETRA. CCD believes that programs such as Section 811 which are targeted to people with disabilities who can benefit from supportive services

should be designed to work in a manner that is consistent with HUD's mainstream programs such as the Housing Choice Voucher program and HUD public and assisted housing.

However, the eventual enactment of legislation such as PETRA by a future Congress should not deter HUD's strong support for the enactment of HR 1675 and S 1481 before the end of this Congress, even though HR 1675 and S 1481 adopt the current PRAC approach to providing a deep subsidize for the housing unit.

With respect to the proposed definition of eligible applicant, the CCD Housing Task Force supports HUD's proposal to include all tax-exempt entities, such as public entities but solely for the purpose of creating integrated housing through multi-family developments with no more than 25 percent of the units reserved for people with disabilities. The CCD Housing Task Force strongly urges HUD to continue to restrict funding for 811 financed group homes and independent living projects to qualified non-profit organizations that have obtained 501(c)(3) status from the Internal Revenue Service.

Finally, with respect to the provisions regarding supportive services, the CCD Housing Task Force strongly supports ensuring that residents of Section 811 financed housing units have access to a range of community-based services and that participation in supportive services is voluntary and not mandated as a condition of occupancy or continued occupancy of the housing. However we urge HUD to adopt stronger language with respect to the systematic linkage of Section 811 funding to publically funded supportive services financing policies which are controlled by state health and human services agencies – particularly community-based Medicaid services and supports. It is not sufficient to simply obtain commitments of supportive services from community-based services providers – who may or may not be in a position to make representations about the continued funding of the services by state governments, or their qualifications to bill for those services as medically necessary under the Medicaid program.

Medicaid is now by far the single highest “payer” of community-based services and supports for people with the most significant and long term disabilities. State Medicaid policies regarding community-based long-term care services will also be strengthened significantly in the very near future due to the enactment of the Affordable Care Act. For these reasons, the CCD Housing Task Force urges HUD to work collaboratively with HHS to develop appropriate supportive services policies for the Section 811 program that are consistent with federal Medicaid policies. For example, HUD's proposed language to “limit occupancy to persons with disabilities who can benefit from the supportive services offered in connection with the housing” ignores the fact that Medicaid waiver programs can be “capped” with a specific number of “slots”.

In practical terms, this means that people may be able to “benefit from the services” but not obtain the services offered because there is a state-operated waiting list for services. These waiting lists may be driven by state Medicaid priorities that essentially define those most in need among the larger group of people who might “benefit” from the services, including recent Olmstead settlements to which the Department of Justice is a party. The CCD Housing Task Force strongly urges HUD Section 811 officials, as well as HUD officials in the Office of Fair Housing and Equal Opportunity, to develop new policies regarding the linkage of housing and services for people with the most significant and long term disabilities

that reflect the realities of current and future federal Medicaid policy as well as state government financed supportive services financing policies.

The CCD Housing Task Force has offered to assist HUD with this policy development activity using funding from the Melville Charitable Trust and the Robert Wood Johnson Foundation. We look forward to a continued dialogue with HUD on effective strategies for HUD to utilize the input and legal analysis of CCD Housing Task Force consultants who are experts in federal fair housing laws as they apply to HUD programs, requirements to “affirmatively further fair housing opportunities for people with disabilities”, the U.S. Supreme Court’s *Olmstead* decision, and federal and state Medicaid and related supportive services policies.

Thank you for efforts in bringing this proposal forward. CCD looks forward to working with you and your colleagues to improve Section 811 and modernize the program as a vibrant tool for development of permanent supportive housing that serves people with severe disabilities in community-based settings.

Sincerely,

Andrew Sperling, Co-Chair, CCD Housing Task Force

Ann O’Hara, Technical Assistance Collaborative

cc: Carol Galante
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