



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

October 4, 2016

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Regulations Division, Office of General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 7th Street SW
Room 10276
Washington, DC 20410-0500

**Re: Housing Choice Voucher Program – New Administrative Fee Formula;
Proposed Rule**

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed “Housing Choice Voucher Program – New Administrative Fee Formula; Proposed Rule”, Vol. 81, Federal Register No. 129, Docket No. FR-5874-P-03 (July 6, 2016). Please accept this letter as the comments of the Co-Chairs of the Consortium for Citizens with Disabilities (CCD) Housing Task Force. CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

General Comments

Department of Housing and Urban Development’s (HUD) *Olmstead* Guidance (June 4, 2013) states: “HUD encourages public housing agencies and other HUD-assisted housing providers to work with state and local governments to provide integrated, affordable and accessible housing options for individuals with disabilities who are transitioning from, or at serious risk of entering, institutions or other segregated settings. For example, public housing agencies, pursuant to PIH Notice 2012-31, and other recipients of HUD assistance may offer certain preferences that will enable individuals with disabilities to transition from institutions more quickly or enable an individual at serious risk of institutionalization to remain in integrated, affordable housing in the community.”^{1 2}

¹ <http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>

In addition to the hundreds of public housing agencies (PHAs) participating in HUD's non-elderly disabled (NED) voucher programs, the CCD Housing Task Force is aware of a number of states – Georgia, Illinois, Pennsylvania, for example - that have worked with state and local PHAs to establish NED preferences to facilitate such transitions and assist states to comply with *Olmstead* (including in some cases under a Department of Justice Settlement Agreement). The CCD Housing Task Force is extremely concerned that the proposed fee formula will provide disincentives for PHAs to provide or continue to provide preferences for NED applicants, including those persons leaving nursing facilities, other institutions or group homes as well as those persons with disabilities at risk of institutionalization.

As outlined below, the CCD Housing Task Force believes that from an administrative perspective, NED households have many of the same characteristics that have led HUD to incorporate features into the proposed administrative fee structure designed to minimize disincentives for PHAs to serve homeless households or other unintended, adverse consequences. **We recommend** that HUD incorporate the same kinds of fee incentives for NED households as proposed for homeless households.

The CCD Housing Task Force agrees with many of the Proposed Rule's suppositions:

- Households with earned income are likely to be associated with greater on-going administrative costs as compared to households where the sole source of income is a fixed source such as SSI or SSDI. With the passage of the Housing Opportunity Through Modernization Act, administrative costs associated with households that have fixed incomes (including formerly homeless households that have head of household or family members with disabilities) are expected to decrease further.
- If HUD makes Households with Earned Incomes a cost driver in the fee formula, it makes sense to be “concerned that this variable could potentially have unintended consequences in terms of the types of families that the programs serves.” [FR-5874-P-03, page 44111], including homeless families and those with disabilities.
- “...the rate of new admissions has such a strong theoretical reasons for impacting the costs,” it makes sense that “the study team decided it should still be included as a component of the fee formula” [FR-5874-P-03, page 44120].
- Homeless households “merit a consideration for a separate fee as there is a strong theoretical basis by which to conclude that they have considerable impact on a PHA's administrative costs” [FR-5874-P-03, page 44120], although the study did not find statistical significance for this variable in either the simple or combined regression analyses. “Many homeless families have poor credit

² <http://portal.hud.gov/hudportal/documents/huddoc?id=pih2013-15.pdf>

histories and lack landlord references, making housing search more problematic, and are more likely to have a mental health and addiction challenges that a typical voucher household” [FR-5874-P-03, page 44120]. The study results were also inconclusive regarding HUD-VASH vouchers, whose heads of household are all also homeless. Commenters indicated that VASH “participants are more likely to suffer from substance abuse, mental illness and other challenges” [FR-5874-P-03, page 44120].

- It “is reasonable to conclude that any new allocation of vouchers that requires the PHA to partner with another entity for family referrals . . . would similarly require additional administrative effort beyond what the PHA would normally experience in leasing a new allocation of vouchers” [FR-5874-P-03, page 44121].

In sum, the proposed rule argues that there is strong theoretical basis that **disability-related challenges** of persons who are homeless result in additional administrative costs to PHAs, especially at new admission. **We recommend** that the final rule also provide incentive-balancing or cost-related fees for PHAs serving people with disabilities who are not homeless, but often face the same challenges.

In January 2014 the U.S. Department of Health and Human Services (HHS) published a study “Non-Elderly Disabled Category 2 Housing Choice Voucher Program: An Implementation and Impact Analysis”, an examination of implementation of a January 2011 collaboration between HUD and the Centers for Medicare and Medicaid Services, that allocated Housing Choice Vouchers to 28 PHAs. PHAs were required to partner with their state Money Follows the Person program, or the relevant health and human services agency, to help voucher recipients access the community-based services and supports necessary for independent living. The vouchers, known as non-elderly disabled Category 2 (NED2) housing choice vouchers, were exclusively available for non-elderly disabled people who lived in an institution. The study found “Missing documentation, bad credit, and a criminal background on the part of applicants were major challenges reported by staff in most of the sites. . . . Contrary to the expectations of some PHA staff, many participants had criminal backgrounds that prevented them from being either approved for vouchers or accepted by landlords. Also commonly cited as a barrier to leasing was bad credit, often incurred as a result of the injury that led to the participant’s disability.”³ Further, “Lessons learned from the NED2 program may also be useful for finding and maintaining stable housing for people who are homeless and other vulnerable populations which may face similar barriers, such as missing documentation, bad credit, and criminal backgrounds.”⁴

From this study as well as its own member organization experiences, the CCD Housing Task Force believes providing incentives for PHAs to serve homeless households without providing similar incentives for PHAs to serve or continue to serve people with disabilities -- including those who are living in nursing facilities or other institutions as

³ <https://aspe.hhs.gov/sites/default/files/pdf/76986/Cat2Housing.pdf> . Page 37

⁴ <https://aspe.hhs.gov/sites/default/files/pdf/76986/Cat2Housing.pdf> . Page 59

well as those who are at risk of institutionalization -- will make it more difficult for states and local government to comply with their *Olmstead* obligations. **We recommend** that the final rule extend incentives for PHAs to serve both people experiencing homelessness as well as people with disabilities, regardless of whether they are currently homeless, institutionalized, or at risk of institutionalization.

Response to Specific Request for Comments

7d. Earned Income Household variable impact on homeless households

The CCD Housing Task Force supports fee incentives to offset any unintended impact of the Earned Income Household variable on homeless households as well other likely impacted populations including people with disabilities. The Housing Task Force notes that HUD has found that PHAs use different definitions of homelessness⁵, making it difficult to understand the implication of a “strong admissions preference” which is not statistically significant.

8a. Adequacy of a new admissions fee for homeless households

The CCD Housing Task Force believes a new admissions add-on fee will address the concerns that the fee formula may inadvertently create a disincentive for PHAs to serve the homeless. However, as described in our comments above, without creating a similar fee for those households with individuals with disabilities who are exiting institutions or at risk of institutionalization, the formula will create a disincentive for PHAs to serve those households and continue to assist states and localities in complying with the *Olmstead* and the Americans with Disabilities Act (ADA).

8b. Including homeless households in base fee calculation

Consistent with the suppositions in the proposed rule, once participating in the HCV program, homeless households will become either (1) households with earned income, in which case, the formula accommodates extra costs in the base calculation, or (2) households with fixed income sources such as SSI, in which case, as described in the Proposed Rule, the study found no additional on-going costs. In sum, in either case, the costs of these households appear to already be included in the base calculation.

18. Homeless new admission fee

The CCD Housing Task Force supports the new admissions fee for homeless households. However, because research cited above provides evidence that persons with disabilities face the same barriers as homeless households, HUD should provide the same new admission fees to PHAs for serving disabled households exiting institutions or at risk of institutionalization. If HUD does not provide the same fees, HUD

⁵ https://www.huduser.gov/publications/pdf/pha_homelessness.pdf

will be creating a significant disincentive for PHAs to assist states and localities in achieving *Olmstead* compliance, in direct contradiction to HUD's own previous guidance and direction to PHAs.

20. Partnership Programs

The CCD Housing Task Force supports an allocation fee for HUD-VASH Programs and other voucher allocations that require partnerships with another entity for application referrals and other services. The HHS study cited above and the Housing Task Force's own experience with NED programs including the Section 811 Project Rental Assistance program indicate that these housing-services partnerships are critical to serving target populations needing access to voluntary supports to maintain successful tenancies and require much staff attention to succeed.

Thank you for the opportunity to comment on "Housing Choice Voucher Program – New Administrative Fee Formula; Proposed Rule", Vol. 81, Federal Register No. 129, Docket No. FR-5874-P-03 (July 6, 2016).

Sincerely,

Andrew Sperling, National Alliance on Mental Illness
Co-Chair, CCD Housing Task Force

T.J. Sutcliffe, The Arc of the United States
Co-Chair, CCD Housing Task Force