



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

March 6, 2017

Electronic submission to www.regulations.gov

Mariam G. Harvey
Director
Office of Civil Rights and Diversity
Department of Treasury
1500 Pennsylvania Avenue NW
Washington DC 20220

Re: Notice of Proposed Rulemaking on Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance, Department of the Treasury, RIN 1505-AC54

Dear Ms. Harvey:

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking on Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance from the Department of the Treasury (Department), RIN 1505-AC54 (January 3, 2017). Please accept this letter as the comments of the Co-Chairs of the Consortium for Citizens with Disabilities (CCD) Housing Task Force and Rights Task Force. CCD is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of the more than 57 million children and adults with disabilities and their families living in the United States. CCD advocates for national public policy that ensures full equality, self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

We greatly appreciate the Department issuing this NPRM. The Department is issuing section 504 Federal financial assistance regulations for the first time. Section 504 of the Rehabilitation Act of 1973 ensures that qualified people with disabilities are not excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity receiving Federal financial assistance. The Act and the regulations promulgated by the various Federal agencies – now including the Department of Treasury – have improved access to critical programs and services including training, education, housing, support services, medical care and so many others for millions of people with disabilities.

We are concerned that the proposed rule may be interpreted not to include tax credit programs such as the Low Income Housing Tax Credits (LIHTC) in the Department's new nondiscrimination standards. The proposed rule would define "Federal financial assistance" as follows, without specifically including the LIHTC program or other tax credit programs:

Federal financial assistance means any grant, contract (other than a direct Federal procurement contract or a contract of insurance or guaranty), subgrant, contract under a grant, cooperative agreement, formula allocation, loan, or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(a) Funds;

(b) Services of Federal personnel;

(c) Real and personal property or any interest in such property, including:

(1) A sale, transfer, lease or use (other than on a casual or transient basis) of Federal property for less than fair market value, for reduced consideration or in recognition of the public nature of the recipient's program or activity; or

(2) Proceeds from a subsequent sale, transfer or lease of Federal property if the Federal share of its fair market value is not returned to the Federal government; or

(3) Any other thing of value by way of grant, loan, contract, or cooperative grant.

The LIHTC program has been the primary driver of affordable housing for low-income persons for over 30 years, producing over 2.6 million units across the country between 1986 and 2013. The Congressional Joint Committee on Taxation estimates the program will cost \$8.3 billion in Fiscal Year 2017. It is extremely problematic that people with disabilities are not afforded the same rights under this Federal program as they are under other programs of the Department. Numerous court cases have found that "...there is no logical (or legal) reason for treating the tax benefits ... as anything other than equivalent to government grants or loans for purposes of interpreting relevant civil rights statutes"¹ Our Task Forces have long supported this position.

We urge the Department to include tax credit programs such the Low Income Housing Tax Credit (LIHTC) program in the list of forms of financial assistance, as part of the definition of "Federal financial assistance" in the Final Rule on Nondiscrimination.

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking on Nondiscrimination of the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance from the Department of the Treasury, RIN 1505-AC54 (January 3, 2017).

Sincerely,

Dara Baldwin, National Disability Rights Network (NDRN)
Co-Chair, CCD Rights Task Force

Samantha Crane, Autistic Self Advocacy Network
Co-Chair, CCD Rights Task Force

¹ David A. Brennan in *Tax Expenditures, Social Justice, and Civil Rights: Expanding the Scope of Civil Rights Laws to Apply to Tax-Exempt Charities*, 2001 BYU L. REV. 167, 212. See also *McGlotten v. Connally*, 338 F. Supp. 448 (D.C. Cir. 1972); *U.S. Dept. of Transportation v. Paralyzed Veterans of America*, 477 U.S. 597, 607 n.11 (1986).

Sandy Finucane, Epilepsy Foundation
Co-Chair, CCD Rights Task Force

Jennifer Mathis, Bazelon Center for Mental Health Law
Co-Chair, CCD Rights Task Force

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

Mark Richert, American Foundation for the Blind (AFB)
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