



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

March 20, 2017

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

**Re: Housing Opportunity Through Modernization Act of 2016: Implementation of Various Section 8 Voucher Provisions [Docket No. FR-5976-N-03]**

To Whom It May Concern:

Thank you for the opportunity to comment on the implementation notice and request for comment on “Housing Opportunity through Modernization Act of 2016 (HOTMA): Implementation of Various Section 8 Voucher Provisions” [Docket No. FR-5976-N-03] published on January 18, 2017.

Please accept this letter as the comments of the Co-Chairs of the Consortium for Citizens with Disabilities (CCD) Housing Task Force. CCD is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of the over 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.

Several of the statutory amendments made by HOTMA relate to the Project-Based Voucher (PBV) program. These include important changes specifically intended to stimulate the expansion of supportive housing<sup>1</sup> to assist the most vulnerable people with disabilities who are

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<sup>1</sup> The CCD Housing Task Force generally uses the term Permanent Supportive Housing to describe this model. For the purposes of these comments, we have adopted HUD’s “supportive housing” terminology.

homeless, institutionalized or most at-risk of these conditions. By expanding the availability of supportive housing units through the PBV program, PHAs will be assisting states and localities to help end chronic homelessness, to promote community integration and comply with the Americans with Disabilities Act (ADA) and the U.S. Supreme Court's *Olmstead* decision, to seek long-term cost savings in the federal/state Medicaid program, and to streamline public systems of care for people with disabilities.

Because of its relevance to these federal policy goals, HOTMA gives HUD the authority to implement many of the PBV changes expeditiously. Through HUD's Notice published in the Federal Register on January 18, 2017, HUD is seeking comments on both the HOTMA implementation requirements in the Notice and future changes to the PBV program.

The CCD Housing Task Force thanks HUD for including the HOTMA amendments related to supportive housing and the PBV program in this Notice. However, we have significant concerns regarding the proposed process for approval of PHA selection preferences for families who qualify for voluntary services including disability-specific. However, we have serious objections and concerns regarding the bureaucratic and inefficient review the Notice requires for PHA implementation of the disability-specific tenant selection preference (Section II.C.5 of the implementation notice and request for comment) authorized by HOTMA. This requirement contravenes the statutory intent of HOTMA to modernize HUD programs to provide housing opportunities, including for vulnerable people with disabilities who need supportive housing. We urge HUD to give serious consideration to our comments and to adopt our recommendation regarding disability specific preferences. We propose alternative review procedures that we believe are feasible and more consistent with statutory intent.

The CCD Housing Task Force is also concerned that the definition of supportive housing allows only for the development of PBV supportive housing in which 100% of the tenants qualify for the PBV units. As explained in more detail below, we propose modifying the definition to allow for integrated housing projects in which only a percentage of units are supportive housing.

We believe that the changes enacted by HOTMA should provide PHAs with the tools and guidance they need to undertake a robust expansion of PSH units targeted to the most vulnerable people with disabilities through the PBV program. With that goal in mind, we urge HUD to address the following issues in the Notice.

### **Comment/Recommendation #1: Selection Preference for Families Who Qualify for Voluntary Services**

The CCD Housing Task Force is disappointed and concerned about the guidance adopted in the Notice for the implementation of the Selection Preference for Families Who Qualify for Voluntary Services (Section II.C.5 of the Federal Register Notice, beginning on page 5469). Specifically, the Notice requires that HUD Headquarters Office of Fair Housing and Equal Opportunity (FHOO) and the Office of General Counsel (OGC) review every PHA proposed preference.

***“As part of the PHA Plan review process, the Office of Fair Housing and Equal Opportunity, in consultation with the Office of General Counsel, will review each proposed preference for consistency with fair housing and civil rights requirements. As part of this process, HUD may request the PHA or owner provide any additional documentation necessary to determine consistency with the PHA plan”.***

Given the volume of requests that HUD could receive, we believe that the requirement for HUD Headquarters review of each proposed PHA preference is infeasible. An estimated 2,300 Public Housing Authorities (PHAs) administer Housing Choice Voucher (HCV) programs for 2.1 million households. A preference-by-preference FHEO/OGC review requirement (as implied by the Notice) is equally infeasible. For example, a single PHA plan from a large PHA could have 5-10 or more different supportive housing PBV proposals, each with a different preference structure. With limited staff capacity, a Headquarters’ review is likely to be a slow process, in direct contravention to Congress’s goals in passing HOTMA. For example, we have observed Headquarters’ review of housing plans from the RAD Program to projects with disability-specific preferences in states covered by *Olmstead* settlement agreements. Despite the urgency of moving these projects forward, FHEO/OGC limited staff capacity has meant projects cannot always be approved in a timely manner.

Given this history, current and anticipated staffing levels at Headquarters, and the “open-ended” process envisioned by the Notice, the CCD Housing Task Force believes that it will be extremely difficult, if not impossible, for HUD Headquarters to approve disability-specific preferences – authorized in statute – within the PBV timelines of PHAs. This will result in the loss of many opportunities across the country to develop supportive housing for extremely low-income people with disabilities including those who are homeless.

The CCD Housing Task Force understands and appreciates that HUD is concerned about segregation and discrimination when reviewing such preferences. In order to both ensure PHAs can move forward with the development of supportive housing using PBVs, and that disability preferences are consistent with fair housing and civil rights laws, we recommend that HUD use the local Field Office review required for implementation of other components of this Notice. PHAs desiring to implement the Selection Preference for Families Who Qualify for Voluntary Services, should comply with the following:

- A. A requirement that the PHA Plan specifically describe the PBV supportive housing activities it plans to undertake, including the specific target populations it plans to assist and the voluntary supportive services that will be offered in conjunction with the offer of a PBV unit.
- B. In addition to the Civil Rights Certification (HUD-50077-CR) already required as a component of the PHA Plan, require an assurance or certification within the PHA Plan that the PHAs PBV supportive housing preferences are:

- (1) consistent with their obligations to HUD under the applicable Fair Housing and Section 504 rules and policies;
- (2) consistent with the PBV program requirements which grant full rights of tenancy and require voluntary services;
- (3) consistent with applicable federal and state Medicaid policies as well as their state's related disability policies that promote and facilitate community integration for people with disabilities; and
- (4) consistent with state efforts to comply with applicable U.S. Department of Justice policies related to the ADA and the U.S. Supreme Court's *Olmstead* decision.

C. Oversight and monitoring by the HUD Field/Regional Office. Information under A and B above can be submitted to the local Field Office for approval in the same manner that other PBV information is submitted, e.g. see page 5464 of Notice, *A. Maximum Amount of PBVs In the PHA's HCV Program*.

HUD would want to provide training and on-going guidance to the Field Offices to ensure consistent review across the country.

Should HUD determine that the process of approving disability-specific preferences will remain at FHEO/OGC, the CCD Housing Task Force strongly urges HUD to implement a seventy-five (75) day deadline for preference review consistent with the PHA Plan review process. A Plan and the PBV preferences would be automatically approved if HUD does not disapprove it within the 75-day period. Once developed, supportive housing projects would of course continue to be subject to fair housing and civil rights laws, as would any other PBV project.

***Comment/Recommendation #2 Regarding Notice Section II.C.2: Changing the Maximum Amount of PBVs permitted in the PHA HCV Program (Notice page 5464)***

This provision allows PHAs to project-base an additional 10 percent of its units above the 20 percent program limit, provided those additional units fall into one of three categories. The first and second categories of units that are exempt from the 20 percent program limit are those that assist households that meet the definition of homeless under the McKinney-Vento Homeless Assistance Act and households that include a veteran, respectively. The third category is units that provide supportive housing to persons with disabilities or to elderly persons, and the Notice provides that "Supportive housing means that the project makes supportive services available to all of the assisted families in the project."

The CCD Housing Task Force has two recommendations regarding this section of the Notice.

First, we have a long-standing interest in promoting the development of integrated housing models such as the Section 811 Project Rental Assistance (PRA) Program, which caps the percentage of units for people with disabilities qualified for services at 25% in any single project. Because HUD proposes to define "supportive housing" as a project that makes supportive services available to all of the assisted families in the project, it has the potential

effect of prohibiting non-supportive housing PBVs from being used in projects that have supportive housing PBVs.

To ensure that PBVs used for supportive housing can be combined with other, non-targeted PBVs in a single project, the CCD Housing Task Force recommends that HUD use the following wording: “Supportive housing means that supportive services are made available to assisted families living in the project’s supportive housing units”.

Second, we recommend that HUD Headquarters advise Field Office staff clearly that “mixed” PBV projects – meaning projects that include some PBV units within the three exempt categories as well as PBV units that do not qualify for one of the three exemptions – are permitted under HOTMA.

***Comment/Recommendation #3: What other standards should HUD require for supportive services under B.2.?***

The CCD Housing Task Force believes that HUD’s proposed definition of supportive housing is overly broad and not consistent with the supportive housing movement as it has evolved over the past 30 years. HUD’s proposed definition as stated in the Notice is as follows:

*Supportive housing means that the project makes supportive services available for all the assisted families in the project and provides a range of services tailored to the needs of the residents occupying such housing.*

*Such services may include (but are not limited to):*

- (A) Meal service adequate to meet nutritional need;*
- (B) Housekeeping aid;*
- (C) Personal assistance;*
- (D) Transportation services;*
- (E) Health related services;*
- (F) Educational and employment services; or*
- (G) Other services designed to help the recipient live in the community as independently as possible.*

First, as noted in Comment/Recommendation #2 above, HUD’s proposed definition requires that all of the assisted units in a project be deemed supportive housing. To promote more integrated housing, HUD should make it clear that PHAs can “mix” PBV supportive housing units with PBV non-supportive housing units in the same project. To accomplish this goal, CCD recommends the identical change as recommended in #2 above.

Second, under HUD’s definition, any project offering any of these services – even if they are sporadic or offered on a very limited basis (for example, transportation to shop once a week, health related services such as podiatry which can be offered only once-per-month, etc.) – could qualify as supportive housing. The substantial body of supportive housing literature

makes it clear that supportive housing offers comprehensive voluntary services needed by a specific vulnerable target population(s) and that, without those services, the target population would be unlikely to gain access to and/or maintain permanent housing. Because of the extraordinary array of supportive services that can be offered to multiple sub-population groups, we believe it is less important for HUD to provide a “laundry list” of possible services and more important to emphasize that supportive housing is a model that serves vulnerable populations with comprehensive service needs, and that those comprehensive services are committed by service provider partner(s) to people living in supportive housing units, rather than a supportive housing project.

***Comment/Recommendation #4: PBV Income-Mixing Project Cap***

Under Exceptions to Project Cap, HUD again uses the phrase “Units housing households eligible for supportive services available to all families receiving PBV assistance in the project”. As stated above, the CCD Housing Task Force recommends that this phrase be modified to state, “Units housing households eligible for supportive services available to all families residing in the project’s PBV supportive housing units”.

**Conclusion**

The enactment of HOTMA clearly underscores the importance of the PBV program to expanding supportive housing and the capacity of PHAs to be successful in these endeavors. CCD urges HUD to assist PHAs maximize the opportunities offered by this legislation.

Thank you for the opportunity to comment on the implementation notice and request for comments on “Housing Opportunity through Modernization Act of 2016 (HOTMA): Implementation of Various Section 8 Voucher Provisions” [Docket No. FR-5976-N-03] published on January 18, 2017.

Sincerely,

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