



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

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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: Affirmatively Furthering Fair Housing Assessment Tool for Public Housing Agencies
Docket No. FR-5173-N-09**

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed “Affirmatively Furthering Fair Housing Assessment Tool for Public Housing Agencies,” Vol. 81, Federal Register No. 56, Docket No. FR-5173-N-09 (March 23, 2016). Please accept this letter as the comments of the Co-Chairs of the Consortium for Citizens with Disabilities (CCD) Housing Task Force and the CCD Rights Task Force. CCD is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of the approximately 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.

Our comments are organized into two parts. The first part addresses overall comments regarding the proposed tool and the second provides comments regarding the specific questions and instructions in the proposed tool.

GENERAL COMMENTS

The CCD Housing Task Force and Rights Task Force recognize and appreciate efforts by the Department of Housing and Urban Development (HUD) to address in the proposed Assessment Tool for Public Housing Agencies (PHA) some of the comments we submitted previously regarding the Assessment Tool for local governments and certain joint and regional collaborations (finalized December 31, 2015, Vol. 80, Federal Register No. 251). However, we remain concerned that significant gaps in HUD-provided national data will impede PHAs in adequately assessing and addressing the fair housing needs of people with disabilities. To ensure that people with disabilities are not left out of fair housing planning efforts

and deprived of needed housing opportunities, we believe it is critical to strengthen the Assessment Tool in the ways suggested below.

HUD Should Provide Existing Federal Data and Require PHAs to Use Existing State and Local Data Concerning Housing Needs of People with Disabilities

Rather than simply exclude from consideration important data that would capture housing needs of people with disabilities, HUD should provide federal data from the Medicaid program and from its own data collection, and require that the PHAs use local data and local knowledge.

While there may not be “uniform” data concerning people with disabilities similar to the data concerning race and ethnicity (especially those persons with disabilities who live in institutions, group homes, etc.), the lack of such data is not a reason for fair housing planning to exclude consideration of the major sources of information concerning the needs of people with disabilities. Yet that is precisely the impact that HUD’s failure to provide more data concerning people with disabilities would have. The result would be diminished access to needed housing for people with disabilities and continued violations of their civil rights to live in the most integrated setting appropriate. Existing federal data as well as state and local data would capture some of the housing needs of people with disabilities.

We recommend the following three-part approach to ensure the housing needs of people with disabilities are assessed to the same degree as the housing needs of other protected classes:

1. HUD should provide PHAs with **data that are readily available in federal systems**, including:
 - Data from the Money Follows the Person program for the 40 participating states, as well as from Medicaid home and community-based waiver programs and options, available from the Center for Medicare and Medicaid Services (CMS);
 - Data on people with disabilities living in nursing facilities and intermediate care facilities for individuals with developmental disabilities, available from CMS;¹
 - Data on people with disabilities experiencing homelessness; available in the HUD Homeless Management Information System and/or Annual Homeless Assessment Report databases.
2. **Where HUD-provided national data are unavailable, HUD should NOT permit PHAs to assert that “data and knowledge are unavailable,”** which HUD currently proposes to be a potentially “complete and acceptable response.” Instead, HUD should require PHAs to seek out and use “local data” and “local knowledge.” This should include, among other things, data concerning individuals with disabilities served in home or community-based settings (including Medicaid and state-funded services), and those served in institutional settings such as nursing homes, board and care homes (sometimes called “adult homes” or “adult care homes”), and assisted living facilities, and individuals ready for discharge from psychiatric hospitals. As HUD is providing only very limited disability data, unless HUD requires PHAs to use local data and local knowledge to address the questions in Section 3, “Disability and Access Analysis,” the exercise will be futile and will result in a disparate and potentially disadvantageous consideration of people with disabilities in PHA Assessment of Fair Housing (AFH) Plans
3. HUD should provide **additional Guidance to PHAs** as to the types of local data and local

¹ For nursing facilities, data from the CMS Minimum Data Set on individuals with disabilities living in nursing facilities who have answered “yes” to question Q0500B, “Do you want to talk to someone about the possibility of leaving this facility and returning to live and receive services in the community?”

knowledge that are likely to be available and how to find these.

SPECIFIC COMMENTS

The following provides specific comments on the questions and instructions in the proposed tool.

Disability and Access Analysis (Section C) of Proposed Tool

Section D2. Housing Accessibility

HUD's regulation at 24 CFR Part 8 requires "that no otherwise qualified individual with handicaps in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development." This requirement for programmatic access covers – at minimum – a PHA's public housing, Housing Choice Voucher (HCV) and Project Based Voucher programs.

Further, the regulation requires that PHAs "assess, on a PHA-wide basis, the needs of current tenants and applicants on its waiting list for accessible units and the extent to which such needs have not been met or cannot reasonably be met within four years through development, alterations otherwise contemplated, or other programs administered by the PHA (e.g., Section 8 Moderate Rehabilitation or Section 8 Existing Housing or Housing Vouchers). If the PHA currently has no accessible units or if the PHA or HUD determines that information regarding the availability of accessible units has not been communicated sufficiently so that, as a result, the number of eligible qualified individuals with handicaps on the waiting list is not fairly representative of the number of such persons in the area, the PHA's assessment shall include the needs of eligible qualified individuals with handicaps in the area. If the PHA determines, on the basis of such assessment, that there is no need for additional accessible dwelling units or that the need is being or will be met within four years through other means, such as new construction, Section 8 or alterations otherwise contemplated, no further action is required by the PHA under this paragraph. If the PHA determines, on the basis of its needs assessment, that alterations to make additional units accessible must be made so that the needs of eligible qualified individuals with handicaps may be accommodated proportionally to the needs of non-handicapped individuals in the same categories, then the PHA shall develop a transition plan to achieve program accessibility. The PHA shall complete the needs assessment and transition plan, if one is necessary, as expeditiously as possible, but in any event no later than two years after July 11, 1988. The PHA shall complete structural changes necessary to achieve program accessibility as soon as possible but in any event no later than four years after July 11, 1988." (24 CFR Part 8.25(c))

As regards the HCV program, the regulation requires the PHA to "encourage participation by owners, include encouragement of participation by owners having accessible units" and "when issuing a Housing Certificate or Housing Voucher to a family which includes an individual with handicaps include a current listing of available accessible units known to the PHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit".

We **recommend** adding the following questions to the tool to ascertain that the PHA has met these very specific requirements of HUD nondiscrimination regulations:

Does the data provided by HUD indicate that people with disabilities including those under age 62 and those with different types of disabilities have equal access to the PHAs programs?

Did the PHA complete a needs assessment and transition plan as required by 24 CFR Part 8? Has the PHA updated this plan? Has the PHA met the requirements of this plan?

Does the PHA have a written reasonable accommodation policy? Does it make this policy known to applicants and tenants?

Does the PHA make its application process accessible to persons with disabilities including persons with cognitive, visual, hearing, physical and psychiatric disabilities?

Does the PHA encourage participation by owners, include encouragement of participation by owners having accessible units? When issuing a voucher to a family which includes an individual with disabilities does the PHA provide a current listing of available accessible units known to the PHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit? Does the PHA take into account the special problem of ability to locate an accessible unit when considering requests by eligible individuals with disabilities for extensions of vouchers? If necessary as a reasonable accommodation for a person with disabilities, does the PHA approve a family request for an exception rent?

When offering an accessible unit to an applicant not having a disability requiring the accessibility features of the unit, does the PHA require the applicant to sign an agreement to move to a non-accessible unit when available?

The instructions for Question 2a state: “For question (2)(a) HUD is unable to provide data at this time. . . . Single-family housing is generally not accessible to persons with disabilities unless state or local law requires it to be accessible or the housing is part of a HUD-funded program or other program providing for accessibility features. The Fair Housing Act requires that most multifamily properties built after 1991 meet federal accessibility standards. As a result, multifamily housing built after this date, if built in compliance with federal law would meet this minimum level of accessibility, while buildings built before this date generally would not be accessible. The age of housing stock can be a useful measure in answering this question. In addition, affordable housing subject to Section 504 of the Rehabilitation Act must include a percentage of units accessible for individuals with mobility impairments and units accessible for individuals with hearing or vision impairments.”

The age of the housing stock is a reasonable proxy for number of accessible units ONLY if one can assume that new construction and substantially rehabilitated or altered projects are nearly always in compliance with Section 504 and the Fair Housing Act. Complaints received by HUD and local fair housing agencies, as well as our experience, indicate this is not always the case.

We recommend that the sentence “The age of housing stock can be a useful measure in answering this question.” be struck from the instructions.

We are concerned that these data do not distinguish between units available only to elderly persons with disabilities and those available to persons with disabilities under age 62. Such a differentiation is important to assess the true availability of housing for various populations.

Most of the limited disability data provided to PHAs is not provided by age group. **We recommend** all disability data be provided by age group. HUD should require PHAs to consider this distinction in their analyses.

Section C3. Integration of Persons with Disabilities Living in Institutions and Other Segregated Settings

We applaud the inclusion of this section, including a number of new questions for PHAs, and strongly recommend that HUD retain this section with the expanded PHA questions in the final Assessment Tool.

We recommend that HUD add the following under Question 3c:

Describe any pending or settled Olmstead-related law suits, settlements or Olmstead initiatives not involving litigation.

HUD's proposed instructions for Section 3 are as follows:

"Local data and local knowledge will likely be particularly useful in answering questions (3)(a)-(d). Sources of location data and local knowledge may include, among others, individuals with disabilities, federally-funded independent living centers, state protection and advocacy organizations, advocacy organizations representing the spectrum of disabilities, state developmental disability councils and agencies, and state mental health/behavioral health agencies. Topics for consideration may include the length of wait lists for accessible units in publicly supported housing, availability of accessible units in non-publicly supported housing available to HCV participants, whether public funding (e.g., CDBG funds) or tax credits are available for reasonable modifications in rental units and/or for homeowners, whether accessible units are occupied by households requiring accessibility features, and whether publicly supported housing, including units and public and common use areas (e.g., entrance, lobby, hallways, laundry rooms, recreation areas, parking, leasing office), is sufficiently accessible to persons with disabilities.

The Fair Housing Act, Section 504, and the ADA contain mandates related to integrated settings for persons with disabilities. Integrated settings are those that enable individuals with disabilities to live and interact with individuals without disabilities to the greatest extent possible and receive the healthcare and supportive services from the provider of their choice. To answer questions (3)(a)-(d), refer to HUD's "Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*."²

Local data and local knowledge will likely be particularly useful in answer question (3)(c). To ensure meaningful analysis of these questions, PHAs may need to obtain information from state disability service authorities, which may include, for example, the developmental disabilities authority, mental health authority, social or human services department, and the state Medicaid

² HUD's *Olmstead* Statement can be found at:
<http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>.

agency, each of which is likely to have ready access to reliable information concerning the location and frequency of individuals with disabilities. A state's *Olmstead* Plan may contain useful information in answering these questions.

For question (3)(d), local data and local knowledge will be particularly useful. Include a description of the efforts the PHA has undertaken to assist persons with disabilities either transitioning from institutions or persons with disabilities at serious risk of institutionalization in accessing PHA-assisted housing."

We recommend the following re-ordering and modifications to clarify the instructions for this section:

The Fair Housing Act, Section 504, and the ADA mandate that public entities administer services to people with disabilities in the most integrated setting appropriate. Integrated settings are those that enable individuals with disabilities to live and interact with individuals without disabilities to the greatest extent possible and receive the healthcare and supportive services they need from the provider of their choice. To answer questions (3)(a)-(d), refer to HUD's "Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead."³

In Tables X, and X, HUD provides PHAs with

- *CMS data from the Money Follows the Person program (if any) as well as other Medicaid home and community-based waivers or options in your state;*
- *CMS data on people with disabilities living in nursing facilities and intermediate care facilities for individuals with developmental disabilities; and*
- *HUD data on people with disabilities experiencing homelessness.*

To ensure meaningful analysis of these questions, PHAs may need to obtain information from local disability service authorities, which may include, for example, the developmental disabilities authority, mental health authority, social or human services department, and the state Medicaid agency, each of which is likely to have ready access to reliable information concerning the location and frequency of individuals with disabilities. A state's Olmstead Plan may contain useful information in answering these questions.

For question (3)(d), local data and local knowledge will be particularly useful. Include a description of the efforts the PHA has undertaken to assist persons with disabilities either transitioning from institutions or persons with disabilities at serious risk of institutionalization in accessing PHA-assisted housing.

Other sources of location data and local knowledge may include, among others, individuals with disabilities, federally-funded independent living centers, protection and advocacy organizations, advocacy organizations representing the spectrum of disabilities, state developmental disability councils and agencies, and state mental health/behavioral health agencies. Topics for consideration may include the length of wait lists for accessible units in publicly supported housing, availability of accessible units in non-publicly supported housing available to HCV

³ HUD's *Olmstead* Statement can be found at:
<http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>.

participants, whether public funding (e.g., CDBG funds) or tax credits are available for reasonable modifications in rental units and/or for homeowners, whether accessible units are occupied by households requiring accessibility features, and whether publicly supported housing, including units and public and common use areas (e.g., entrance, lobby, hallways, laundry rooms, recreation areas, parking, leasing office), is sufficiently accessible to persons with disabilities.

Section D7. Disabilities and Access Issues Contributing Factors

To ensure that PHAs consider the same major barriers to opportunity for people with disabilities as for the other protected classes, **we recommend** adding the following additional contributing factors:

- *Community opposition*
- *Location and type of affordable housing*
- *Occupancy codes and restrictions*
- *Private discrimination*
- *Access to financial services*
- *Access to federally qualified health clinics and other healthcare settings often used by low-income individuals*
- *Availability, type, frequency and reliability of public transportation*
- *Lack of state, regional or other intergovernmental cooperation*
- *Admissions and occupancy policies and procedures including preferences in publicly supported housing*
- *Impediments to mobility*
- *Lack of private investment in specific areas within the State*
- *Lack of public investment in specific areas within the State including services and amenities*
- *Siting selection policies, practices and decisions for publicly supported housing*
- *Source of income discrimination*
- *Access to schools that are accessible to students and parents with disabilities and proficient in educating students with disabilities in integrated classrooms*
- *Access to employment opportunities*
- *Access to low poverty areas*
- *Access to environmentally healthy areas within the PHA*

The first bullet under Section 7 currently reads “Access to proficient schools for persons with disabilities.”

We are concerned that this will be interpreted to refer to segregated schools for individuals with disabilities. It is critical that children with disabilities have access to equal educational opportunity in their neighborhood schools, as required by federal law. While many neighborhood schools may not be complying with the ADA, Section 504, and the Individuals with Disabilities Education Act (IDEA), determining such compliance would be outside of the grasp of fair housing planners. In light of this as well as the suggestion that a separate reference to proficiency for persons with disabilities means that general proficiency need not include proficiency in educating students with disabilities, **we recommend** this be revised to read:

Access to schools that are accessible to students and parents with disabilities and proficient in educating students with disabilities in integrated classrooms

Thank you for the opportunity to comment on Affirmatively Furthering Fair Housing Assessment Tool for Public Housing Agencies, Vol. 81, Federal Register No. 56 (March 23, 2016).

Sincerely,

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