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Regulations Division, Office of General Counsel  
U.S. Department of Housing and Urban Development  
451 Seventh Street SW, Room 10276  
Washington, DC 20410-0500

**Re: Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program; Interim Final Rule with extension of comment period  
Docket No. FR-5476-N-02**

To Whom It May Concern:

### **Introduction**

Please accept this letter as the comments of the undersigned members of the Consortium for Citizens with Disabilities Housing Task Force (CCD Housing Task Force) concerning the proposed amendments to the Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program; Interim Final Rule with extension of comment period. *See*, 77 Fed. Reg. 147 (July 31, 2012) and 77 Fed. Reg. 189 (September 28, 2012). CCD is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of the 57 million children and adults with disabilities and their families living in the United States. The CCD Housing Task Force advocates on behalf of the housing needs of people with a variety of disabilities, including developmental disabilities, mental illness, sensory disabilities, physical disabilities, and intellectual disabilities. The CCD Housing Task Force works to increase access to decent, safe and affordable housing for all people with disabilities and to protect rights guaranteed to people with disabilities under the Fair Housing Act and other civil rights laws.

The following are the comments of the undersigned members of the CCD Housing Task Force.

### **Integration Mandate §578.83**

The CCD Housing Task Force applauds HUD for incorporating the “integration mandate” in the preamble and Section 578.83 of the Interim Rule, Fair Housing and Equal Opportunity. One of the highest priorities for people with significant and long term disabilities is the practical realization of the mandate under Section 504 of the 1973 Rehabilitation Act and the Americans with Disabilities Act to provide public services, including affordable housing and supportive services, to people with disabilities in the “most integrated setting appropriate to their individual needs.” The ADA offers people with significant

disabilities who need and desire a combination of supportive services and access to mainstream affordable housing in order to live independently, the opportunity to share in the “family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment” that the Supreme Court in *Olmstead* recognized as the hallmarks of integrated, community living.<sup>1</sup>

### Recommendation

Because the integration mandate is a critical requirement, the CCD Housing Task Force strongly urges HUD to incorporate additional explanation and examples in the Rule, similar to the explanations and clarifying examples offered in the preamble for Subsection 578.93(b)(7) regarding admission preferences. Given that “In reviewing requests for funding, HUD will be considering each recipient’s proposals to provide integrated housing to individuals with disabilities”, CCD encourages HUD to further provide guidance materials and other upfront technical assistance to ensure Continuums (CoCs) do not risk funding by failing to meet this requirement. For example, Continuums whose permanent supportive housing renewals provide only segregated housing options, should be identified before the NOFA is released, offered technical assistance and encouraged to submit an integrated model (e.g. tenant based program, set-aside model, etc.) when bonus, reallocation or other new HEARTH funding becomes available.

### **Supportive Services**

The CCD Housing Task Force has long held the position that support services should be made available to people with disabilities including people with disabilities who are homeless but that use of these services by participants or tenants must be voluntary. This is a principled position supported by research<sup>2</sup>. We offer the following recommendations and comments regarding various supportive services language and requirements in the Interim Rule<sup>3</sup>.

### Recommendations

- §578.53 (b)(2) “Permanent supportive housing projects must provide supportive services.....”

The CCD Housing Task Force recommends this be revised as follows: “Permanent supportive housing projects must **make available non-mandatory** supportive services.”

- §578.75(e) Ongoing Assessment of Services “To the extent practicable, each project must provide supportive services...”

The CCD Housing Task Force recommends this be revised as follows: “To the extent practicable, each project must **make available non-mandatory** supportive services...”

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<sup>1</sup> *Olmstead v. L.C.*, 527 U.S. 581 (1999).

<sup>2</sup> See for example <http://aspe.hhs.gov/hsp/homelessness/symposium07/barrow/index.htm#self>

<sup>3</sup> The Task Force comments in this regard are intended to apply to the Permanent Supportive Housing component of Permanent Housing, not the Rapid Rehousing component.

- §578.75(h) Supportive service agreement: “recipients and subrecipients may require program participants to take part in supportive services so long as they are not disability-related services, provided through the project as a condition of continued participation in the program.”

As stated above, the CCD Housing Task Force is opposed to mandatory support services in permanent supportive housing, regardless of whether they are disability-related. We urge HUD to omit housing from this requirement. Further, we believe that CoCs and providers will have great difficulty interpreting and thus properly implementing this requirement. For example, is a mental health service always disability-related or only when it is a service for someone with a mental health disability? This is only one of many questions that could arise regarding services that are and are not allowed to be required.

### **General Operations- Residential Supervision §578.75(f)**

The CCD Housing Task Force has serious concerns regarding this section. The language in this section implies that all HEARTH funded housing is place-based, segregated housing, even though HUD’s McKinney-Vento-funded housing portfolio includes tenant based rental assistance.

#### Recommendation

The Interim Rule states the goal of this “residential supervision” is to “facilitate the adequate provision of supportive services”. The CCD Housing Task Force agrees that permanent supportive housing programs should make available voluntary support services to tenants. The CCD Housing Task Force also agrees that HEARTH funding should be used to ensure that recipients and subrecipients can facilitate the provision of these voluntary services. However, we strongly disagree that such facilitation in either tenant- or project-based models should be characterized as “residential supervision”. We believe HUD’s goal of ensuring services are available is covered under §578.53(b)(2). HUD could add a sentence to §578.53(b)(2) stating: “Costs to facilitate the adequate provision of non-mandatory services are eligible costs.” We recommend deleting the proposed §578.75(f).

### **Fair Housing and Equal Opportunity – Reasonable Accommodations §578.93**

CCD Housing Task Force applauds HUD for reminding recipients of these funds of their obligations to provide accessible and integrated housing and services. The provision of reasonable accommodations – a requirement of Section 504, the ADA Title II and the Fair Housing Act – is one of the critical tools for ensuring equal access and participation. For example, some persons with disabilities may require as a reasonable accommodation, a unit with a rent that is higher than a rent reasonableness standard. Examples include the need for accessible architectural features such as ramps, roll-in showers, and elevators – which in many areas, are mostly available in newer construction associated with higher rents; the need for space for an attendant, which may require a larger unit; and the need for proximity to service providers or to transportation to service providers.

#### Recommendation

CCD Housing Task Force recommends the addition of the following language under §578.93.

*§578.93 (f) Reasonable Accommodation* : Recipients and sub-recipients must provide reasonable accommodations which may be necessary for a person with a disability to use or participate in the program, service or activity funded under this part; unless the recipient or sub-recipient can demonstrate that the accommodation will result in an undue financial and administrative burden or a fundamental alteration in the nature of the program, service or activity. This requirement applies to all parts of this section including but not limited to *§578.51(g) Rent Reasonableness* and *§578.75 (c) Suitable Dwelling Unit Size*.

#### **Fair Housing and Equal Opportunity - Housing for specific populations *§578.93 (b)(7)***

The Interim Rule states “Recipients may limit admission to or provide a preference for the housing to subpopulations of homeless persons and families who need the specialized supportive services that are provided in the housing (*e.g.*, substance abuse addiction treatment, domestic violence services, or a high intensity package designed to meet the needs of hard-to-reach homeless persons).”

#### Recommendation

CCD Housing Task Force recommends this be revised as follows:

“Recipients may limit admission to or provide a preference for the housing to subpopulations of homeless persons and families who **are eligible for and can readily access** the specialized supportive services that are provided in the housing (*e.g.*, substance abuse addiction treatment, domestic violence services, or a high intensity package designed to meet the needs of hard-to reach homeless persons).”

CCD Housing Task Force feels the proposed language is more precise. With the current Interim Rule language, an applicant for PSH might “need” a particular set of services but not be qualified or eligible for the services. The proposed language better synchronizes the provision of affordable housing with the availability of non-mandatory supportive services.

#### **CoC Membership Composition *Preamble page 45427 and §578.5***

The Interim Rule requires the CoC to include representatives from relevant organizations within a geographic area. The list in *§578.5* includes mental health agencies but no other disability organizations. While mental illness is one of the most common disabilities faced by people who are homeless, others include alcohol and drug addiction, brain injury, developmental disability, chronic medical illness and others.

#### Recommendation

In order to better ensure homeless individuals and families have access to necessary support services including mainstream and disability specific services, CoC Membership composition should be broadened. The CCD Housing Task Force recommends that HUD amend the required relevant organizations to include additional disability organizations such as substance abuse agencies, Independent Living Centers, and programs for persons with brain injuries.

#### **Centralized or coordinated assessment system *§578.7(a)(8)***

HUD requires CoCs, in coordination with the Emergency Solutions Grant (ESG) program, to establish and operate either a centralized or coordinated intake system that provides an initial comprehensive assessment of the needs of homeless individuals and families for housing and services. The CCD Housing Task Force is concerned that such a system may create barriers to accessing homeless program services for people with disabilities as well as victims of domestic violence. People with disabilities who are homeless -- especially those persons on the streets such as chronically homeless individuals with mental illness -- will also face barriers to housing and homeless services if access to services is overly arduous.

#### Recommendation

A coordinated intake system makes sense if such a centralized or coordinated system enhances access for the most vulnerable citizens rather than creating additional barriers to services. Individuals or families on the street or experiencing an emergency should not have to wait for necessary services because the centralized system is not available or the homeless individual or family is not able or willing to answer noncritical assessment questions. Additional guidance to CoCs as to how centralized systems might unintentionally create barriers as well as how to regularly assess whether certain populations are being excluded from services could help to ensure centralized systems are not excluding vulnerable populations including victims of domestic abuse as well as people with disabilities.

#### **Initial Lease term in permanent housing for at least one year §578.3**

While CCD supports the stability provided with an initial lease term of one year, we are also concerned that flexibility is necessary to provide some homeless persons with disabilities access to permanent housing programs. Shorter lease terms may be necessary to facilitate the transition of those who have difficult tenancy history – related, for example, to their disability - from streets or shelter to permanent housing. Flexibility is also critical in tight housing markets where homeless individuals and families compete with non-homeless households. We encourage HUD to allow for flexibility around the term of the lease under permanent housing programs.

#### **Entity Eligible to administer Rental Assistance §578.51(b)**

The way in which HUD is interpreting “administering Rental Assistance” poses two serious issues:

- 1) HUD states “Rental assistance must be administered by a State, unit of general local government, or a public housing agency”. Many legacy Shelter Plus Care (S+C) grantees that are units of state or local government contract out the administration of rental assistance (i.e. unit Housing Quality Standard inspections, processing checks to landlords) to nonprofit agencies. Some examples, the City of Boston CoC, Massachusetts Balance of State CoC, New Hampshire Balance of State CoC, Maine Balance of State CoC, several CoCs in Louisiana and the District of Columbia. Under the interim rule, this is no longer allowable as HUD has specifically identified those tasks as “administering” rental assistance. While HUD has grandfathered existing/legacy S+C programs using nonprofits as administrators, the interpretation of the new language means that, rather than build on the success and proven track record of the nonprofit agencies, in order to apply for additional CoC rental assistance funding, these existing grantees will need to either 1) build internal capacity to administer the rental assistance within the agency – a substantial cost in an era of shrinking resources, or 2) seek out and establish new partnerships with different agencies. Furthermore, if these existing legacy S+C programs make any future program changes that require a grant amendment, they would be subject to the new rental assistance administration requirement (i.e. a legacy S+C program may conduct a needs

assessment and determine they need to change their target population but may not do it because they don't want to lose their "grandfathered" status).

- 2) There are many legacy Supportive Housing Program (SHP) "leasing" programs currently administered by nonprofit providers that will be converting to "rental assistance" programs due to the nature and design of the program. In these cases, based on HUD's interpretation of §578.51(b), although the nonprofit may continue to be the grantee/recipient, it will no longer be eligible to administer the rental assistance for its own program. Unlike the legacy S+C program, HUD has not grandfathered the legacy SHP projects that transfer to a rental assistance project under the CoC Program. As a result, many legacy SHP projects will no longer be able to directly operate and provide rental assistance for permanent supportive housing all across the country.

### Recommendation

One way to resolve this issue would be for HUD to more liberally interpret "administer rental assistance" to enable CoC recipients to contract with nonprofit agencies to assist in rental assistance administration. Specifically, "administration of rental assistance" should be defined as:

- Entering into a grant agreement with HUD
- Processing invoices and drawing down funds from HUD
- Submitting the Annual Performance Report to HUD
- Monitoring all subrecipients and contractors
- Ensuring the grant is operated in accordance with applicable statutes, regulations, and guidance
- Additional project administrative functions as outlined in the grant agreement and in the CoC Program Interim Rule.

The definition should not include the day-to-day operations of administering rental assistance (i.e. processing rental checks to landlords, conducting unit inspections). This will enable recipients who cannot administer the day-to-day rental assistance duties to contract with more appropriately skilled entities (including nonprofit agencies). This broader interpretation will also enable current SHP leasing programs that are both converting to rental assistance and are administered by nonprofit agencies to continue to administer the rental assistance directly for their own programs.

Sincerely,

The Arc of the United States  
Association of University Centers on Disabilities (AUCD)  
Mental Health America  
National Alliance on Mental Illness  
National Association of Councils on Developmental Disabilities  
National Association of State Mental Health Program Directors  
National Council on Independent Living  
Technical Assistance Collaborative, Inc.

Joined by:

National Low Income Housing Coalition