



Commemorating 40 Years
Of Disability Advocacy
1973-2013

September 17, 2013

Electronic submission to <http://www.regulations.gov>

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

RE: Affirmatively Furthering Fair Housing, Proposed Rule, Docket No. FR-5173-P-01

To Whom It May Concern:

Thank you for opportunity to submit the following comments on behalf of the undersigned members of the Consortium for Citizens with Disabilities (CCD) regarding the Affirmatively Furthering Fair Housing Proposed Rule published July 19, 2013.

The CCD is a coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of children and adults with disabilities and their families living in the United States. The 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.

The undersigned CCD members strongly support the Proposed Rule and believe that the Rule, if implemented properly, will significantly improve housing opportunities for those most in need, including people with disabilities. Particularly important is the Proposed Rule's recognition that affirmatively furthering fair housing includes affording people with disabilities the opportunity to live in the most integrated setting appropriate to their needs. This core aspect of non-discrimination has too often been ignored in fair housing planning for people with disabilities. As a result, the most integrated setting appropriate has typically been the option least available to people with disabilities.

We support the following provisions in the Proposed Rule and urge the Department of Housing and Urban Development (HUD) to include these provisions in the Final Rule:

- The Proposed Rule’s definition of *fair housing choice* appropriately states that “For persons with disabilities, fair housing choice includes access to accessible housing, and, for disabled persons in institutional or other residential environments, housing in the most integrated setting appropriate as required under the law, including disability related services that an individual needs to live in such housing.” We recommend, however, that the Final Rule clarify that fair housing choice means that housing is not conditioned on acceptance of disability-related services (unless that is one of the rare instances in which it is specifically required by a federal statute).
- We strongly support the statement that “[f]or individuals with disabilities, integration also means that such individuals are housed in the most integrated setting appropriate. The most integrated setting is one that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible, consistent with the requirements of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.” (citations omitted). As HUD stated in its guidance concerning the Supreme Court’s Olmstead decision, “[f]or communities that have historically relied heavily on institutional settings and housing built exclusively or primarily for individuals with disabilities, the need for additional integrated housing options scattered throughout the community becomes more acute.”
- We urge HUD to maintain the Proposed Rule’s definition of “segregation” as including, for persons with disabilities, “the failure to provide housing in the most integrated setting possible.”
- We recommend that HUD include in the Final Rule this statement from the HUD guidance on Olmstead: “Examples of integrated settings include scattered-site apartments providing permanent supportive housing, tenant-based rental assistance that enables individuals with disabilities to lease housing in integrated developments, and apartments for individuals with various disabilities scattered throughout public and multifamily housing developments.” Including these examples will help regulated entities better understand their obligations.
- We applaud the Proposed Rule’s encouragement of Public Housing Authorities (PHAs) to “take affirmative steps to overcome the effects of conditions which resulted in limiting participation of person because of their . . . disability . . . (ii) such affirmative steps may include but are not limited to tenant selection and assignment policies that lead to desegregation (e.g., use of minimum/ceiling rents, narrowly tailored site-based waiting lists and residency preferences such as those designed to assist in deinstitutionalizing individuals with disabilities)”. However, for clarity the phrase “residency preferences” should be changed to “admissions preferences” in the final rule.

HUD requests comments regarding the “nationally uniform data that HUD is providing to assist in the assessment of segregation, concentration of poverty and disparities in access to community assets.” Specifically, HUD asks: “Do these data effectively measure differences in access to community assets for each protected class, such as person with disabilities?” The current proposed data sets will not effectively measure these differences and will not provide jurisdictions with an accurate picture of the housing situations of many people with disabilities relative to other protected and unprotected classes. This is particularly important as the use of HUD-provided uniform national data is one of the cornerstones of the Proposed Rule’s revised approach to affirmatively furthering fair housing.

The proposed data sets do not adequately capture the needs of people with disabilities who are not in the housing market. First, as HUD is aware, because these individuals are homeless or living in nursing facilities, board and care homes (sometimes known as adult care homes), and other institutional settings, as well as other group quarters, the needs of these households will not be captured with traditional data sources. For example, HUD’s *Worst Case Housing Needs* report is based on the American Housing Survey which excludes homeless people and people living in institutions and “noninstitutional group quarters” from its sample. In March 2011, HUD issued a supplement to its 2009 *Worst Case Housing Needs* report acknowledging the “need to improve the estimation of the number of people with disabilities with severe housing needs and address the known undercount of past estimations.” That report estimated that “a total of 856,425 people with at least one of the six measures of disability [were] living in homeless shelters, group homes, and other noninstitutional group quarters facilities” alone.¹

While the Proposed Rule acknowledges that fair housing choice includes housing in the most integrated setting appropriate to the needs of people with disabilities, the proposed data sets would not provide even the most basic information needed to promote this type of fair housing choice. In order to estimate in any meaningful way the housing needed to afford people with disabilities the opportunity to live in the most integrated setting appropriate, as required by the Americans with Disabilities Act (ADA), Section 504, and the Supreme Court’s *Olmstead* decision, the data considered must include, at a minimum:

(1) information about how many people with disabilities are being served in different settings, including nursing homes, board and care homes, intermediate care facilities for individuals with intellectual and/or developmental disabilities, long-term psychiatric hospital beds, group homes, single site housing for people with disabilities, and scattered-site apartments in mainstream or mixed-use housing, and

¹ 2009 Worst Case Housing Needs of People with Disabilities, March 2011

(2) information collected from state and local disability services authorities (including developmental disabilities authorities, mental health authorities, and social or human services authorities) concerning the housing needs of people with disabilities in their service systems.

Second, these settings may not be dispersed evenly across jurisdictions, making geo-coded data difficult to use appropriately without additional HUD guidance. For example, in a state where the great majority of state-run institutions for persons with intellectual disability are concentrated in a small number of Community Development Block Grant (CDBG) entitlement communities, it is not clear whether they have fair housing responsibility for all persons living in these institutions or whether this responsibility should be shared by all of the CDBG entitlement communities in the state. HUD should make clear that such responsibility should be shared across the state; shared responsibility could be based on statistical modeling, the individual's last previous residence, the individual's choice of community or other factors directed by HUD.

Similarly, the proposed data sets do not adequately capture the needs of persons with disabilities who *are* in the housing market. First, the disability data currently provided in HUD's prototype geospatial tool is limited to the six sets of disability questions used in the Census and the American Community Survey, i.e. disabilities involving certain sensory, physical, mental, self care, or work limitations.² Without more refined analysis, these data cannot provide a jurisdiction with useful fair housing information. For example, the prototype geospatial tool can indicate a concentration of persons with mobility disabilities in a certain part of a jurisdiction. In order to understand the reasons for this concentration (e.g., is the concentration a result of a large elderly housing development, nursing facilities or a neighborhood with many older homeowners?), determine whether the concentration reflects a lack of fair housing choice and, if so, identify the most effective way to address it, jurisdictions will need more refined data such as disability cross tabulated by housing status, age and income as well as supplemental information. The involvement of disability community stakeholders will be critical in helping to interpret this data.

Second, the Affirmatively Furthering Fair Housing Data Document draft of June 2013 indicates that HUD will provide data on disproportionate housing needs for racial and ethnic groups only.³ HUD should provide data on disproportionate need uniformly for other protected classes such as people with disabilities. HUD's most recent *Worst Case Housing Needs* report found that "Of the 8.48 million renters with worst case needs in 2011, 1.31 million, or 15.4 percent, contained one or more nonelderly people with disabilities. Worst case needs increased 32 percent from the 986,000 such households in 2009."⁴ If data on disproportionate housing needs among persons

² We agree that the American Community Survey data is important, as it is the primary national data set involving people with disabilities, though we note that this data covers a significantly smaller group of people with disabilities than those protected by the ADA, Section 504, and the Fair Housing Act.

³ Pages 8 and 9.

⁴ *Worst Case Housing Needs Report 2011*.

with disabilities is not provided, this protected class may lose out on affordable housing and related opportunities.

HUD may have other data available that can inform jurisdictions of relative need. For example, HUD could provide the percentage of persons with disabilities residing in Multifamily and Public Housing developments in each jurisdiction. Such data could be provided uniformly across the country. HUD could provide jurisdictions with guidance to determine whether the percentage is appropriate or affirmative fair housing measures are required.

Finally, we object to the Proposed Rule's statement that jurisdictions "will have the flexibility to supplement or replace HUD measures when better local alternatives exist." The obligation to affirmatively further fair housing would have little meaning if jurisdictions were given carte blanche to ignore the measures prescribed by the federal government. Instead, HUD should permit jurisdictions to supplement, but not replace, federal measures with additional data if they can demonstrate that the use of such data will increase fair housing choice and HUD approves the use of the data.

Additional Comments:

- We urge you to specify in the Final Rule that disability organizations, such as protection and advocacy agencies, independent living centers, state and local affiliates of The Arc, the Mental Health Association, NAMI, United Cerebral Palsy and similar organizations be consulted in the preparation of the Assessment of Fair Housing and the consolidated plan, as well as the citizen participation plan. These organizations typically have the best knowledge concerning people with disabilities who are needlessly segregated.
- We recommend including a reference to promoting opportunities for people with disabilities to live in the most integrated setting appropriate in the provision requiring PHAs to take steps to deconcentrate poverty and comply with fair housing requirements.
- We recommend including a statement that HUD's compliance activities will include a review and requirement that PHAs have completed and implemented their Section 504 self-evaluations and transition plans.
- We recommend that the definition of "integration" replace the word "handicap" with "persons with disabilities" in the sentence concerning "high concentrations of persons of a particular race, color, religion, sex, familial status, national origin, or handicap. . . ." Otherwise the sentence would refer only to concentrations of individuals with a particular handicap. We assume that was not the intent of the sentence.

Finally, we support the comments of the National Low Income Housing Coalition highlighting important aspects of the Proposed Rule and making recommendations to strengthen it.

We understand that one of the next steps in the rulemaking process will be a focus on these types of data issues including a review of a proposed template. We would be pleased to be part of a discussion with HUD to identify possible solutions to ensuring people with disabilities – especially non-renter, non-owner households - are fully included in any assessment of housing need.

Thank you again for this opportunity to comment on the Proposed Rule.

Sincerely,

American Association on Health and Disability

American Network of Community Options and Resources

The Arc of the United States

Association of Assistive Technology Act Programs (ATAP)

Association of University Centers on Disabilities

Autistic Self Advocacy Network

Bazelon Center for Mental Health Law

Disability Rights Education & Defense Fund

Disability Rights Legal Center

Lutheran Services in America Disability Network

National Alliance on Mental Illness

National Association of State Head Injury Administrators

The National Council on Independent Living

National Disability Rights Network

National Down Syndrome Congress

Paralyzed Veterans of America

Special Needs Alliance

Technical Assistance Collaborative, Inc.

United Spinal Association

The above CCD members are joined in these comments by:

National Low Income Housing Coalition