



December 8, 2014

**Electronic submission to [www.regulations.gov](http://www.regulations.gov)**

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Washington, DC 20410-0500

**Re: Supportive Housing and Services for the Elderly and Persons With Disabilities:  
Implementing Statutory Reforms  
Docket No. FR-5576-P-01**

To Whom It May Concern:

**INTRODUCTION**

Thank you for the opportunity to comment on the proposed amendments to the Supportive Housing and Services for the Elderly and Persons with Disabilities: Implementing Statutory Reforms. *See*, 79 Fed. Reg. 194 (October 7, 2014). 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 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 divided into three sections: (1) comments on Proposed 24 CFR 891 subpart G, (2) comments regarding the tenant selection provisions of 24 CFR 891 subparts D and G, and (3) comments on other sections of the Proposed Rule. In these comments, strikethrough indicates recommended strike-out of proposed or existing language. Underscore represents new language recommended by CCD Housing Task Force.

## COMMENTS ON PROPOSED 24 CFR 891 SUBPART G

We applaud HUD for its efforts over the last three years to implement the Project Rental Assistance Program (PRA) authorized by the Melville Act and covered under Proposed Subpart G. The CCD Housing Task Force spearheaded the development and enactment of the Section 811 reform under the Frank Melville Supportive Housing Investment Act, which created PRA; our comments on this Proposed Rule reflect our continued commitment to working with HUD to promulgate a Final Rule that ensures effective and successful program implementation consistent with the intent of Congress.

### **891.870 Applicability**

The CCD Housing Task Force is concerned about the lack of clarity in the rule regarding the applicability of the provisions in subparts A and D – which relate primarily to the Section 811 Capital Advance/PRAC option – to the PRA program in subpart G. There are important regulatory areas that are covered in subparts A and D that are not included in subpart G but which HUD is regulating in the current PRA Program through HUD/OMB approved documents such as the Cooperative Agreement and PRA Guidelines. Because HUD administers the PRA Program through “participating agencies” and not directly with owners, much of the specific regulatory language in subparts A and D is generally not applicable to the PRA Program, subpart G.

We urge HUD to include the following substitute language in subpart G to clarify that except where specified, subparts A and D are not applicable to subpart G.

#### **891.870 Applicability of this and other subparts**

(a) The requirements in this subpart G apply only to project rental assistance provided to projects without capital advances under the Section 811 Program.

(b) The requirements of other subparts of 24 CFR part 891 do not apply to subpart G except where otherwise specified in subpart G.

Further, the CCD Housing Task Force recommends that HUD add the topics listed in the chart directly below to subpart G using language from the PRA Program’s HUD/OMB approved documents. See Labor Standards, for example, in the chart below. Column 2 indicates that language regarding current Section 811 Labor Standard requirements can be found in subpart A 891.155(d). Column 3 indicates that current PRA Program Guidelines PRA.213 provides guidance regarding Labor Standards specific to the PRA Program. Finally in Column 4, we recommend that the language from PRA.213 be added to 24 CFR 891.882 of subpart G.

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Regulatory Topic</b>	<b>Section of 24 CFR 891, subpart A or D citation for regulatory topic in Column 1</b>	<b>Citation from HUD/OMB approved PRA Program document for regulatory topic in Column 2</b>	<b>Recommended Subpart G citation for regulatory language from Column 3</b>
Labor Standards	891.155(d) Labor Standards	PRA Guidelines PRA.213	891.882 (f)
Uniform Relocation Act	891.155(e) Displacement	FY12 NOFA Section III C. 4. h	891.882 (g)
Lead Paint	891.155(g) Lead Paint	PRA Guidelines PRA.217	891.882 (h)
Audit	891.160 Audit	Cooperative Agreement XIII G, and PRA 402(d)	891.882
Physical Conditions Standards	891.180 Physical Conditions Standards	PRA Guidelines PRA.405	891.882
Owner Responsibilities	891.400 Responsibilities of Owner (a) Marketing (b) Management and Maint. (c) Contracting (d) Submission of fin. (e) Use of project funds	PRA Guidelines PRA.402(a) PRA Guidelines PRA.402(b) PRA Guidelines PRA.402(c) PRA Guidelines PRA.402(d) PRA Guidelines PRA.402(e)	891.883 [new section]
Selection and admission of tenants	891.410 Selection and admission of tenants (a) written procedures (b) application (c)(1) determination of eligibility (e) ineligibility determination (f) records (g) reexamination, interim exam	PRA Guidelines PRA.403(a) PRA Guidelines PRA.403(a) PRA Guidelines PRA.403(b)  PRA Guidelines PRA.403(c)  PRA Guidelines PRA.403(c) RAC Part II 2.8(c)(5)	891.884 [new section]
Obligation of household	891.415 Obligation of household a. Requirements (1) Pay amount due (2) Supply information (3) allow inspection (4) Notify pre-vacating (5) sole residence b. Prohibitions (1) Assign space	PRA Lease 13(e) PRA Lease 23. PRA Lease 13(e) PRA Lease 8(a) PRA Lease 11.  PRA Lease 11.	891.885 [new section]
Overcrowded and Underoccupied units	891.420 Overcrowded and Underoccupied units	PRA Guidelines PRA.404	891.880 (g)

Column 1	Column 2	Column 3	Column 4
Regulatory Topic	Section of 24 CFR 891, subpart A or D citation for regulatory topic in Column 1	Citation from HUD/OMB approved PRA Program document for regulatory topic in Column 2	Recommended Subpart G citation for regulatory language from Column 3
Lease	891.425 Lease	PRA Lease 2.8(c)(4)	891.880 (h)
Denial of admission, termination	891.430 Denial of admission, termination	PRA Guidelines PRA.403(c) and PRA Lease 8.	891.884
Security Deposits	891.435 Security Deposit	RAC Part II 2.8(b) and PRA Lease 6.	891.880 (i)
Utility Allowance	891.440 Adjustment of Utility allowance	PRA Guidelines PRA 301 and RAC Part II 2.8(d)	891.880 (j)
Vacancy Payments	891.445 Vacancy Payments	PRA Guidelines PRA.301	891.880(k)

### 891.871 Purpose and Policy Statement

The CCD Housing Task Force urges HUD to include a “Purpose and Policy” section to Subpart G to emphasize aspects of the PRA Program that are critical and unique to this Section 811 model. Other Subparts in 24 CFR Part 891 – Subparts A, E and F, as well as Proposed Rule 24 CFR Part 892 Subparts A and B - include an introductory “Purpose and Policy” statement that provides the statutory intent and context for the relevant subpart

The CCD Housing Task Force recommends that HUD include the following Purpose and Policy Statement as an introduction to Subpart G.

#### 891.871 Purpose and Policy

(a) Purpose: The purpose of the program is to create formal state level supportive housing partnerships to provide project-based rental assistance without capital advances for the development of integrated, permanent supportive housing that includes commitments of long term community based services for extremely low-income persons with disabilities.

(b) Policy: (1) In order to ensure that the program assists persons with disabilities most in need of supportive housing as determined by the state, that sources of private and public funds other than capital advances provided under 24 CFR 891 are used for development costs, and that appropriate services and supports are funded and available for PRA tenants, the program shall be implemented in each state through a single state housing agency or collaboration of state housing agencies in partnership with the state’s health and human services and Medicaid agencies.

(2) In order to successfully leverage capital for projects receiving project rental assistance under this subpart, the program shall be aligned with Federal and state programs providing the primary sources of capital including but not limited to the Low Income Housing Tax Credit

Program under Section 42 of the Internal Revenue Code of 1986, the HOME Investment Partnership Act and the National Housing Trust Fund authorized by the Housing and Economic Recovery Act of 2008.

(3) All services and supports made available under this subpart are accessed by tenants on a voluntary basis.

### **891.872 Definitions: Interagency Partnership Agreement**

To ensure alignment with the statute, the CCD Housing Task Force recommends the following revisions to the definition of Interagency Partnership Agreement:

*Inter-agency Partnership Agreement* means the agreement entered into between the eligible applicant and the State agency responsible for health and human services programs, and the State agency designated to administer or supervise the administration of the State plan for medical assistance under title XIX of the Social Security Act ~~state health and human services agency, and the applicable state Medicaid agency~~, if different entities. ~~A~~ The agreement must:

“(i) identify the target populations to be served by the project;

“(ii) set forth methods for outreach and referral; and

“(iii) make available appropriate services for tenants of the project.

### **891.872 Definitions: Eligible Applicant**

In the FY 2012 and FY 2013/2014 Notices of Funding Availability (NOFAs), we were pleased that HUD reinforced the statute’s goal of synchronizing the housing and services components of the PRA by requiring that:

“Only one Eligible Applicant per state is eligible to receive funding, and each State should determine which Eligible Applicant, in the event there may be more than one, is the most appropriate. The State Health and Human Services/Medicaid agency can only be included in one application for Section 811 PRA Demo funds.”

We are concerned that in the Proposed Rule, the definition of Participating Agencies does not limit the PRA Program to one agency per state, as was clear in the FY 2012 and FY 2013/FY 2014 NOFAs.

The CCD Housing Task Force recommends that the definition stipulate that only one state agency per state is eligible per state to receive funding. This can be achieved by amending the proposed definition as follows:

*Eligible applicant* means any ~~state~~ housing agency currently allocating low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42), or any state housing or state community development agency that is currently allocating and overseeing assistance under the HOME Investment Partnerships (HOME) program as authorized by title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*), or under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or other similar Federal or state program, and the agency is determined to be in good standing by HUD in its administration of assistance. An eligible applicant may also be a state, regional, or local housing agency or agencies; or a partnership or collaboration of state housing agencies and/or state and local/regional housing agencies that has the capacity to operate statewide. To be eligible, the agency must have a formal partnership with the state health and human services agency and the state agency designated to administer or supervise the administration of the State plan for medical assistance under title XIX of the Social Security Act. Only one Eligible Applicant per state is eligible to receive funding, and each State should determine which Eligible Applicant, in the event there may be more than one, is the most appropriate. This requirement may be waived if necessary to allow continued expansion of the PRA Program, to allow the program to serve specific underserved eligible target populations, or other reasons approved by the Secretary.

#### **891.874 Allocation of Funds**

Under the Proposed Rule, HUD would allocate PRA funding either through a competition (as it has with FY 2012, FY 2013 and FY 2014 appropriations) or in “accordance with the formula allocation provided under 24 CFR part 791”. Allocation under the latter regulation is problematic because the formula allocation is based on data derived from the U.S. Census (see 791.402). We have worked with HUD – including with staff in the Office of Fair Housing and Equal Opportunity and the Office of Policy Development and Research – concerning the Census’s undercounting of people with disabilities, especially those living in institutions, group quarters or other institutional settings, or who are homeless. This is especially concerning as the PRA Program is specifically intended to assist these populations.

The CCD Housing Task Force recommends that 891.874 be modified to limit allocation of PRA funding to a national competition that takes into consideration criteria related to the these populations. We recommended the following language:

HUD may allocate funds made available in any fiscal year for project rental assistance under this subpart through a competitive Notice Of Funding Availability. In creating a competition for funds under this subpart, HUD shall take into account such factors as amount of funds available, the number and types of eligible applicants including those already implementing funds under this subpart, administrative efficiency, need for permanent supportive housing for extremely low-income persons with disabilities as demonstrated through, for example, Olmstead settlements or plans, homeless Point In Time data, and other factors consistent with the purpose of the statute.

Eligible applicants for project rental assistance funds shall be allowed to identify specific projects subsequent to being awarded funds.

### **891.878(b) Eligible tenants**

As described above, one of the goals of the Melville Act is to create access to integrated affordable housing for people with significant disabilities by synchronizing the availability of the housing with community based services. Proposed 891.878 states that a “person with a disability assisted under this subpart must be **eligible** for” services [emphasis added]. Being eligible for services, however, does not necessarily mean that services are available for the tenant at the time they are needed. For example, states may have a limited number of “waiver slots” for certain Medicaid waiver programs, and people who are eligible are often placed on waiting lists until a “waiver slot” becomes available.

In its Cooperative Agreement with the FY 2012 PRA Grantees, HUD defines Eligible Tenant as “Eligible Applicants who are being referred to available Assisted Units in accordance with Grantee’s Inter-Agency Agreement and for whom community-based, long-term care services are available at time of referral.”

The CCD Housing Task Force recommends HUD adopt similar language such that 891.878 (b) is amended as follows:

A person with a disability assisted under this subpart must be eligible for community-based long term services and supports as provided through Medicaid waiver, Medicaid state plan options, state funded services or other appropriate services (provided by state, local, nonprofit or other entities) which are related to the target populations identified under the interagency Partnership Agreement and are readily available to the individual at the time of referral to the assisted unit.

### **891.878(d) Eligible Tenants**

Proposed 891.878 (d) discusses the voluntary nature of “participation in community- based, long term services”. The CCD Housing Task Force recommends that this section of the rule also state that participation in any on-site services including service coordination must also be voluntary, and suggests the following language for 891.878(d):

“Participation in community-based, long term services and supports or on-site services and supports including service coordination is voluntary and shall not be required as a condition of tenancy.”

### **891.882 (a)(1) Required agreement**

As the Interagency Partnership Agreement is defined previously in this subpart, the CCD Housing Task Force recommends minor changes to ensure consistency between the definition in 891.872 and the further description of the Agreement in 891.882:

(a) *Required agreement.* (1) Participating agencies must develop an Interagency Partnership Agreement, as defined in 24 CFR 891.872, which is a formalized agreement for collaboration (such as a memorandum of understanding (MOU), joint letter, or other document) that includes the eligible applicant and the state health and human services agency, and the applicable state Medicaid agency, if different entities.

(i) In states where health and human service functions have been separated, both agencies' participation must be evidenced in the collaboration.

(ii) Project rental assistance under this subpart may only be provided for eligible projects that conform to the Interagency Partnership Agreement.

~~(2) Such agreement must:~~

~~(i) Identify the target populations to be served by the project;~~

~~(ii) Set forth methods for outreach and referral; and~~

~~(iii) Describe the services to be made available to the tenants of the project.~~

(iii) The plan must also address how the state housing and services/Medicaid agencies will maintain on-going collaboration to ensure the effectiveness of: the outreach and referral process and infrastructure, availability and provision of services, tracking, and resolution of owner/tenant issues that may arise.

### **891.882 (a)(3) Target Populations**

As stated previously, we were pleased that in the FY 2012 and FY 2013/2014 PRA NOFAs, HUD reinforced the goal of synchronizing housing and services, including in the definition of Eligible Tenant. The CCD Housing Task Force recommends incorporating similar language into 24 CFR 891.882 (a)(3) as follows:

(3) *Target populations.* The Interagency Partnership Agreement must include the target populations to be served that will benefit from the assisted units under this subpart and available services. In addition to being extremely low-income, the person with disabilities as defined in § 891.305, must have a disability appropriate to the services to be provided in the community under such agreement. In the Interagency Partnership Agreement, states must commit to make available identify the community based, long-term services as provided

through Medicaid waivers, Medicaid state plan options, state funded services or other appropriate services related to the type of disability targeted under the Inter-Agency Partnership Agreement ~~available state funded services and other appropriate services (provided by state, local, nonprofit, or other entities)~~, and describe how such services will be made available to the tenants.

#### **891.882 (d)(1) (ii) Full disclosure of available housing**

We have several concerns regarding this section. First, 891.882(d)(1)(ii) requires states to estimate the period of time the applicant would likely have to wait to be admitted to units of different sizes and types at each site. This language is impractical for the PRA Program for several reasons. First, as allowed by the HUD NOFAs, states are all managing their waiting lists differently, in a manner most appropriate to their individual PRA program designs. Some states will have site specific waiting lists but most will have broader city, county or regional lists. Second, estimates of wait times are likely to be unreliable when only a very small number of PRA units are included in any one property (i.e. 2 PRA units in a 40 unit property; 5 PRA units in a 100 unit property) or in any single locality. The CCD Housing Task Force recommends 891.882 (d) (1)(ii) be revised as follows:

*“Full disclosure of available housing.* Participating agencies must adopt a process for providing full disclosure to each applicant of any option available to the applicant in the selection of the development in which to reside, including basic information about available sites (e.g., location, number and size of accessible units, access to transportation and commercial facilities). Applicants must also be provided an estimate of the period of time the applicant would likely have to wait to be admitted to specific properties with PRA units, including accessible units, if such estimate can reasonably and accurately be calculated. ~~and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types (e.g., regular or accessible) at each site.~~

#### **891.882 (d) (2) Civil rights recordkeeping**

We have several concerns regarding this section. First, in the PRA program because the participating agency manages the outreach and referral process, collection of affirmative marketing and related data for the PRA Program should be done by that agency.<sup>1</sup> Second, this program is specifically targeting extremely low income people with disabilities including the specific target populations described in the state’s Interagency Partnership Agreement. 891.882(d)(2) requires states to maintain records on race, ethnicity, sex and place of previous residency but not on other characteristics of the target populations such as disability. It is appropriate for the state human services or disability or Medicaid agency to

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<sup>1</sup> We understand that owners who have other HUD assistance in addition to PRA may be required to independently keep records and report this information for their project as a whole.

collect this information and provide it in an aggregate manner to the state housing agency for reporting to HUD.

We recommend the following revisions to 891.882(d):

~~“Participating agencies must require projects receiving project rental assistance under this subpart to maintain records on the race, ethnicity, sex, and place of previous residency and other characteristics of each specific target population assisted in a manner as required by HUD for applicants and approved eligible households. The owner must submit such reports to the housing agency to demonstrate compliance with applicable civil rights and equal opportunity requirements.~~

### **Current PRA Program Guidance Omitted from Subpart G**

The HUD/OMB approved PRA Program documents include other important sub-regulatory language that is not included in proposed subpart G. The CCD Housing Task Force recommends that HUD include the following language from these documents into Subpart G.

#### **Approved Rent and Rent Adjustments.**

The initial RAC rent level may not exceed the applicable or Fair Market Rent (FMR) level as determined by HUD, unless such rent level is substantiated by a market study that has been prepared in accordance with the requirements of a state housing agency or of Chapter 9 of HUD’s Section 8 Renewal Guide, or as approved by HUD. Rents can only be adjusted annually based upon: (1) HUD’s Operating Cost Adjustment Factor (OCAF), (2) other operating cost index approved by HUD as has been adopted by the Grantee for purposes of subsidizing affordable housing, or (3) approval by HUD.

#### **Effective Communications.**

Participating agencies<sup>2</sup> and Owners must ensure that all communications are provided in a manner that is effective for persons with hearing, visual, and other communications-related disabilities consistent with Section 504 of the Rehabilitation Act of 1973 (see 24 CFR § 8.6) and the Americans with Disabilities Act.

#### **Barrier Free/Accessibility Requirements for Units, Buildings, and Facilities, Including Public and Common Use Areas.**

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<sup>2</sup> Note: The language in the PRA documents is “Grantee”. “Participating agencies” has been used here instead to ensure consistency with the Proposed Rule.

Participating Agencies and Owners are subject to Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8 and Title II of the Americans with Disabilities Act and implementing regulations at 28 CFR part 35. Covered multifamily dwellings as defined in 24 CFR part 100 must also meet the design and construction requirements of the Fair Housing Act and 24 CFR part 100. However, PRA funded units can consist of a mix of accessible units for those persons with physical disabilities and non-accessible units for those persons without physical disabilities.

**Duty to ensure Owner requirements are satisfied**

Participating agency is responsible for ensuring all Owner requirements are met at all times.

**COMMENTS REGARDING TENANT SELECTION PROVISIONS**

**891.410(c)(2)(ii) Determination of eligibility and selection of tenants**

The proposed rule states that “an owner may, with the approval of HUD, limit occupancy within the housing to persons with disabilities who can benefit from the supportive services, including accessibility features, offered in conjunction with the housing”. CCD urges HUD to provide additional tenant selection guidance and clarification in 891.410(c)(2) – as well as in subpart G covering the PRA program – to ensure that: (1) only persons who have been determined eligible for the services to be offered are selected; and (2) at the time of the unit offer, a determination is also made that these services are readily available to those persons. This additional guidance is essential so that the housing and services component of all Section 811 financed properties/units – including the PRA program – can be seamlessly synchronized at the time of admission.

It is extremely important for HUD to provide this additional guidance at this time, because, along with HUD, other agencies within the federal government – including the U.S. Department of Justice and the U.S. Department of Health and Human Services, and the U.S. Interagency Council on Homelessness – have agency goals and policies to end chronic homeless and ensure state compliance with the Americans with Disabilities Act and the U.S. Supreme Court’s *Olmstead* decision. To meet these goals, a significant national expansion of permanent supportive housing is required, and HUD’s programs must lead this effort. In addition to Section 811, all of HUD’s programs are vital to this goal, and policies developed in conjunction with a Section 811 Final Rule could also help inform permanent supportive housing tenant selection policies in other HUD programs.

Webster’s on-line dictionary and Roget’s Thesaurus have virtually identical interpretations of the verb benefit, which essentially is “to receive an advantage because of the action or existence of something else”. Therefore, the term “benefit from” as used in the Melville Act implies that a judgment must be made regarding whether or not the individual actually is able to receive the services at the time an offer

of a Section 811 unit is made. Because the statute is silent on how this judgment made, it is critically important that HUD's regulation provide additional guidance on that issue and that the guidance ensure that the housing and services components of the permanent supportive housing model can be efficiently and effectively synchronized.

Unfortunately, we have heard that there is some confusion as to whether a simple declaration from the applicant that they can "benefit from" the services is sufficient. While this may be well-intended guidance, the fact is that for an individual with a significant disability to benefit from a particular service or services program in conjunction with permanent supportive housing they must: (1) first be deemed eligible by the funding agency (typically the state or their designated service provider agencies) ; and (2) they must be able to access those services. This is particularly important in terms of Medicaid services – which are increasingly the services needed and desired by people in need of permanent supportive housing.

The services funding agency or its designee is the appropriate party to determine whether an individual can "benefit from the services offered" by making a determination that the individual is, in fact, eligible for those services and that the services can be made available to this person at the time that Section 811 assistance is offered. This requirement is extremely important because Medicaid eligibility criteria for long-term services and supports are extremely rigorous. In addition, many of these services are provided through "capped" state Medicaid waiver programs that have long waiting lists of people who have been determined eligible but cannot yet access these services. State Medicaid policies are also the sole determinant of how and on what basis access to waiver services is provided.

To appropriately address these critically important tenant selection issues, the CCD Housing Task Force recommends that the following tenant selection language be adopted in subpart D and subpart G of the Final Rule:

**891.410 (c) 2(ii)**

Owners shall make selections in a nondiscriminatory manner without regard to considerations such as race, religion, color, sex, national origin, familial status, or disability. An owner may, with the approval of HUD, limit occupancy within the housing to persons with disabilities who can benefit from the supportive services, including the accessibility features, offered in connection with the housing. A person with a disability assisted under this subpart must be eligible for community-based long term services and supports as provided through Medicaid waiver, Medicaid state plan options, state funded services or other appropriate services (provided by state, local, nonprofit or other entities) and those services must be readily available to the individual at the time of referral to the assisted unit.

### **891.878 (b)**

A person with a disability assisted under this subpart must be eligible for community-based, long-term services and supports as provided through Medicaid waivers, Medicaid state plan options, state funded services, or other appropriate services (provided by state, local, nonprofit, or other entities) which are related to the target populations identified under the Interagency Partnership Agreement and those services must be readily available to the individual at the time of referral to the assisted unit.

### **Retroactivity of 891.410 Determination of eligibility and selection of tenants**

The CCD Housing Task Force believes this section of the proposed rule is unclear with respect to its applicability to existing Section 811 projects. Proposed language for section 891.410, for example, indicates that Section 811 capital advance projects can “no longer limit occupancy based on type of disability”. If applicable to existing Section 811 projects, this provision is extremely problematic. The vast majority – if not all – of the Section 811 projects acquired, rehabilitated or constructed with HUD approval have targeted occupancy to specific disability groups as allowed under the statute at that time. The proposed rule could require significant changes to tenant selection policies which may not be feasible for some existing projects.

The CCD Housing Task Force urges HUD to adopt a Final Rule stating that 891.410 applies solely to new projects receiving capital advances but does not apply to Section 811 projects that are already approved by HUD.

### **891.410 (c)(2)(iii)**

891.410(c)(2)(ii) is (a) not applicable to capital advance projects funded under this subpart prior to the effective date of the Final Rule, (b) not applicable to multi-family projects funded under 891.345, and (c) not applicable to subpart G.

## **COMMENTS ON OTHER SUBPARTS OF 24 CFR 891 AND 892 PROPOSED RULE**

### **891.175 Technical Assistance**

We are concerned that the Proposed Rule does not implement the technical assistance provisions of the Melville Act, Section 2 (b). The Melville Act authorized the Secretary to the extent funds were made available,

“ to provide technical assistance to public housing agencies and other administering entities to facilitate using vouchers to provide permanent supportive housing for persons with disabilities,

help States reduce reliance on segregated restrictive settings for people with disabilities to meet community care requirements, end chronic homelessness, as “chronically homeless” is defined in section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11361), and for other related purposes.”

The CCD Housing Task Force recommends the addition of the following language to 891.175:

(c) HUD may also authorize technical assistance to assist project rental assistance programs funded under subpart G to leverage vouchers from public housing agencies and other administering entities to provide permanent supportive housing for persons with disabilities, help States reduce reliance on segregated restrictive settings for people with disabilities to meet community care requirements, and end chronic homelessness.

### **891.190 (b)(1) Enhanced project rental assistance contracts (ePRACs)**

The Proposed Rule states that e-PRAC assistance would be available to a non-profit organization submitting a new application under either the Section 811 or the Section 202 program, as well as existing projects. We are very supportive of the e-PRAC concept as a mechanism to either re-finance or to re-configure **existing** Section 811 capital/PRAC properties. However, we believe that the e-PRAC duplicates the model of assistance that can be provided through the PRA program but without the assurance that no more than 25 percent of the units can have supportive housing occupancy restrictions. Further, because the proposed e-PRAC would provide assistance that includes debt service, the availability of the e-PRAC option could actually create a disincentive for developers to accept PRA subsidies or for states to apply for PRA funding.

The CCD Housing Task Force urges HUD to modify the proposed rule to limit eligibility for the proposed e-PRAC funding to existing Section 811 capital advance/PRAC properties only and that the Final Rule state specifically that the Section 811 e-PRAC cannot be utilized to provide assistance to new Section 811 units. Our proposed language is:

(1) *Eligible applicants.* Applicants eligible for ePRACs are only nonprofit organizations, as defined under §§ 891.205, 891.305, and 891.805, with:

~~Sponsors accessing private capital to fund the construction or provide permanent financing for supportive new housing units; or~~

(ii) Owners of existing properties accessing private capital and where debt service results in ongoing operating cost savings in an amount greater than the cost of debt service. New Section 811 capital advance projects funded under subpart C are not eligible for e-PRACs.

### **891.305 Definition: Disabled Household**

The definition of Disabled Household includes under (2) “Two or more persons with disabilities living together or one or more such persons living with another person who is determined by HUD based on a certification from an appropriate professional (e.g. rehabilitation counselor, social worker, or licensed physician) to be important to their care or well being;”

Given the large number of Section 811 tenants it seems inefficient for HUD to make these determinations; it seems sufficient to have the Owner, or the Grantee in the case of the PRA program, make such a determination within HUD guidance such as the HUD Handbooks and Notices.

We recommend the following language for the Definition of Disabled Household

(2) Two or more persons with disabilities living together or one or more such persons living with another person who is determined by HUD based on a certification from an appropriate professional (e.g. rehabilitation counselor, social worker, or licensed physician) to be important to their care or well being;

### **891.335 Conversion**

The CCD Housing Task Force believes small changes in the proposed language will give HUD more flexibility to review conversions. Notably, we do not believe that HUD should require that a project have had persistent vacancy in order for HUD to consider a proposed conversion. We recommend the following changes:

(1) The state agency responsible for administering the Medicaid program and/or the state health and human services agency indicates in writing that the need for supportive housing for very low-income persons with disabilities no longer exists or that the affordable supportive housing for very low-income persons with disabilities will be replicated in a more integrated setting; and

(2) (a) The proposed conversion will result in integrated housing; or

(b) The project has had persistent vacancy, despite a reasonable effort to lease such units as determined by HUD; ~~and~~ or

(c) A demonstrated need exists for the households that would benefit from such conversion.

### **891.345 Multi-family housing projects**

The Section 811 multi-family option authorized by the Melville Act also creates integrated Section 811 units through the capital advance/PRAC program components. At some future time, should Section 811

capital be appropriated by Congress, we want to ensure that the capital advance/PRAC multi-family option does not conflict with or compete with the implementation of the PRA Program in any state. To avoid these conflicts, the Final Rule should provide that Section 811 multi-family capital advance/PRAC properties in states where PRA Programs are established, must be administered under the provisions of the Interagency Partnership Agreement including the target populations to be assisted the outreach and referral infrastructure developed for the PRA program, as well as the supportive service commitments made by state health and human services/Medicaid officials specifically for the Section 811 program. This requirement will ensure that the policies and state system created through the PRA agreement are utilized comprehensively and effectively to expand permanent supportive housing.

**§ 891.345 Multifamily housing projects.**

(a) *Restriction.* The total number of dwelling units in any multifamily housing project (including any condominium or cooperative housing project) containing any unit for which assistance is provided under this part for supportive housing for persons with disabilities, or with any occupancy preference for persons with disabilities, may not exceed 25 percent of such total.

(b) *Exception.* The restriction under paragraph (a) of this section shall not apply to any project that is a group home or independent living facility.

(c) *Coordination with state PRA Program.* Multi-family housing projects funded in states that have established project rental assistance programs under subpart G of this Section, shall operate under the state's Interagency Partnership Agreement as defined in subpart G including but not limited to referral of tenants from the target populations defined under the Agreement. Such tenants shall have access to the services committed by the state under such Agreement.

**891.350 Voluntary support services**

We applaud HUD for including this new section of the regulation. Voluntary use of on-site and community-based services is consistent with the Melville Act.

The CCD Housing Task Force recommends that the language in this section be revised to ensure consistency with the supportive services references in other sections of the Proposed Rule.

(b) *Supportive service plan.* A supportive service plan for housing for Section 811 projects must permit each resident to choose and acquire or not to receive any on-site or community-based supportive services.

## **Subpart H Senior Preservation Rental Assistance**

### **891.910 Leasing to Eligible Families**

While some existing Section 202 projects may include nonelderly tenants with disabilities, the vast majority have not leased to this population since at least 1992 when legislation passed permitting owners of certain HUD-Assisted housing to limit admissions to elderly households. This regulation offers an opportunity to correct this great harm. This section of the Proposed Rule can and should offer occupancy to nonelders with disabilities before offering any units to nonelderly, nondisabled households.

We recommend the following modifications to the 891.910(d)

*“(d) Occupancy by nonelderly or nondisabled families. (1) HUD may permit SPRAC units in the project to be leased first to nonelderly persons with disabilities and second to nonelderly or nondisabled families when there is no eligible nonelder with a disability on the waiting list, if:*

## **Part 892 Service Coordinators in Multifamily Housing and Assisted Living Conversions**

### **892.105 Definitions: Supportive Services**

The definition of supportive services unnecessarily omits nonelders from services designed to prevent institutionalization.

The CCD Housing Task Force recommends the following modifications to the definition of Supportive Services:

*“. . . and other appropriate services that are designed to prevent hospitalization and institutionalization and permit ~~elderly~~ residents to age in place . . . “*

### **892.115 Nondiscrimination and equal opportunity requirements**

We applaud HUD’s language under *892.115 (c) Most Integrated setting appropriate*.

### **892.205 Definitions: Eligible Project**

Eligible project language implies that a project might be designated only for elders or persons with disabilities; there are projects that serve both populations.

The CCD Housing Task Force recommends the following modification to the definition of Eligible Project

*(2) Is designed or designated for the elderly and/or persons with disabilities.*

## **CONCLUSION**

In closing, thank you for the opportunity to comment on the proposed amendments to the Supportive Housing and Services for the Elderly and Persons with Disabilities: Implementing Statutory Reforms. *See*, 79 Fed. Reg. 194 (October 7, 2014).

Sincerely,

Andrew Sperling, National Alliance on Mental Illness

Co-Chair, CCD Housing Task Force

TJ Sutcliffe, The Arc of the United States

Co-Chair, CCD Housing Task Force