



January 31, 2005

Regulations Division
Office of General Counsel
Room 10276
HUD
451 7 th Street, SW
Washington , DC 20410-0500

Re: HUD's proposed changes to the consolidated planning rule in 24 CFR Part 91 as published for comment on December 30, 2004

To Whom It May Concern:

The Consortium for Citizens with Disabilities (CCD) is a Washington-based national coalition of approximately 100 consumer, advocacy, provider and professional organizations who advocate on behalf of people of all ages with disabilities and their families. The CCD Housing Task Force focuses specifically on housing issues that affect all people with disabilities. Members of the CCD Housing Task Force include The Arc/United Cerebral Palsy Public Policy Collaboration, the National Alliance for the Mentally Ill, the National Association of Protection and Advocacy Systems, and many other national disability organizations representing thousands of state and local chapters and affiliates.

The CCD Housing Task Force is pleased to submit these comments in response to HUD's publication of a Proposed Rule regarding Revisions and Updates To Consolidated Plan in the Federal Register dated December 30, 2004 .

The individuals represented by the CCD Housing Task Force are the most vulnerable of any group eligible for federal housing assistance. Because of their extremely low incomes, people with disabilities are among the poorest of our nation's citizens. Over 3 million non-elderly people with severe disabilities receiving federal Supplemental Security Income are literally "priced out" of the affordable housing market.

The CCD Housing Task Force's *Priced Out in 2002* study found that the income of people with disabilities receiving SSI benefits is equal to only 18 percent of median income. This study also

found that as a national average, people receiving SSI benefits needed to pay 105 percent of their monthly income – literally an impossibility – to rent a modest one bedroom apartment priced at the HUD Fair Market Rent.

The high cost of rental housing means that millions of people with disabilities are chronically or sporadically homeless, are at-risk of becoming homeless, or are forced to live in restrictive congregate settings, in seriously substandard housing, or are still living at home with aging parents. As documented by the 1999 U.S. Supreme Court *Olmstead v. LC* decision, people with disabilities continue to be denied their civil rights under the Americans with Disabilities Act to live integrated and successful lives in housing and communities of their choice. The Administration's New Freedom Initiative is intended to improve access to community living for people with disabilities – a false hope without access to affordable housing.

HUD's Consolidated Plan (ConPlan) is the truly the “master plan” in terms of state and local planning for affordable housing activities. All other HUD planning documents – including the Public Housing Agency Plan and the Continuum of Care Plan – now must be consistent with the ConPlan. Thus, local and state housing officials who receive HUD funding governed by the ConPlan, the PHA Plan and the Continuum of Care Plan pay close attention to HUD regulations and guidance, including the provisions of any proposed or final rule.

The CCD Housing Task Force is extremely pleased to see that HUD has included several new references to chronic homelessness in the proposed rules. These additions, which are product of Administration policy rather than changes to the ConPlan statute, will highlight for state and local housing officials the importance of including strategies to address chronic homelessness in the ConPlan.

Comment on the New Freedom Initiative for People with Disabilities

However, we are concerned that HUD's proposed rule does not refer to another equally important Administration policy – the President's New Freedom Initiative for People with Disabilities. President Bush announced the New Freedom Initiative on February 1, 2001 as part of a nationwide effort to remove barriers to community living for people with disabilities. As part of the New Freedom Initiative, the President issued Executive Order 13217, “Community-Based Alternatives for Individuals with Disabilities”, calling upon the federal government to assist states and localities to swiftly implement the decision of the United States Supreme Court in *Olmstead v. LC*.

Decent, safe, and affordable housing is central to the success of the goals articulated in New Freedom Initiative. Funding governed directly or indirectly by the ConPlan is critically important to expanding housing opportunities for people with disabilities – particularly affordable rental housing opportunities for those people with disabilities with the lowest incomes as well as the homeownership goals included in the Executive Order. Without a specific HUD reference in the ConPlan regulations and guidance to the New Freedom Initiative – as HUD has done for the goal of ending chronic homelessness – it is much less likely that state and local housing officials will establish a high priority in the ConPlan for people with disabilities living in restrictive settings which violate the integration mandates in the ADA. This housing issue is directly relevant to

state ConPlans, which should be linked to the state strategies being developed through the Real Choice Systems Change grants awarded to states by HHS.

To address this issue, the CCD Housing Task Force recommends that the proposed rule be modified to include specific references to the community living goals for people with disabilities stated in the Administration's New Freedom Initiative Executive Order. ConPlan guidance to states should also incorporate specific references to HHS's Real Choice Systems Change grants program. We believe these modifications are needed to encourage states (as well as localities) to assess needs and develop strategies to improve affordable and permanent community living options for people with disabilities.

Comment on HUD's Form 2A – Housing and Homeless Needs Assessments

In 91.205(b) (Housing and homeless needs assessment, categories of persons affected), there is a specific statutory requirement that jurisdictions assess the housing needs of persons with disabilities. However, CCD is concerned that HUD's ConPlan Table 2A (which directly pertains to this section of the rule) does not include a separate reference to persons with disabilities as it does to other groups included in 91.205 (such as elderly households). Table 2A's single reference to persons with disabilities is included only in the sub-category of “special populations”. This sub-category is confined to a discussion of supportive housing needs of many other sub-populations.

Referring to people with disabilities solely within a sub-category of “special needs populations” does not provide an accurate assessment of a jurisdiction's housing needs with respect to all people with disabilities but limits the assessment to people with disabilities with supportive housing needs. As HUD well knows, many people with disabilities do not need supportive housing but do need decent, safe, and affordable housing.

The narrative statements of many ConPlans we have read are based on the categories included on these HUD's forms. For that reason, many ConPlans lack an assessment of housing needs of people with disabilities other than an assessment of their supportive housing needs. The CCD Housing Task Force recommends that HUD include a specific reference to the housing needs of people with disabilities in the main text of Table 2A to help jurisdictions understand that both supportive and non-supportive housing needs of people with disabilities must be identified.

Comment on Including the Definition of Disabling Condition

The CCD Housing Task Force is concerned that including the definitions of “Chronically Homeless Person” and “Disabling Condition” in Section 91.5, may cause confusion regarding the distinctions between HUD's definition of disabled person vs. the new definition of a person with a disabling condition. As you know, the definition of disabling condition is much broader than the definition of disabled person used for HUD programs. Specifically, the definition of “disabling condition” includes a person with a “diagnosable substance use disorder” – a person who would not be considered disabled under HUD's disabled definition.

While it is important that HUD continue to reinforce the goal of ending chronic homelessness, including the definition of “disabling condition” can have unintended consequences. To avoid this problem HUD should provide additional guidance to ConPlan jurisdictions clarifying these distinctions. In particular, HUD should make it clear that HUD's definition of “person with disabilities” applies uniformly to the all of requirements of the ConPlan, and that the term disabling condition applies specifically to the sections of the ConPlan that relate exclusively to chronically homeless people.

Please feel free to contact Ann O'Hara at the Technical Assistance Collaborative at (617) 266-5657 or aohara@tacinc.org for additional information or questions concerning the above comments.

Sincerely,

Co-Chair Andrew Sperling, National Alliance for the Mentally Ill

Co-Chair Liz Savage, The Arc/UCP Public Policy Collaboration

Co-Chair Kathleen McGinley, National Association of Protection and Advocacy Systems

Ann O'Hara, Technical Assistance Collaborative, Inc.