



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

June 12, 2018

Submitted via [www.fhfa.gov/open-for-comment-or-input](http://www.fhfa.gov/open-for-comment-or-input) and [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov).

Alfred Pollard  
General Counsel  
Federal Housing Finance Agency  
Eighth Floor  
400 Seventh Street SW  
Washington DC 20219

**Re: Comments/RIN 2590-AA83 Affordable Housing Program Amendments**

Dear General Counsel Pollard:

Thank you for opportunity to submit the following comments on behalf of the Consortium for Citizens with Disabilities (CCD) Housing Task Force (HTF) regarding the Federal Housing Finance Agency March 14, 2018 Federal Register Notice “Affordable Housing Program Amendments”.

CCD is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of the over 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.

The CCD HTF commends the Federal Housing Finance Agency (FHFA) for identifying the need for housing for people with disabilities as an underserved population and including it specifically under “(ii) Housing for Special Needs” as well as “(iii) Housing for other Targeted Populations”.

**There is significant need for housing for people with disabilities.**

As discussed in *Priced Out*<sup>1</sup>, approximately 4.8 million adults with disabilities who are between the ages of 18 and 64 received income from the Supplemental Security Income (SSI) program in 2016. The enormity of rental housing costs relative to monthly SSI payments affects the daily lives of millions of adults with disabilities. Unless they have rental assistance or live with other household members who have additional income, virtually everyone in this group has great difficulty finding housing that is affordable.

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<sup>1</sup> Technical Assistance Collaborative, Inc. and Consortium for Citizens with Disabilities Housing Task Force. (2018). *Priced Out: The Housing Crisis for People with Disabilities*. <http://www.tacinc.org/media/59493/priced-out-in-2016.pdf>.

Approximately 1.2 million households of single non-elderly adults with disabilities or non-elderly adults with disabilities who have at least one child receive rental assistance through the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA)<sup>2</sup> – but many others are not so lucky. Instead, many people with disabilities are:

- *Rent Burdened*: In its 2017 *Worst Case Housing Needs Report to Congress*, HUD found that 1.39 million worst case needs households included a non-elderly person with disabilities, a 28% increase from 2013.<sup>7</sup> As researcher Matthew Desmond’s recent work has illustrated, rent burdened households are at high risk of eviction.
- *Homeless*: The 2017 Annual Homeless Assessment Report (AHAR) found approximately 111,900 persons with serious mental illness, 89,300 persons with chronic substance abuse, and 10,200 persons with HIV/AIDS who were homeless. The report also identified approximately 90,000 “chronically homeless” people (people with disabilities who have been continuously homeless for a year or more or have experienced 4 or more extended episodes of homelessness in the last 3 years).<sup>3</sup>
- *Living in Institutions*: The reported number of non-elderly persons with disabilities living in nursing facilities is between 200,000 and 300,000.<sup>4</sup> Mathematica’s most recent annual evaluation of the Money Follows the Person (MFP) program found almost 190,000 non-elderly people with physical disabilities, over 77,000 with intellectual or developmental disabilities (I/DD), and over 34,000 with psychiatric disabilities living in Medicaid-supported nursing homes, intermediate care facilities for individuals with intellectual disabilities, psychiatric facilities, or long-term care hospitals for at least 90 continuous days. The annual publication *State of the States in Intellectual and Developmental Disabilities* reports that in 2015 nearly 70,000 persons with I/DD lived in settings with 16 or more persons, including more than 27,000 in nursing facilities, more than 21,000 in state institutions, and more than 17,000 in private intermediate care facilities.<sup>5</sup> The National Association of State Mental Health Program Directors found that approximately 40,000 people with mental illness reside in state mental health institutions.<sup>6</sup>
- *Living with Aging Family Members*: The *State of the States* report cited above found that in 2015 over 870,000 people with I/DD live with caregivers who are 60 years of age or older. When their caregivers are no longer able to provide the necessary supports, some

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<sup>2</sup> Center on Budget and Policy Priorities (2017). United States Fact Sheet: Federal Rental Assistance, 3/30/17. <https://www.cbpp.org/sites/default/files/atoms/files/4-13-11hous-US.pdf>

<sup>3</sup> U.S. Department of Housing and Urban Development. (2017). *The 2017 Annual Homeless Assessment Report (AHAR) to Congress*. <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf> and [https://www.hudexchange.info/resource/reportmanagement/published/CoC\\_PopSub\\_NatlTerrDC\\_2017.pdf](https://www.hudexchange.info/resource/reportmanagement/published/CoC_PopSub_NatlTerrDC_2017.pdf)

<sup>4</sup> Harris-Kojetin L. et al. (2013). Long-term care services in the United States: 2013 overview. National Center for Health Statistics. *Vital Health Stat* 3(37).

<sup>5</sup> Braddock, D.L., Hemp, R.E., Tanis, E.S., Wu, J., & Haffer, L. (2017). *The State of the States in Intellectual and Developmental Disabilities: 2017*. American Association on Intellectual and Developmental Disabilities, Washington, DC.

<sup>6</sup> Parks, J. & Radke, A., eds. (2014). *The vital role of state psychiatric hospitals*. National Association of State Mental Health Program Directors, Alexandria, VA. [https://www.nasmhpd.org/sites/default/files/The%20Vital%20Role%20of%20State%20Psychiatric%20HospitalsTechnical%20Report\\_July\\_2014.pdf](https://www.nasmhpd.org/sites/default/files/The%20Vital%20Role%20of%20State%20Psychiatric%20HospitalsTechnical%20Report_July_2014.pdf).

of these individuals can rely on siblings or other family, while others will have the means to pay for a market rate apartment and private supports. But for a great many, SSI is their sole or predominant source of income and they will need affordable housing and supports to continue to live in the community and avoid institutionalization.

Current regulations identify housing for “special needs” populations as an eligible housing need under the Bank First District Priority; these populations include people with disabilities, as well as seniors, people in recovery, and people with AIDS.<sup>7</sup> The proposed rule would maintain this priority status while increasing the percentage of units reserved for occupancy by these populations, expanding the subpopulations, updating the terminology used to refer to the subpopulations, and adding a requirement for access to supportive services.<sup>8</sup>

**We submit the following comments in response to Question 30, “Is the proposed increase in the minimum threshold from 20 to 50 percent for the number of units in a project reserved for people with a specific special need appropriate?”**

We appreciate the FHFA’s goal of increasing affordable housing for these populations. **As it pertains to people with disabilities, however, we do not** agree that the proposed increase in the minimum threshold from 20 to 50 percent for the number of units in a project reserved for households with a specific special need is appropriate. Our comments are specific to non-elderly people with disabilities and do not represent other populations under this category, such as seniors or people in recovery.

As HUD outlined in its 2013 *Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead*,<sup>9</sup>

“Individuals with disabilities have historically faced discrimination that limited their opportunity to live independently in the community and required them to live in institutions and other segregated settings. In 1999, the United States Supreme Court issued the landmark decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), affirming that the unjustified segregation of individuals with disabilities is a form of discrimination prohibited by Title II of the Americans with Disabilities Act (ADA). Following the *Olmstead* decision, there have been increased efforts across the country to assist individuals who are institutionalized or housed in other segregated settings to move to integrated, community-based settings. In addition, states are “rebalancing” health care delivery systems by shifting away from an overreliance on providing long-term services and supports to individuals with disabilities in institutions, hospitals, nursing homes, adult care facilities, and other restrictive, segregated settings and moving towards a

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<sup>7</sup> 12 C.F.R. 1291.5, “Special needs. The financing of housing in which at least 20 percent of the units are reserved for occupancy by households with special needs, such as the elderly, mentally or physically disabled persons, persons recovering from physical abuse or alcohol or drug abuse, or persons with AIDS; or the financing of housing that is visitable by persons with physical disabilities who are not occupants of such housing;”

<sup>8</sup> “Housing for special needs populations. The financing of housing in which at least 50 percent of the units are reserved for, and provide supportive services or access to supportive services for, households with specific special needs, such as: The elderly; persons with disabilities; formerly incarcerated persons; persons recovering from physical abuse or alcohol or drug abuse; victims of domestic violence, dating violence, sexual assault or stalking; persons with HIV/AIDS; or unaccompanied youth; or the financing of housing that is visitable by persons with physical disabilities who are not occupants of such housing.”

<sup>9</sup> Available at <https://www.hud.gov/sites/documents/OLMSTEADGUIDNC060413.PDF>.

greater reliance on home- and community-based services. For many states, these efforts to comply with *Olmstead* and rebalance the way long-term services and supports are provided by moving individuals out of institutions and into the community are confounded by a lack of integrated housing options for individuals with disabilities. As a result, there is a great need for affordable, integrated housing opportunities where individuals with disabilities are able to live and interact with individuals without disabilities, while receiving the health care and long-term services and supports they need.

HUD states further,

In practical terms, this means that states must find housing that enables them to assist individuals with disabilities to transition out of institutions and other segregated settings and into the most integrated setting appropriate to the needs of each individual with a disability.

In response to the question “**1. What does the most integrated setting mean and how does an integrated setting differ from a segregated setting?**” HUD goes on to say

In its 1991 rulemaking implementing Title II of the ADA, the U.S. Department of Justice defined “the most integrated setting appropriate to the needs of qualified individuals with disabilities” as “a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible.” The Department of Justice reinforced this definition in 2011 when it issued a statement on enforcement of the integration mandate of Title II of the ADA and *Olmstead* (DOJ *Olmstead* Statement) and described the following additional characteristics of integrated settings as:

those that provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities. Integrated settings are located in mainstream society; offer access to community activities and opportunities at times, frequencies and with persons of an individual’s choosing; afford individuals choice in their daily life activities; and provide individuals with disabilities the opportunity to interact with non-disabled persons to the fullest extent possible.

Within the context of housing, integrated settings enable individuals with disabilities to live like individuals without disabilities. Integrated settings also enable individuals with disabilities to live independently with individuals without disabilities and without restrictive rules that limit their activities or impede their ability to interact with individuals without disabilities. 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.

By contrast, segregated settings are occupied exclusively or primarily by individuals with disabilities. Segregated settings sometimes have qualities of an institutional nature, including, but not limited to, regimentation in daily activities, lack of privacy or

autonomy, policies limiting visitors, limits on individuals' ability to engage freely in community activities and manage their own activities of daily living, or daytime activities primarily with other individuals with disabilities.”

We see these ideas come to life in housing and services programs funded by HUD and the Department of Health and Human Services (HHS), in Department of Justice (DOJ) settlement agreements with states, and in Congressional action.

For example, the Section 811 Project Rental Assistance (PRA) program was authorized under the bipartisan Frank Melville Supportive Housing Investment Act of 2010 to create integrated housing opportunities for people with disabilities. The Section 811 PRA program creates state level partnerships between housing and services agencies and provides these partnerships with funds for rental assistance to be used in not more than 25 percent of the units in any given project. Similarly, the HHS Centers for Medicare and Medicaid Services (CMS) home and community-based services (HCBS) settings requirements set standards to ensure that Medicaid community-based services are non-institutional in nature. HCBS consumers must be integrated with the community, and given choices regarding services and supports, and who provides them. Consumers also must be treated with dignity and respect, and be free from coercion and restraint. Additional requirements apply when the service provider owns or otherwise controls the consumer's residence. DOJ in *Olmstead* settlement agreements with numerous states requires states to identify or develop housing and supports to assist people with disabilities to move from institutions or segregated settings into the community.

The CCD HTF urges the FHFA to provide incentives for the development of housing for people with disabilities that is aligned with federal policy goals of disability inclusion and retains the maximum percentage of units to 25 percent, consistent with HUD's Section 811 PRA program. We also recommend that FHFA clarify that supportive services must be offered on a voluntary basis, and many not be required.

We recommend that FHFA remove the term “persons with disabilities” from 12 CFR 1291.48 (c)(1)(ii). Further we recommend that FHFA add a new section 12 CFR 1291.48 (c)(1)(vii) that reads:

(vii) *Housing for people with disabilities.* The financing of housing in which no more than 25 percent of the units are reserved for, and provide voluntary supportive services for, households that include persons with disabilities.

With this recommendation, the CCD HTF seeks to ensure that the Federal Home Loan Banks Affordable Housing Programs provides an equal incentive for these units to be constructed while aligning with the goals and principles of *Olmstead* as well as other federal agencies.

Thank you again for the opportunity to comment on Federal Housing Finance Agency, March 14, 2018 Federal Register Notice, “Affordable Housing Program Amendments”.

Sincerely,

Andrew Sperling, National Alliance on Mental Illness  
Co-Chair, CCD Housing Task Force

T.J. Sutcliffe, The Arc of the United States  
Co-Chair, CCD Housing Task Force