



November 23, 2022,

*Via email* rad2@hud.gov

To Whom It May Concern:

Thank you for the opportunity to comment on potential changes to Section IV of the current RAD Notice to facilitate the conversion of Section 811 Capital Advance/PRAC properties to a more financially viable model.

The Consortium for Constituents with Disabilities (CCD) is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of children and adults with disabilities in all aspects of a society free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ based discrimination and religious intolerance. The CCD Housing Task Force (HTF) works to ensure that all people with disabilities have safe, stable, accessible, affordable, and integrated housing that enables people to live in communities of their choosing, with full access to home and community-based services and supports.

The term “disability” describes a diverse group of individuals. A person’s disability can be related to vision, hearing, movement, communication, cognition, and/or psychosocial issues. A disability can occur at birth, older age, or anytime in between. It can be congenital or arise from chronic illness, injury, malnutrition, or aging. The CDC estimates that one in five people in the United States has a disability. Due to the impacts of systematic racism, poverty, or both, disability is disproportionately experienced by Black and Brown communities and among extremely low and no-income people. Americans with disabilities are one of the largest minority groups in the country and growing. Estimated numbers vary from 40 million to over 60 million people. COVID continues to further impact the size of the population as a result of long-term consequences that are still being identified.

CCD HTF is pleased that Congress expanded the RAD program to include the preservation of properties funded with Section 811 Capital Advance/PRAC. HUD’s articulation of the goals of the RAD program includes the preservation of affordable housing for the target population (people with disabilities ages 18-61), creating resident choice, bringing properties into compliance with accessibility requirements, and creating new housing options for people with mobility, hearing, or vision disabilities<sup>1</sup> are aligned with the goals of the CCD HTF. CCD HTF was very pleased to see that HUD understands that “these properties also experience unique challenges as owners satisfy community integration mandates and supportive service program requirements, all of which will be maintained through the RAD conversion process”.

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<sup>1</sup> [https://www.hud.gov/sites/dfiles/Housing/documents/RAD\\_Overview\\_06072021.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/RAD_Overview_06072021.pdf)

Despite the HTF's concerns about the S. 811 Capital Advance/PRAC portfolio's current alignment with Olmstead (see below), at this point in time, when the housing needs of extremely low-income people with disabilities are so great, preservation of these 30,000-plus units across the country is critical. According to HUD's most recent Worst Case Housing Needs Report, there are over a million households with worst-case housing needs that include a younger person with a disability; half a million of these households include a single individual. Households with worst-case housing needs are very low-income renters— households with incomes at or below 50 percent of area median income—who do not receive government housing assistance and pay more than one-half of their income toward rent, live in severely inadequate conditions or both. For people with disabilities who rely on Supplemental Security Income and other forms of federal assistance, there is no US housing market where rent is affordable. This is impacting over 4 million people with disabilities<sup>2</sup>.

The high poverty rates and struggle to afford housing have only exasperated during the pandemic. One year after the pandemic, nearly 40 percent of renters with any disability experienced housing insecurity, in that they either deferred paying their rent or reported no or slight confidence in their ability to pay next month's rent. This is substantially higher than the national average of 25 percent. Disabled Black and Hispanic renters were especially likely to be housing insecure, at 52 percent and 50 percent.<sup>3</sup>

The CCD HTF has the following observations, comments and concerns as HUD considers how to make real this Congressional mandate:

- As articulated by the U.S. Department of Justice on the last anniversary of the ADA<sup>4</sup>, “In Olmstead, the Court ruled that the ADA prohibits unnecessary segregation of people with disabilities, who have a right to live and receive services in the most integrated setting appropriate. Enforcement of this “integration mandate” has enabled many thousands of people with disabilities to live in their homes and communities instead of in institutions and to have greater independence, autonomy, and opportunities to participate fully in their communities. The ongoing public health emergency underscores the urgency of providing meaningful alternatives to institutional care for people with disabilities. As described above, since the onset of the pandemic, more than 200,000 long-term care facility residents and staff have lost their lives to COVID. The integration mandate has been crucial not just to afford people with disabilities independence, dignity, and self-determination; it has been important in protecting against danger.” Where a S.811 PRAC property is a large, segregated building, HUD should consider creative models to convert these properties into integrated housing. This might include moving some or all of the PRAC to other properties in a scattered site approach and backfilling some of the units in the S.811 property with non-disabled persons. The HTF understands that to both preserve and integrate may be challenging. However, we feel confident that HUD with owners can explore models and pilots to achieve this balance. This is especially important if larger properties are part of the S.811 PRAC portfolio.

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<sup>2</sup> <https://www.tacinc.org/resources/priced-out/>

<sup>3</sup> <https://www.americanprogress.org/article/recognizing-addressing-housing-insecurity-disabled-renters/>

<sup>4</sup> <https://www.justice.gov/opa/blog/justice-department-commemorates-anniversary-olmstead-v-lc-1>

- RAD’s cost neutrality requirements are challenging for S.811 PRAC projects. S.811 PRAC projects are significantly smaller than the projects currently being converted through the RAD program. Estimates based on HUD’s FY22 Congressional Justification<sup>5</sup> indicate that S. 811 PRAC properties have an average of 12 units while S.202 properties have an average of 42 properties and that public housing properties converted through RAD may have closer to 70 units on average. The small size of these S. 811 PRAC properties may make RAD conversions more difficult. For example, they may be more expensive per unit and per contract. They are less likely to be eligible or competitive for LIHTC projects and thus have a harder time securing funds to address capital needs, making them potentially ineligible for RAD. HUD may need to dispense with or be more flexible with cost neutrality in order to preserve this critical source of housing for people with disabilities.
- The current Notice offers the option of bundling properties for conversion, which may make RAD a viable option for S. 811 PRAC properties. Bundling might be an effective model for properties that can easily be brought under one “umbrella”, e.g., have a single management entity or ownership is “related” through a third party. The HTF does not know what percentage of the S.811 PRAC portfolio fits this description. The HTF is also concerned the costs relative to such a complex transaction might be prohibitive; given the potentially large number of separately-owned properties that may have to be included, it will certainly be a complex transaction. Finally, the HTF feels strongly it is incumbent on HUD to explore these issues proactively with owners, possibly through a pilot project, and that HUD should not leave owners on their own to devise creative ways to preserve this important portfolio.
- HUD asks what processes it should consider reviving units under contracts that may not have been occupied due to contracts not meeting the integration mandate codified under Olmstead. There could be many different reasons related to the integration mandate that the units are not occupied; different problems require different solutions. For example, if the property is not physically accessible, funds may be able to be identified to make the property accessible. If a determination is made that the property cannot reasonably be made accessible (e.g., split level home), the subsidy could be transferred to another property. If the issue is the provider’s administration of the service program – e.g., the provider does not allow choice of roommates, freedom to furnish and decorate a room, provide door locks, etc., the state oversight agency can work with the provider to make these changes or could replace the provider agency. If the property serves eight persons in four bedrooms, and the state will only fund services where there are a maximum of four persons, HUD should consider a rent increase to ensure continued operation at that location. Where there are eight rooms and the property can be modified or reconfigured into two four-bedroom apartments, HUD should support such a reconfiguration.
- Generally, people with disabilities seek opportunities for more integrated living amongst people without disabilities. However, some CCD HTF members represent people with disabilities who

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<sup>5</sup> [https://www.hud.gov/program\\_offices/cfo/reports/fy22\\_CJ](https://www.hud.gov/program_offices/cfo/reports/fy22_CJ)

seek a single-site living. This specifically applies to the Deaf and Hard of Hearing community, who prefer to live in a community primarily comprised of people who are Deaf and Hard of Hearing. This is due to the need to nurture, cultivate and preserve shared Deaf culture and language. The CCD HTF supports the right of these individuals to such choices and self-determination. CCD HTF does not support single-site settings where the individual tenants with disabilities have not themselves determined the choice or settings that are not consistent with the Center for Medicare and Medicaid's (CMS) "settings rule."

- As per 4.7.3 of the Notice, the CCD HTF is pleased that the Notice reminds owners that "When providing [the required] resident notifications and conducting resident meetings, the Project Owner must use effective communication for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act of 1973 and, as applicable, the Americans with Disabilities Act of 1990. Effective communication includes, but is not limited to, providing written materials in appropriate alternative formats (e.g., Braille, large type), as needed, and providing sign language interpreters and assistive listening devices at resident meetings, as needed (24 CFR § 8.6). Additionally, resident meetings must be held in facilities that are physically accessible to persons with disabilities. Where physical accessibility is not achievable, a Project Owner must use alternative methods to meet with qualified individuals with disabilities, such as holding meetings at an alternate accessible site or offering in-home meetings. Such meetings must be provided in the most integrated setting appropriate to the needs of qualified individuals with disabilities in a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible." Many of the S.811 PRAC tenants are people who have mental health, intellectual, and/or developmental disabilities. The CCD HTF is concerned that these individuals also received effective communication and are provided with an opportunity to make their own choices and decisions. We are concerned that owners may take shortcuts or communicate with family members rather than the tenants themselves. While communication with a family member or friend, a case manager, or an advocate may be helpful to the tenant, it is not a substitute for ensuring direct, appropriate, and effective communication with the tenant.
- The RAD program seeks to preserve two things: (1) property/capital and (2) subsidy. The CCD HTF would argue that given the tremendous needs of low-income people with disabilities, HUD is obligated to preserve the subsidy even when it cannot preserve the capital. The 210 or 8(bb) process provides a potential path to preserving the PRAC. Transferring subsidy is very cumbersome, even when an owner is willing to participate. The CCD HTF suspects that some owners will not be willing to go through such a process and might walk away from a project. In such a case, the HTF feels HUD should be required to seek ways to preserve the subsidy – not simply to add it to the larger pool of renewal funds but specifically to secure every one of the 30,000 plus units currently available.

As Congress has asked, HUD leadership must determine how the RAD program can be modified to ensure the preservation of these properties – even if this requires Congressional requests for funding or statutory changes. If RAD cannot, with or without such modifications, be used to preserve these properties, the CCD HTF urges HUD to work with Congress to develop a new program that will, at the very least, preserve the subsidy. To do less than this is to widen the gap in resources available to extremely low-income people with disabilities, consigning us to homelessness and institutionalization. To make available preservation options for all PRAC programs except S.811 Capital Advance Supportive Housing for People with Disabilities would be discriminatory on its face.

We would be pleased to meet with you to discuss these difficult issues further. Thank you for your consideration.

Sincerely,

Allie Cannington  
Allie@thekelsey.org  
The Kelsey  
Co-Chair, CCD Housing Task Force

Carlean Ponder  
Ponder@thearc.org  
The Arc of US  
Co-Chair, CCD Housing Task Force

Greg Robinson  
grobins@autisticadvocacy.org  
Autistic Self Advocacy Network  
Co-Chair, CCD Housing Task Force