



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

June 25, 2021

Virginia Sardone, Director

Office of Affordable Housing Programs, Room 7164

Office of Community Planning and Development

Department of Housing and Urban Development

451 7th Street SW

Washington, DC 20410-8000

Submitted electronically through www.regulations.gov

Re: Docket No. FR 5246-N-04: "Housing Trust Fund: Request for Public Comment on Prior Interim Rule"

The Consortium for Citizens with Disabilities (CCD) is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, integration, and inclusion of children and adults with disabilities in all aspects of society. I am writing on behalf of the CCD Housing Task Force (HTF) to comment on Docket No. FR 5246-N-04: "Housing Trust Fund: Request for Public Comment on Prior Interim Rule".

93.2 Definitions

The definition of **Housing** is outdated. CCD Housing Task Force recommends the following modifications.

"Housing includes ***but is not limited to*** manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, single-room occupancy housing, and ***other permanent housing options where the resident has the rights of tenancy and a lease of at least one year.*** ~~group homes.~~ Housing does not include emergency shelters (including shelters for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, halfway houses, housing for students, or dormitories (including farmworker dormitories)."

93.151 Income determinations

The Interim Rule uses Annual income as defined at 24 CFR 5.609 and Adjusted gross income as defined by the IRS as options for the determining applicant income.

CCD Housing Task Force recommends HUD use Adjusted income as defined art 24 CFR 5.611 instead of Annual income in Part 5. Many people with disabilities and seniors have costs such as unreimbursed health care or other disability-related costs that are recognized by 5.611 and more realistically reflect the amount of income available to a household for housing.

93.200 Eligible Activities: General

CCD Housing Task Force recommends HUD remove the limitation that:

“Not more than one third of each annual grant may be used for operating cost assistance and operating cost reserves.”

Such a limitation is not required by the statute and therefore should not be imposed on states. Each state is in the best position to identify its affordable housing development needs in any given year. Such latitude should be made available where it is not prohibited.

93.201 Eligible Project Costs

In 24 C.F.R. § 93.201(e)(1), HUD provides a limited definition of “operating costs,” permitting use only for “insurance, utilities, real property taxes, and maintenance and scheduled payments to a reserve for replacement of major systems.” This definition is not consistent with the industry standard, state’s underwriting practices, and Section 202 and 811 program policies in regards to operating costs. As a result, some states have been reluctant to move forward with providing operating costs assistance for critically important multi-family housing projects supporting extremely low-income (ELI) households especially permanent supportive housing.

CCD Housing Task Force recommends HUD add the following activities to the definition of operating costs in 24 C.F.R. § 93.201(e)(1):

- Costs associated with personnel providing maintenance and security for the property,
- Costs associated with personnel providing on-site front desk services and overall operational support for the property, and
- Costs associated with personnel providing service coordination services to tenants residing at the property.

93.250 Income Targeting

CCD Housing Task Force supports requiring 100% of the HTF funds be used to provide housing for extremely low-income households where there is less than \$1 billion available for the HTF in the given year.

93.302 Qualification as affordable housing: rental housing

CCD Housing Task Force supports the language changes to 93.302(b)(1)(i) in comments submitted by the National Low Income Housing Coalition on June 25, 2021.

93.303 Tenant Protections and selection. (d) Tenant Selection

CCD Housing Task Force has several recommendations to ensure that people with disabilities can participate equally in the National Housing Trust Fund.

1. In addition to complying with affirmative marketing requirements in 93.350, the owners of rental housing should be required to develop specific affirmative marketing plans for the accessible units to better ensure these units are leased by households requiring the design features. Such marketing activities could include outreach to the state's Money Follows the Person Program, any public housing agency's Mainstream voucher program or other programs specifically seeking to help persons with physical disabilities obtain housing.
2. 93.303 Tenant Protections and Selection. (d) Tenant Selection (3)(i) references the HOPWA program. CCD Housing Task Force recommends HUD's "*Section 811 Project Rental Assistance program (PRA)*" be referenced in addition as it is currently a more likely candidate for project based rental assistance at this time.
3. 93.303 Tenant Protections and selection. (d) Tenant Selection (3)(ii) includes outdated language regarding disability needs and supports. CCD Housing Task Force urges HUD to adopt for the HTF Rule similar modifications that PIH has adopted for the Section 8 Project Based Voucher (PBV) program.

First, CCD Housing Task Force urges HUD substitute the phrase "persons with disabilities who qualify for services" rather than "persons with disabilities who need services". HUD adopted this same change in the Federal Register of October 8, 2020 [Docket No. FR-6092-P-01] Housing Opportunity Through Modernization Act of 2016—Housing Choice Voucher (HCV) and Project Based Voucher Implementation; Additional Streamlining Changes.

"As previously implemented under the FR Implementation notice, a key component of the changes that the proposed rule provides is that the preference is for families who **qualify** [emphasis added] for the voluntary services offered at a particular project. Prior to the effective date of this HOTMA provision on April 18, 2017, PHAs were required to provide the preference to any disabled family who **needed** [emphasis added] the voluntary supportive services, regardless of whether the family was eligible to receive the services. "

Second, CCD Housing Task Force requests HUD remove the outdated language in the Interim Rule 93.303 Tenant Protections and selection. (d) Tenant Selection (3)(ii):

"(A) The limitation or preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain housing;

(B) Such families will not be able to obtain or maintain themselves in housing without appropriate supportive services; and

(C) Such services cannot be provided in a nonsegregated setting. The families must not be required to accept the services offered at the project.”

Again, HUD removed this same language in the Section 8 PBV program¹. As the Federal Register for that change stated:

“The current regulatory restrictions at § 983.251(d)(1) that limit the services preference only to a population of families with disabilities that (i) significantly interfere with their ability to obtain and maintain themselves in housing, (ii) who would not be able to obtain or maintain themselves in housing, and (iii) for whom such services cannot be provided in a nonsegregated setting **would be eliminated in this proposed rule.**”
[emphasis added]

While some supportive services may be provided on-site, as services are increasingly funded by a state’s Medicaid program for each qualified person on an individualized basis, the vast majority of services are today provided through community-based organizations and are available and can be provided to persons with disabilities in nonsegregated settings. The NHT language is obsolete and does not reflect the current environment in regards to the manner in which supportive services are offered.

4. 93.303 should include language reminding owners of rental housing that they are required by Section 504 to provide reasonable accommodations and reasonable modifications for people with disabilities. It is important that this reminder be included in the tenant selection portion of the Rule.

Tenant Screening and Criminal Records

In [Secretary Fudge’s June 23, 2021 letter](#) to a broad range of housing providers and in PIH Notice 20-15 implementing a \$5 Billion Emergency Housing Voucher program, HUD has strongly encouraged housing providers to reduce barriers to housing among people with criminal records. Consistent with this recent policy guidance, owners of rental housing should be required to comply with the Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (April 4, 2016), available at https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF, similar provisions PIH Notice 2015-19 and other guidance that ensures owners use reasonable and nondiscriminatory tenant screening procedures in regards to criminal history. Key guidance CCD Housing Task Force urges HUD to require of owners includes but is not limited to:

- Allow only review of criminal convictions and disallow screening or review for arrest history;

¹ Federal Register October 8, 2020 [Docket No. FR-6092-P-01] Housing Opportunity Through Modernization Act of 2016—Housing Choice Voucher (HCV) and Project Based Voucher Implementation; Additional Streamlining Changes.

- Adopt only reasonable look back periods that limit what criminal conduct is considered during the screening process based upon when the conduct occurred and/or the type of conduct;
- Prohibit blanket bans against people with criminal records;
- Allow prospective tenants/applicants to address and present mitigating circumstances regarding criminal backgrounds prior to admissions decisions; and
- Adopt admission policies that name specific factors that will be considered in evaluating the criminal record.

Thank you for the opportunity to comment on Docket No. FR 5246–N–04: “Housing Trust Fund: Request for Public Comment on Prior Interim Rule”.

Sincerely,

Andrew Sperling

Andrew Sperling

National Alliance on Mental Illness

CCD Housing Task Force, Chair