



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

March 19, 2007

The Honorable Charles Rangel
The Honorable Jim McCrery
Committee on Ways and Means
U.S. House of Representatives
1100 Longworth Office Building
Washington, DC 20515

Dear Chairman Rangel and Representative McCrery:

On behalf of the Consortium for Citizens With Disabilities (CCD) Housing Task Force, we are writing to offer our support for your Committee's efforts to modify the Low-Income Housing Tax Credit (LIHTC) program to foster more effective coordination with affordable housing programs at the Department of Housing and Urban Development (HUD). The CCD Housing Task Force applauds these efforts to make the LIHTC program more responsive to the affordable housing needs of people with disabilities.

As you move forward in drafting legislation, the CCD Housing Task Force recommends that you consider language modifying Section 42(d)(5)(A) of the Internal Revenue Code (IRC) to specifically provide that Project-Based Rental Assistance Contracts (PRACs) authorized as part of the HUD Section 811 program are NOT considered to be federal grants. Addition of language making this clarification is critical to efforts to promote public-private partnerships that show enormous promise in expanding affordable housing opportunities for non-elderly people with disabilities.

Background

Section 42(d)(5)(A) of the Internal Revenue Code provides that the amount of tax credits awarded to a building is reduced to the extent of any grant of federal funds made with respect to the building or operation thereof. Citing legislative history that "Congress did not intend to treat federal rental assistance payments as grants" the Treasury Department issued regulations in 1997, Treasury Regulations §1.42-16(b), excluding from the definition of federal grant certain rental assistance payments made to a building owner on behalf of a tenant. Payments are excluded therefore if made pursuant to: (1) Section 8 of the United States Housing Act of 1937 ("the Act"); (2) A qualifying program of rental assistance administered under Section 9 of the

Act; or (3) A program or method of rental assistance as the Secretary may designate by publication in the Federal Register or in the Internal Revenue Bulletin.

Following up on that regulation, the Service has subsequently issued guidance excluding three other rental assistance programs from the definition of federal grant, including: payments made to building owners under the Section 8 Assistance for Single Room Occupancy Dwelling Program, and the Shelter Plus Care Program¹; rental assistance payments under the Housing Opportunities for Persons with AIDS (“HOPWA”) Program²; and, rental assistance payments under the 236 program and under section 101 of the National Housing Act³.

Those rulings were based on specific requests by affected organizations. Meanwhile, a number of other federal housing programs – including the HUD Section 811 program – that provide rental assistance under substantially identical rules have not received clearance from the IRS, and there is some confusion whether they could be considered a federal grant.⁴ This confusion often results in the expenditure of significant legal and administrative costs as part of the process of lining up sufficient financing to develop an affordable housing property.

In addition, there are other programs that provide operating assistance to enable Housing Credit properties to rent units to the lowest income tenants at rates they can afford. These operating subsidies are economically equivalent to rental assistance payments and should be treated the same for purposes of determining whether they are federal grants under section 42(d)(5)(A). The purpose of the federal grant rule is to prevent credits from being awarded on construction costs that are not paid by the owner of the property, but that are instead covered by a federal grant. While that rule should be preserved, it should not apply to operating subsidies that are designed to make the property affordable to the lowest income tenants.

The CCD Housing Task Force looks forward to working with you to include this important clarification in any legislation the Committee brings forward to amend the LIHTC program. We would look forward to meeting with your staff to discuss this further. Your staff can reach us by contacting either: Liz Savage at The Arc and UCP Disability Policy Collaboration (202-783-2229), Kathy McGinley at NDRN (202-408-9514) or Andrew Sperling at NAMI (703-516-7222).

Thank you for your consideration on this important issue.

¹ Revenue Ruling 98-49

² Revenue Ruling 99-39

³ Revenue Ruling 2002-65

⁴ Among these programs are Rural Development Rental Assistance, Rural Development Interest Credit Subsidies, HUD Section 236 Interest Reduction Payments, HUD Section 202 Project Rental Assistance Contracts, NAHASDA (Native American Housing and Self-Determination Act), Supportive Housing Program leasing payments and operating cost payments, Section 202 and Section 811 project rental assistance contracts, HOME tenant based rental assistance, HOPWA (Housing Opportunities for People with AIDS) operating subsidies, VA per diem payments.

Sincerely,

CCD Housing Task Force Co-Chairs:

Andrew Sperling
National Alliance on Mental Illness

Liz Savage
The Arc and UCP Disability Policy Collaboration

Kathleen McGinley
National Disability Rights Network

The Consortium for Citizens with Disabilities Housing Task Force is a Washington-based coalition of national disability organizations which advocates on behalf of the housing needs of people with a variety of disabilities, including mental retardation and other developmental disabilities, mental illness, and physical disabilities, including mobility and sensory impairments. Among the national disability organizations that participate in the CCD Housing Task Force are the National Alliance on Mental Illness (NAMI), The Arc of the United States (The Arc) United Cerebral Palsy (UCP), the National Disability Rights Network (NDRN), the American Network of Community Options and Resources (ANCOR), United Cerebral Palsy (UCP), the Paralyzed Veterans of America (PVA), Easter Seals, United Spinal Association, the National Multiple Sclerosis Society (NMSS), Mental Health America (MHA), and the Brain Injury Association (BIA),