



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

January 6, 2020

R. Hunter Kurtz
Assistant Secretary
Office of Public and Indian Housing
U.S. Department of Housing and Urban Development
Washington, DC 20410-0500

Submitted electronically through www.regulations.gov

Re: 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”

Dear Assistant Secretary Kurtz:

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. We are writing on behalf of the CCD Housing Task Force (HTF) to comment on 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.”

Comments on Proposed Changes to 24 CFR Part 982 Housing Choice Voucher Program

Increased payment standard as a reasonable accommodation - § 982.503(d)(4)

The CCD Housing Task Force (HTF) strongly urges HUD to revise the payment standard regulations (and revise or rescind inconsistent Office of Public and Indian Housing notices) to make it clear, as provided in Section 102(d)(1) of HOTMA, that tenants who request a reasonable accommodation for an increase in the payment standard are not required to pay 40% of their income in rent to see the benefits of the accommodation. Fair housing laws allow a person with a disability to request higher payments standard as a reasonable accommodation if there is a disability-related need for a particular unit (for example, it has accessibility features or is located in proximity to services/supports which will be lost if the client has to relocate). As provided in Section 102(d)(1) of HOTMA, a PHA can grant a request of up to 120% of FMR as a reasonable accommodation, and anything above 120% FMR must be approved by the HUD central office. Unfortunately, HUD issued PIH Notices beginning in 2010 that appear to require

tenants pay at least 40% of their income before HUD would grant a higher payment standard.¹ These notices were published prior to passage of HOTMA.

Section 102(d)(1) of HOTMA amends 42 U.S.C. § 1437f(o)(1)(D) as follows:

A public housing agency may use a payment standard that is greater than 120 percent of the fair market rent as a reasonable accommodation for a person with a disability, but only with the approval of the Secretary. **In connection with the use of any increased payment standard established or approved pursuant to either of the preceding two sentences as a reasonable accommodation for a person with a disability, the Secretary may not establish additional requirements regarding the amount of adjusted income paid by such person for rent.**

This section of HOTMA was self-implementing. HUD issued an implementation notice regarding Section 102(d)(1) in the fall of 2016, and discussed the right of PHAs to begin to approve payment standards of up to 120% of FMR as a reasonable accommodation, but did not discuss the language in the third sentence and how it rendered HUD's prior PIH notices requiring a 40% payment obsolete.² Despite the clear language in the statute, PHAs have been reluctant to implement the third sentence because of the inconsistent prior PIH notices and absent a clear HUD directive. HUD must act now to ensure that the third sentence of Section 102(d) is given full effect, and that PHAs are clearly directed to no longer follow the inconsistent language in the prior PIH notices. HUD should add the following sentence to 982.503(d)(4):

A PHA may not establish a policy that requires families to pay an additional amount of adjusted income based on a reasonable accommodation for an exception payment standard.

HUD's List of Life-threatening Conditions - 24 C.F.R. § 401(o) (HUD Question 3)

HOTMA allows PHAs to make housing assistance payments if the unit fails an Housing Quality Standards inspection but only for non-life-threatening conditions.³ The proposed rule codifies a list of life-threatening conditions and allows tenants to move into a unit for any conditions that do not appear on the list.⁴ The list is unchanged from the rule previously proposed in the federal register. HUD is again requesting comment on whether its list of life-threatening conditions is comprehensive to ensure the health and safety of its residents.

¹ PIH Notice 2010-11, as extended and revised by PIH Notices 2011-19 and 2013-18.

² 81 Fed. Reg. 73030, 73031 (Oct. 24, 2016).

³ See HOTMA Sec. 101(a)(1)(A)(ii).

⁴ Proposed 24 C.F.R. § 401(o); 85 Fed. Reg. 63,699.

The CCD HTF urges HUD to include significant mold on its list of life-threatening conditions. Mold may trigger asthma,⁵ and asthma often has serious consequences.⁶ For children, asthma is a leading cause of school absences, accounting for 10.5 million lost school days in 2008.⁷ Despite highly effective treatment guidelines for asthma, the overall morbidity (attack rates, emergency department visits, and hospitalizations) and mortality rates among children have not decreased.⁸

Voucher Briefings - 24 C.F.R. § 301(b)

HUD made several welcome changes related to the rights of tenants with disabilities during the initial voucher briefing. For oral briefings, HUD added an explicit right to effective communication.⁹ For written briefings, HUD added a requirement that when disclosing info about subsidy standards, a PHA must include information about when the PHA will grant an exception to the standard, including as a reasonable accommodation under Section 504, FHA, or the ADA.¹⁰ Also for the written briefing, HUD requires PHAs to provide contact information for the Section 504 coordinator and information on how to request an accommodation.¹¹ If the family includes a person with a disability, the PHA must provide notice that the family may request a current listing of accessible units and other assistance in locating an available accessible unit.¹²

In communities across the country, families with vouchers face numerous barriers to obtaining accessible units. Because PHAs are only required to provide info on *known* accessible units, people with disabilities often wait an unreasonable period of time before an appropriate unit becomes known or available. HUD should require that PHAs make available meaningful information about accessible units to all tenants and provide housing search assistance to tenants who have specific accommodation needs. This is consistent with 24 CFR § 8.28(a)(3).

HUD should develop sub-regulatory guidance for PHAs in this area that includes suggestions for proactively identifying a variety of accessible units, including new construction and substantially rehabilitated units financed through the Low Income Housing Tax Credit Program, as well as units marketed through web sites including, but not limited to, <https://www.socialserve.com/> (which is used in 29 states and Washington, DC).

Comments on Proposed Changes to 24 CFR Part 983 Project Based Vouchers (PBV)

How participants are selected - § 983.251

⁵ Testimony of Emily Benfer, JD, LLM, Solomon Center for Health Law And Policy, Yale Law School, Before the House Financial Services Subcommittee on Housing and Insurance: Oversight of the Federal Government's Approach to Lead-Based Paint and Mold Remediation in Public and Subsidized Housing (June 26, 2018) at 4.

⁶ See, e.g., Illinois. Dept. of Pub. Health, Addressing Asthma in Illinois (2009), http://www.idph.state.il.us/pdf/Asthma_State_Plan_3rd_Edit.pdf (25 percent of adults with asthma are unable to work or carry out daily activities).

⁷ *Id.*

⁸ Marla McDaniel et al., Urban Institute, Making Sense of Childhood Asthma: Lessons for Building a Better System of Care (2014).

⁹ 301(a)(4).

¹⁰ See 301(b)(8).

¹¹ 301(b)(10.)

¹² See 301(b)(12).

The CCD Housing Task Force appreciates the improvements to this important component of the regulation and strongly encourages HUD to adopt these changes in the final rule. First, the CCD HTF supports the modification in the rule that requires eligible families to **qualify** for services. Section 106(a)(7)(B) of HOTMA provides that a PHA (or owner, if the owner maintains a site-based waiting list, as discussed further below) may establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that the preference is consistent with the PHA Plan. HUD proposes to revise § 983.251(d) to cover PHA and owner preferences for families that qualify for these voluntary services. 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 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 the voluntary supportive services, regardless of whether the family was eligible to receive the services.

Second the CCD HTF supports the rule's emphasis that the use of these services by eligible applicants or tenants is voluntary. Families may not be required to accept the particular services offered at the project, and the preference may not be based on the family's agreement or commitment to accept the offered services. The preference may only be based on whether the family qualifies for the services offered in conjunction with the assisted unit. These preference requirements apply regardless of whether the preference is for a PBV excepted unit or a PBV non-excepted unit.

Further, HUD proposes to remove 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. The CCD HTF commends HUD for this proposed change; this section of the previous regulation was confusing and contradictory to the goal of providing integrated, independent housing for people with disabilities consistent with the goals of *Olmstead*.

We note that the preamble to the proposed rules includes the following two paragraphs, but that HUD does not include them in the proposed rule:

[T]he PHA would still have to ensure that the PBV project complies with all applicable Fair Housing and Civil Rights requirements, including but not limited to the requirement to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities under section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (see 24 CFR 8.4(d) and 28 CFR 35.130(d)).

Additionally, the PBV project where Medicaid-funded home and community based services will be offered as part of "disability-specific

services” must also fully comply with the federal home and community-based settings requirements found at 42 CFR 441.301(c)(4), (5) (“Home and Community-Based Settings”).

The CCD HTF strongly encourages HUD to incorporate these two paragraphs as written into §983.251 in the final rule. This will better ensure PHAs support the development of integrated housing for people with significant disabilities.

PHA information for accepted family - §983.252

The CCD HTF supports the language in proposed §983.252 that ensures effective communication with people with disabilities and that people with disabilities are made aware of their rights. The proposed rule provides that the PHA Information packet must include information on federal, State, and local equal opportunity laws, the contact information for the Section 504 coordinator, a copy of the housing discrimination complaint form, and information on how to request reasonable accommodations and modifications under Section 504, the Fair Housing Act, or the ADA; as well as information as to when the PHA will consider granting exceptions to the payment standards, including when required as a reasonable accommodation for a person with disabilities under Section 504, the Fair Housing Act, or the ADA. Further, the proposed rule requires the PHA to take appropriate steps to assure effective communication, in accordance with 24 CFR 8.6 and 28 CFR part 35, subpart E in conducting the oral briefing and in providing the written information packet, including in alternative formats.

The proposed rule also requires the PHA shall have some mechanism for referring to accessible PBV units a family that includes a person with a mobility or sensory impairment. As described in greater detail in the next section, it will be important that the PHA keep track of whether the current tenants in the accessible units require the design features – or not – and to ensure those who do not will be moved to an appropriate unit or offered a tenant-based voucher, in order to maximize utilization of the few affordable, accessible units that may be available in the community.

Over-crowded, under-occupied and accessible units - §983.260

The CCD HTF generally supports the language regarding the occupancy of accessible units but recommend slight modifications to ensure PHAs may lease accessible units to families who do not require the design features today but who can document that they will require the design features in the near future. For example, a household that includes a child with a disability such as Duchenne muscular dystrophy is likely to require an accessible unit during the child’s lifetime.

HUD should encourage PHAs to use a lease addendum for households occupying an accessible unit who do not require the design feature. Such an addendum will better ensure the family understands that it may be required to move and may provide the PHA will the necessary leverage to achieve such a move.

The CCD HTF recommends the following modifications to the proposed language:

§ 983.260 Overcrowded, under-occupied, and accessible units.

(a) Family occupancy of wrong-size or accessible unit. (1) The PHA subsidy standards determine the appropriate unit size for the family size and composition.

(2) If the PHA determines that a family is occupying a wrong-size unit, or a unit with accessibility features that the family does not require **and is not expected to require**, and the unit is needed by a family that requires the accessibility features (see 24 CFR 8.27), the PHA must, within 30 days from the PHA's determination:

(i) Notify the family and the owner of this determination, and

(ii) Offer the family continued housing assistance in another unit, pursuant to paragraph (b) of this section.

(3) Families leasing up an accessible unit who do not require and are not expected to require such design features, shall sign a lease addendum including the language from this section.

Thank you for this opportunity to submit comments on the "Housing Opportunity Through Modernization Act of 2016: Housing Choice Voucher (HCV) and Project-Based Voucher Implementation; Additional Streamlining Changes" proposed rule.

Sincerely,

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