

**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

November 7, 2005

Regulations Division
Office of General Counsel, Room 10276
Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410-0500

Re: Additional Comments on HUD's Draft Section 504 Self-Evaluation Report, Docket No. FR-4994-N-01; HUD-2005-0012

Filed electronically at: <http://www.regulations.gov>

To Whom It May Concern:

This letter re-submits a revised version of the Additional Comments submitted by the Consortium for Citizens with Disabilities (CCD) on August 22, 2005 in response to HUD's notice on its FHEO webpage stating it was extending the time to submit comments for 30 days from the original July 22, 2005 deadline. The CCD submits the following additional Comments to provide additional examples of how HUD's Self-Evaluation failed to evaluate its current policies and practices, and the effects of those policies and practices.

Applicability of Section 504 to HUD's Homeownership Programs

HUD's Section 504 Self Evaluation fails to acknowledge HUD's lack of guidance on the applicability of Section 504 to HUD's various home ownership programs. The absence of guidance is especially problematic in light of this Administration's emphasis on homeownership, and HUD's lead role in promoting homeownership.

Section 504 of the Rehabilitation Act's goals include ending the exclusion of people with disabilities from participation in federally funded programs and ensuring that people with disabilities receive the benefits of such programs. To help meet those goals, the HUD 504 regulations require a percentage of newly constructed housing to be built as accessible to individuals with mobility and sensory impairments.

The 1988 HUD regulations require that "New multifamily housing projects . . . shall be designed and constructed to be readily accessible to and usable by individuals with handicaps." 24 C.F.R. 8.22(a). The regulations specifically require that a minimum of five percent of the total dwelling units or at least one unit in a multifamily housing project,

whichever is greater, shall be made accessible for person with mobility impairments. An additional two percent of the units (but not less than one unit) in such project shall be accessible for persons with hearing or visual impairments. 24 C.F.R. 8.22(b)

Similarly, 24 C.F.R. 8.23 imposes similar minimum unit requirements when existing housing undergoes substantial renovation. In both new construction and substantial alteration, HUD may prescribe a higher percentage based on local needs.

A "multifamily housing project" is defined as a project containing five or more dwelling units. 24 C.F.R. 8.3. Nowhere in the regulations is there exclusion for homeownership programs.

Despite the statutory intent and the language of the Section 504 regulation, HUD has inexplicably chosen to create uncertainty among recipients of HUD financial assistance and in the housing development community. HUD's Community Planning and Development, Notice CPD-00-9 issued December 26, 2000 advising recipients of Federal funds through the HOME Investment Partnerships (HOME) or the Community Development Block Grant (CDBG) Program to comply with Section 504 specifically excludes homeownership programs. The Notice states at the end of the very first paragraph, "Note with respect to Section 504, this Notice does not address the applicability of Section 504's physical accessibility requirements to homeownership programs financed with HOME/CDBG assistance." The Community Planning and Development Notice, CPD-05-09 just issued on November 3, 2005 continues the same policy.

In describing the general requirements of Section 504 to HOME and CDBG funded new construction or rehabilitation of rental housing or rehabilitation of owner occupied housing the Notice specifically states, "For purposes of this Notice, the references to multifamily housing projects covered by Section 504 only apply to multifamily *rental* housing projects."

By creating ambiguity about whether the five percent and two percent accessible unit requirements apply to multifamily *homeownership* projects, HUD encourages developers in homeownership projects to perpetuate discrimination against individuals with physical and sensory impairments by creating housing that does not meet the requirements of the Department's own Section 504 regulations. The Department is promoting the creation of housing that violates the Department's regulations, with no explanation or acknowledgement of doing so, and thereby undermining national disability policy and the purposes of the President's New Freedom Initiative.

In addition, HUD's Section 504 guidance for new construction homeownership projects funded through programs such as HOPE VI is similarly misleading. HUD Notice

PIH 2002-01 issued on January 22, 2002 on Accessibility and Section 504. In Part II, Program Specific Compliance/Activities, Section B(2) HOPE VI, HUD inexplicably uses permissive rather than mandatory language stating, "Accessible For-Sale Units. The HOPE VI Program *encourages* PHAs to include 5% of for-sale units accessible for people with mobility impairments and 2% for people with hearing and vision impairments."

HUD regulations already require, not just encourage PHAs using HOPE VI for new construction to ensure that five percent of the units are accessible for people with mobility impairments and two percent are accessible for people with hearing and vision impairments. 24 C.F.R. 8.3 provides that "*Project* means the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract for Federal financial assistance or application for assistance, or are treated as a whole for processing purposes, whether or not located on a common site." A "*Multifamily housing project* means a project containing five or more dwelling units" without regard to whether the project is for rental or homeownership purposes. The requirement to construct accessible units applies to all multifamily housing projects, again without regard to whether the units are for rent or for sale. 24 C.F.R. 8.22(b). Thus, if at least five newly constructed scattered site single family homeownership units are built by a PHA under one HOPE VI grant, the five percent, two percent accessibility requirements apply.

Other HUD homeownership programs are subject to the same inconsistent guidance from HUD. While the Community Planning and Development Notice cited above limits its guidance to rental properties, in another Notice that specifically addresses the President's New Freedom Initiative, CPD's Notice lists "[e]xamples of how the CDBG program can address the needs of persons with disabilities," and, as the first example, lists: "[a]ssistance to support homeownership for persons with disabilities (addresses New Freedom Initiative objectives to promote homeownership and promote full access to community life)." Notice CPD-05-03 (June 6, 2005).

In its Report to the President on Executive Order 13217, The New Freedom Initiative, HUD's Office of Fair Housing and Equal Opportunity identified this very problem as a barrier to facilitating community-based alternatives for individuals with disabilities. FHEO's Barrier #4 noted that HUD's existing Section 504 homeownership regulation, 24 CFR 8.29, identified the four homeownership programs that were active in 1988, when HUD published its regulation, but that they had since been replaced by other homeownership programs.

The regulation was not updated and FHEO stated that the apparent ambiguity resulting from the Department's failure to substitute the current programs in the regulation caused "some new homeownership programs developed under HUD's HOPE VI and HOME programs not to meet the accessibility requirements in the regulations [and] reduce the accessible housing stock available to persons leaving institutions." FHEO stated that it "plan[ned] to draft a rule amendment [24 CFR 8.29] to resolve this concern."

Nonetheless, the regulation remains unchanged and the Section 504 Self Evaluation fails to include, much less correct, this illegal barrier to new, accessible housing.

HUD's 504 Guidance to Private owners of federally subsidized housing

HUD's self evaluation failed to identify that not just the form but the substance of its policy guidance in the form of regulations, handbooks, notices and other written guidance must be evaluated to see the effect of such guidance on the ability of persons with disabilities to access and use all HUD conducted programs and activities. CCD does acknowledge that HUD has improved its Section 504 guidance to private owners of federally funded subsidized multi-family rental housing in HUD Handbook 4350.3 REV. 1, "Occupancy Requirements of Subsidized Multifamily Housing Programs." However, additional work is required.

The CCD applauds HUD for publishing the July 20, 2005 Federal Register Notice seeking public input on the Draft Changes to the Handbook but points out as in the original Federal Register notice for the Section 504 Self-Evaluation, the comment period was too short.

The CCD supports the Comments on Draft changes to HUD Handbook 4350.3 REV. 1 submitted by Greater Boston Legal Services and the National Housing Law Project. Additionally, the CCD urges HUD to revise the Handbook in four general areas. First, the Handbook must require that owners use an application procedure that does not disadvantage persons with disabilities. (For example, in-person as opposed to mail-in submissions of applications impose unnecessary and illegal application burdens on many applicants with mental and physical disabilities.)

Second, the Handbook must require owners to modify the recertification interview process to accommodate renters with a disability, such as conducting the interview in a different location if the interview space is not accessible or possibly in the tenant's unit for a home-bound tenant.

Third, the Handbook must add language to the model leases and model notices that advise tenants that they have a right to request reasonable accommodations. Having the right to request a reasonable accommodation is of no use to a person with a disability if the person does not know he or she can make the request.

Fourth, the Handbook should provide its model leases and notices in alternative formats to owners so that they can be provided to persons with disabilities that need them. Given the reduced operating costs available to owners of affordable housing, and owners' reluctance to make any changes in HUD forms, many find it burdensome to provide documents in alternate formats. HUD can and should emphasize the importance of providing key documents in alternative formats by making such formats available upon request, and by advertising their availability.

HUD's failure to have a reasonable accommodation policy for program rules

The Self Evaluation acknowledged that "Few program offices, however, made efforts to communicate to the public the willingness of the Department to modify its programs . . ." As a result, the Self Evaluation further found "[m]any program offices and divisions indicated that only rarely did they ever receive request from individuals with disabilities for modifications of program activities . . . The self-evaluation worksheets also revealed that there was a lack of knowledge and understanding, among some program offices as to the application of Department policies and procedures for accommodating employees and the public.

It is essential that HUD have a clear agency-wide reasonable accommodation policy particularly for members of the public to request a reasonable accommodations of program rules so that they may have "an opportunity to participate in or benefit from the housing, aid, benefit or service."

HUD's failure to follow its own Meeting Checklist Worksheet

CCD and other commenters responding to the original Federal Register notice noted that the "Phase I Self-Evaluation Worksheets" were not provided with the Draft Section 504 Self-Evaluation Report. Since HUD has released the Worksheets, it is clear from reviewing Worksheet 5 Meeting Checklist that HUD is aware of its obligations to make meetings accessible. The Draft Self Evaluation identified Communication as one of the three primary barriers to the participation of individuals with disabilities in HUD conducted activities.

The self evaluation specifically addressed the issue of sign language interpreters at HUD sponsored events:

5. Persons with Hearing Impairments (Sign Language Interpreters)

Many program offices were not aware of the procedures for requesting a sign language interpreter for *HUD sponsored* training workshops, conferences and *events*. Program offices indicated that they were unaware of alternatives to interpreters that may best suit individuals with hearing impairments.

POLICY/PROCEDURE:

The Office of Administration manages the Headquarters interpreter contract. It has been the practice of the interpreter staff to disseminate the procedures for requesting interpreter services to only supervisors of deaf employees.

RECOMMENDATIONS:

- In order to reach a broader base of employees, it is recommended that the procedures for requesting an interpreter at Headquarters be linked on the HUD

website as well as disseminated in a notice to the HUD Training Academy, personnel staff and program office heads.

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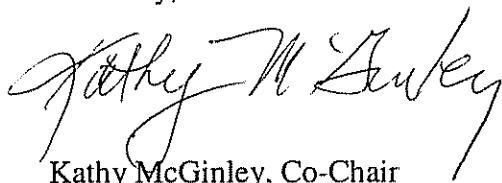
- All event coordinators should make certain that notification is given to the interpreter staff in advance of all scheduled events. (Report on Section 504 Self-Evaluation, page 10)

Unfortunately, HUD proved the continuing viability of this barrier on July 25, 2005, one day before the 15th anniversary of the signing of the Americans with Disabilities Act, when HUD Secretary Alphonso Jackson announced the publication of *Discrimination Against Persons with Disabilities – Barriers at Every Step*. The study showed that people with disabilities were discriminated against more than any other group when seeking rental housing, and the study specifically involved people with hearing-impairments seeking housing in Chicago.

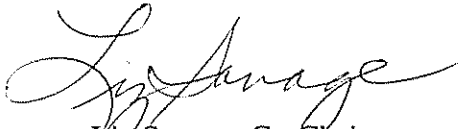
At the press conference, a deaf person interested in housing issues and access for deaf Americans left the event in shock and anger because HUD had not provided a sign language interpreter for its own event, trumpeting its accomplishments on behalf of people with hearing impairments. (Comment submitted by P. Singleton to this Request for Public Comments, HUD Docket HUD-2005-0012, Document ID: HUD-2005-0012-0019) No comments that we could file would provide as vivid an example of the Department's failure to understand its own Section 504 obligations or to conduct a meaningful Self Evaluation of HUD conducted activities.

The CCD urges HUD to comprehensively review the content of its policies and practices, and the effects of those policies and practices, including regulations, handbooks, notice and other written guidance to ensure that no qualified individual with disabilities shall, based on the basis of disability, be excluded from participation in or benefit or service of any HUD program or activity. For good and ample reasons, the CCD also urges HUD to continue to seek input from people with disabilities in developing corrective actions to ensure the rights of individuals with disabilities under Section 504.

Sincerely,



Kathy McGinley, Co-Chair
National Disability Rights Network (formerly National Association of Protection and Advocacy Services)

A handwritten signature in cursive script, appearing to read "Liz Savage".

Liz Savage, Co-Chair
The Arc and UCP Disability Policy Collaboration

A handwritten signature in cursive script, appearing to read "Andrew Sperling".

Andrew Sperling, Co-Chair
National Alliance for the Mentally Ill