



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

January 31, 2020

Electronic submission to www.regulations.gov

Mr. Seth Appleton
Assistant Secretary for Policy Development and Research
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Re: Docket No. FR–6187-N-01: White House Council on Eliminating Regulatory Barriers to Affordable Housing; Request for Information

Dear Assistant Secretary Appleton:

Thank you for the opportunity to comment on the “White House Council on Eliminating Regulatory Barriers to Affordable Housing; Request for Information,” Docket No. FR–6187-N-01, published on November 22, 2019. Please accept this letter as the comments of the Co-Chairs of the Consortium for Citizens with Disabilities (CCD) Housing Task Force. 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 appreciate the focus from the White House and the Department of Housing and Urban Development (HUD) on shortages in affordable housing and agree that it’s a pivotal concern. Across the nation, many people with disabilities are experiencing an affordability crisis.¹ The availability of affordable, accessible housing remains far less than the need, leaving far too many people with disabilities institutionalized, homeless,² or in “worst case” housing³ (paying too much in rent to afford other basics or living in severely inadequate conditions). However, as

¹ See, e.g., Technical Assistance Collaborative, Inc., et al, “Priced Out: The Housing Crisis for People with Disabilities” (2017) at: <http://www.tacinc.org/media/59493/priced-out-in-2016.pdf> (as of 2016, approximately 4.8 million adults with disabilities between the ages of 18 and 64 received income from the Supplemental Security Income program, and many in this group have great difficulty finding housing that is affordable).

² U.S. Dep’t of Housing & Urban Development, “2019 Annual Homeless Assessment Report to Congress, Part 1: Point-in-Time Estimates of Homelessness,” (2020) at 66, <https://files.hudexchange.info/resources/documents/2019-AHAR-Part-1.pdf> (96,141 people experiencing homelessness as individuals in January 2019 were reported to have chronic patterns of homelessness, nearly one-quarter of all homeless individuals, where “Chronically Homeless Individual” refers to an individual with a disability who has been continuously homeless for one year or more or has experienced at least four episodes of homelessness in the last three years where the combined length of time homeless on those occasions is at least 12 months).

³ See, e.g., Kathryn P. Nelson, “The Hidden Housing Crisis: Worst Case Housing Needs Among Adults With Disabilities,” (2008), at <http://www.tacinc.org/media/13262/Hidden%20Housing%20Crisis.pdf> (an estimated 2.1 - 2.4 million households in the U.S. with worst case housing needs are non-elderly disabled households).

HUD undertakes this information-gathering process, we want to emphasize several important issues for consideration in weighing the impacts of reducing or eliminating regulations, requirements or administrative practices.

HUD Regulations Provide People with Disabilities Equal Access to Community Living

While streamlining certain HUD regulations may help the agency advance its mission to “create strong, sustainable, inclusive communities and quality affordable homes for all,”⁴ many existing regulations provide critical protections for populations such as low-income people with disabilities. Executive Order 13878 and the related Request for Information concern removing “overly burdensome regulatory barriers,” as an avenue to increase the supply of affordable housing. Accurately assessing the return on investment from implementing laws that promote equal opportunity by prohibiting discrimination can be challenging. Remedial action to address a history of unequal treatment may impose a burden, in service of a greater goal. HUD’s implementation and enforcement of laws such as Section 504 of the Rehabilitation Act (Sec. 504) and the Fair Housing Act (FHA) has been a critical element enabling people with disabilities to remain in or move into the community. Regulations prohibiting discrimination on the basis of disability in HUD-funded programs and activities are a vital tool.

The Rehabilitation Act was a significant step in implementing a national policy for the full participation and integration of people with disabilities in America. The law contains broadly worded civil rights protections against discrimination. The regulations provide a consistent, coherent interpretation of the Sec. 504 requirements, providing important substance and greater certainty for covered entities. The existing requirements already include a careful balance of interests, for example drawing a line at changes that constitute a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.⁵

Affordable and accessible housing is integral to making a community more livable for people with disabilities. As you are aware, in the *Olmstead* decision, the Supreme Court held that that unnecessary institutionalization constitutes discrimination under the Americans with Disabilities Act (ADA).⁶ For people with disabilities, housing has been and continues to be a significant barrier to community integration and to *Olmstead* implementation, and the federal government has been a key partner in advancing the cause of community integration for people with disabilities. HUD regulations and guidance have been important for policymakers and service-providers working to meet the obligations of *Olmstead* and the integration mandate of the ADA.⁷

HUD has used the FHA to ensure that design and construction of new or substantially rehabilitated housing is accessible to people with disabilities. Recently, old arguments have resurfaced among a small number of multifamily developers that the FHA accessibility

⁴ See U.S. Dep’t of Housing & Urban Development, “Mission,” <https://www.hud.gov/about/mission> (last visited Jan. 30, 2020).

⁵ 24 C.F.R. § 8.24(a)(2).

⁶ *Olmstead v. L.C.*, 527 U.S. 581 (1999) (“institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life.”)

⁷ See, e.g., U.S. Dep’t of Housing & Urban Development, “Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*,” (2013) *at* <https://www.hud.gov/sites/documents/OLMSTEADGUIDNC060413.PDF>.

requirements are a barrier to development because they add to development costs. However, this is an old and inaccurate myth. For example, the FHA House Report states, these features do “not add significant additional costs.”⁸ In 1993, HUD published a study⁹ prepared for the Office of Policy and Development Research that used cost estimates generated by builder and developers. The study found that the “Guidelines for the 1988 Fair Housing Amendment Act” led to total average project increases of 0.34% and the “ANSI A117.1 (1986) Standards” led to total average project increases of 0.63%.

The accessibility and adaptability provided in new or substantially rehabilitated rental housing is also critical to support seniors who choose to age in place. Given that mobility and other physical challenges generally increase with age, accessible and/or adaptable housing for older renters is critical to helping people remain safely in the community as they age rather than having to move into expensive nursing facilities or other institutional settings, and the population of older adults with these needs will continue to grow.¹⁰

CCD was pleased that in issuing the “Proposed Rule Docket No. FR-6138-P-01 Fair Housing Act Design and Construction Requirements; Adoption of Additional Safe Harbors,” the Secretary stated that “HUD is committed to supporting states, local communities, and the housing industry at large, in their efforts to build housing that is accessible to persons with disabilities.”¹¹ HUD’s continued commitment to the FHA, including, but not limited to, the accessibility requirements, is critical to ensuring people with disabilities can claim their rights under *Olmstead* to live and fully participate in their community.

Federal fair housing laws, regulations and guidance play a vital part in ensuring equitable access to affordable housing, which is central to expanding access to integrated, affordable housing opportunities for people with disabilities, who, too frequently, encounter discrimination when seeking housing.¹²

We recommend that HUD should continue to advance regulations and policies that fulfill the Fair Housing Act’s prohibition of housing discrimination on the basis of race, color, religion, sex, familial status, national origin, or disability. We further recommend that HUD should:

- Restore and strengthen federal regulations and tools to Affirmatively Further Fair Housing (AFFH). CCD opposes HUD’s efforts to reverse the 2015 AFFH rule, and calls on HUD to withdraw the current NPRM and move forward with implementation of the 2015 rulemaking.

⁸ H.R. Rep. No. 711, 100th Congress, 2d Sess. 31 (1988) at 18 and 25.

⁹ Cost of accessible housing: an analysis of the estimated cost of compliance with the Fair housing accessibility guidelines and ANSI A 117.1. Prepared for U.S. Department of Housing and Urban Development, Office of Policy Development and Research; prepared by Steven Winter Associates, Inc. with Tourbier & Walmsley, Inc. and Edward Steinfeld, architect, and Building Technology, Inc.

¹⁰ See, e.g., Joint Center for Housing Studies at Harvard University, “Housing America’s Older Adults 2019,” (2019) at https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Housing_Americas_Older_Adults_2019.pdf.

¹¹ https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_009.

¹² National Fair Housing Alliance, “2018 Fair Housing Trends Report” 52 (2018) at: <https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report.pdf> (“As has been the case in past years, the majority of complaints [of housing discrimination] from 2017 involved housing discrimination against people with disabilities.”)

- CCD submitted comments to HUD regarding its proposed revisions to the disparate impact rule, recommending that HUD withdraw its proposed disparate impact rule. The changes proposed would place a difficult and sometimes insurmountable evidentiary burden on people defined as protected classes under the Fair Housing Act, and would tip the scale in favor of defendants that are accused of discrimination.

These types of regulatory actions create uncertainty in the near term, and ultimately make the nondiscrimination protections more difficult to enforce or address, creating an additional, unnecessary and cruel burden on people with disabilities and others who have faced systemic exclusion and discrimination.

Finally, as the agency examines effective approaches to increase access to affordable housing, we recommend fully funding affordable housing programs, such as housing choice vouchers, including, but not limited to, additional Mainstream Vouchers; Section 811 Project Rental Assistance; HOME; the National Housing Trust Fund programs and other programs that expand the production and availability of housing that is affordable to households at or below 30% of Area Median Income.

Thank you again for the opportunity to comment on the White House Council on Eliminating Regulatory Barriers to Affordable Housing; Request for Information, Docket No. FR-6187-N-01.

Sincerely,

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Co-Chair, CCD Housing Task Force

Andrew Sperling, National Alliance on Mental Illness
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