



OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

August 11, 2011

MEMORANDUM FOR: FHEO Regional and Field Office Directors

FROM: Sara K. Pratt, Deputy Assistant Secretary for Enforcement
and Programs, ED

SUBJECT: Guidance for FHEO Staff in Assisting Persons with Disabilities
Transitioning from Institutions

I. PURPOSE

The Office of Fair Housing and Equal Opportunity (FHEO) must ensure that PHAs meet their obligations under Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act (ADA), and the implementing regulations. Over the past several decades, the passage of these disability-related civil rights laws, and the development of initiatives such as Money Follows the Person, have focused federal attention on the transition of people with disabilities out of institutions and into community-based settings. Increasingly, federal programs are shifting models for the funding and delivery of services to support the community-based integration of persons with disabilities. As part of a government-wide initiative, the Department has prioritized efforts to support the transition of people with disabilities out of institutions and into community-based settings. This memorandum provides background information regarding the transition of people with disabilities into community-based settings and highlights civil rights related compliance and monitoring strategies to ensure that public housing programs operate in a manner that supports this important objective.

II. BACKGROUND

In June of 1999, the Supreme Court ruled on a case, *Olmstead v. LC*. One of the parties argued that some States and local governments were only providing public benefits and services for persons with disabilities in unnecessarily segregated settings in violation of Title II of the ADA. In the *Olmstead* decision, the Court held that unjustified institutionalization of people with disabilities is a form of unlawful discrimination under Title II of the ADA. The Court's ruling in *Olmstead* is largely based upon Title II's integration mandate, which requires that States administer their services, programs and activities "in the most integrated setting appropriate to the needs of qualified individuals with disabilities." See 28 C.F.R. § 35.130 (d). While Title II applies to State and local governments, most State and local government programs and activities, such as a Public Housing Authority (PHA), are also recipients of federal financial assistance and are typically covered by Section 504, which includes a similar integration mandate provision. See 24 C.F.R. § 8.4(d). This integration mandate is also a foundation of the Department's Section 504 regulations promulgated in 1988.

At the President's request, the Secretaries of HUD and the Department of Health and Human Services (HHS) began a collaboration to further the integration of institutionalized persons into the community. HUD's Office of FHEO and HHS' Office of Civil Rights (OCR) have been working together to develop more effective collaborative efforts. One of the purposes of this collaboration is to facilitate compliance review activities and resolution of complaints that more effectively address the housing needs of persons with disabilities.

III. THE ROLE OF FHEO

FHEO enforces Section 504 and Title II of the ADA in part by conducting compliance reviews and periodic limited monitoring reviews. When conducting these reviews it is important to recognize that persons with disabilities include those individuals transitioning from institutional to community-based settings. For example, HUD's Section 504 regulations impose an affirmative obligation on PHAs to assess the housing needs of persons with disabilities in their local service area, which includes persons transitioning from institutional to community-based settings. Further, PHAs operating HCV programs are obligated in providing notice of the availability and nature of housing assistance for low-income families under program requirements, to adopt suitable means to assure that the notice reaches eligible individuals with disabilities. *See 24 C.F.R. 8.28(a)(1)*.

A. Monitoring and Compliance Reviews

A monitoring review generally entails a review of a recipient's policies, procedures, and operations with a particular set of nondiscrimination or equal opportunity requirements in mind. Generally, monitoring does not have to include a site visit and could be accomplished by reviewing written policies and procedures, information in existing HUD databases, investigative files following complaints, and reports provided by the recipient.

HUD may also conduct an on-site compliance review in cases where a Section 504 complaint is filed against a PHA or when there is a reasonable basis to do so, such as when monitoring raises concerns about Section 504 compliance. *See 24 C.F.R. § 8.56*. Based on information received, a compliance review may cover all aspects of a recipient's housing, non-housing facilities, policies, procedures, and operations with respect to Section 504, or may focus on one or more aspects of Section 504 compliance such as program access to persons with disabilities seeking to transition from institutions. FHEO may also focus on the extent to which the PHA is meeting its obligation to afford persons with disabilities transitioning from institutions an opportunity to participate or benefit from the PHA's public housing, HCVs or other services. The review should examine the HCV Program and the Public Housing Program to determine if the recipient is in compliance with 24 CFR Part 8, and specifically, but not limited to, *24 C.F.R. § 8.6 (Communication)*; *24 C.F.R. § 8.27 (Occupancy of Accessible Dwelling Units)*; and *24 C.F.R. § 8.28 (Housing Certificate and Housing Voucher Program)*. A compliance review may include physical inspections of housing units and non-housing facilities (*e.g.*, offices, recreational facilities, mail box areas) to determine if they meet physical accessibility standards.

Both compliance and monitoring reviews may also afford FHEO the opportunity to review the community's need for accessible units. If the need exists, upon request by any affected recipient, or any state or local government or agency based on census data or other available current data including a currently effective housing assistance plan or comprehensive homeless assistance plan, or in response to evidence of a need for a higher percentage or number received in any other

manner, FHEO can increase the required percentage of mobility accessible units in Public Housing beyond the 5% (and 2% sensory accessible units) floors specified in *24 C.F.R. § 8.22* (See *24 C.F.R. § 8.22(c) and 24 C.F.R. § 8.23 (b) (2)*). In preparation for a review, it is recommended that the Regional or Field Offices calculate an estimated percentage of accessible units required in the geographical area of the review. The reviewer can derive the estimate by using available Census and American Community Survey data for the geographical area under review and income eligible population of people with disabilities. FHEO Headquarters intends to develop guidance to Regional and Field Offices on the methodology used in developing these percentages. See *24 C.F.R. § 8.22 (c)*. If there is unmet need for accessible units in the area based on this analysis, field staff may suggest or require a percentage of accessible units in Public Housing higher than the 5%/2% floors in the regulations.

When conducting a monitoring or compliance review of a PHA under Section 504 or Title II, the reviewer should examine the following types of activities including, although not limited to:

- **Outreach:** When opening the HCV and/or Public Housing waiting list, or any other instance where the PHA engages in educational outreach about its programs, does the PHA ensure that information regarding the availability of accessible units reaches eligible individuals, including persons ready to transition from institutional to community-based housing? Does the PHA ensure that information on available accessible units and other assistance is in a form that is accessible to persons with disabilities, or that the information can be provided through the necessary assistive technology or interpretive services? Does the PHA make certain all advertisements include underserved populations of individuals in institutions by reaching out to social service agencies, nursing homes, psychiatric hospitals and other mental health facilities, and group homes in the local service area that serve those populations? PHAs may choose to contact the facilities via Twitter, Facebook, websites or newsletters.
- **Accessibility Feature Needs:** Does the PHA request information on accessibility feature needs of applicants, residents, and voucher holders in a nondiscriminatory manner, e.g., information requested on the form HUD-50058? Does the PHA maintain this information in tenant files? Does the PHA update this information periodically?
- **Occupancy of Accessible Units:** Are accessible units occupied by persons who do not require the features of the accessible unit? If so, inquire about the PHA's transfer policy and lease provisions to relocate Public Housing or Project-Based Voucher or Certificate residents without disabilities out of accessible units if an applicant/resident with disabilities requires the accessible unit features. PHAs may maintain a policy that provides that when accessible units are offered and accepted by non-disabled applicants, it is with the understanding that such applicants must accept a transfer to a non-accessible unit at a later date if a person with a disability requiring the features of the unit applies for housing and is determined eligible. See *24 C.F.R. § 8.27*.
- **Reasonable Accommodation Policies:** Does the PHA provide for reasonable accommodations in their housing programs which may be necessary for a person with a disability transitioning to use or participate in the program, service or activity? A reasonable accommodation is an adaptation or modification to a program rule, policy, practice or service, which provides a qualified person with a disability an equal

opportunity to participate in programs. Reasonable accommodations may include, but are not limited to, adjustments or modifications to buildings, facilities, dwellings, and may also include provision of auxiliary aids, such as readers, interpreters, and materials in accessible formats. Examples of reasonable accommodations during the application process might include allowing additional time to submit an application, visiting an applicant's place of residence, which might include a nursing home in order to assist in completing the application or working with an individual's case manager to facilitate the application process. *See 24 C.F.R. §§ 8.4, 8.11, 8.20, 8.21, 8.24, 8.25, 8.33.* Does the PHA maintain records of reasonable accommodation requests and appropriate responses?

- **Accessible Housing Listing:** Does the PHA have an up-to-date listing of accessible units known to the PHA for its voucher program, including occupied and vacant units as well as units that have been modified by the addition of accessible features and bedroom size? *See 24 C.F.R. § 8.28.*
- **Accessible Unit Waiting Lists:** In order to maximize the utilization of accessible units, does the PHA maintain its waiting list with information regarding individuals requiring the accessibility features of a vacant accessible Public Housing unit? *See 24 C.F.R. § 8.27.*

B. Voluntary Compliance

If the monitoring review reveals concerns, offer recommendations, e.g., engaging in advertising activities that will reach individuals transitioning from institutional to community-based settings. You can refer the PHA to the jurisdiction's Analysis of Impediments to fair housing choice to identify local and regional outreach resources and strategies. You can also reach out to local social service agencies, nursing homes, psychiatric hospitals and other mental health facilities, and group homes. See also examples of actions listed under Section III (B) (3).

When HUD has found that a PHA has not complied with Section 504 or /ADA Title II, FHEO is required to undertake an effort to resolve the findings voluntarily. This usually takes the form of a Voluntary Compliance Agreement (VCA). The following paragraphs cover topics that might be included in a Section 504 VCA.

1. Local Admission Preference for Persons Transitioning from Institutions

As part of the commitments made by the Secretaries of HUD and HHS to further our collaborative efforts around transitioning issues, in June 2009, Secretary Donovan issued a letter to PHAs (*See* Section D, Resources) urging them to adopt a local preference in their admission policies for the HCV program for persons with disabilities who are ready to exit institutions. The letter provides detailed information on the HHS' Money Follows the Person (MFP) Demonstration Program – a national grant program that identifies individuals in institutions who wish to transition to the community and helps them do so by coordinating necessary supportive services.

While not required by law, the Department has made efforts to encourage local admissions preferences for persons transitioning. Consider negotiating a term in the VCA for the establishment of a local admission preference for persons transitioning from institutional to

community-based settings. This could include a limited preference for a certain number of vouchers (e.g., 10 or 15). Note that such a preference may not target or exclude persons with certain categories or types of disabilities. Suggested language:

(Name of PHA) will incorporate the necessary preferences and other written policies, including but not limited to provisions of the Housing Choice Voucher Administrative Plan, that will grant the highest priority for available housing for individuals transitioning from institutional settings into community-based living. The deadlines for these activities will be consistent with corresponding deadlines for modifying admissions and occupancy related documents specified in this Agreement.

2. Coordination with Other Agencies

Consider negotiating a term in the VCA that requires the PHA to actively coordinate with local disability organizations that are assisting in the transition of persons with disabilities from institutional to community-based settings. Forty three States and the District of Columbia have received specific funding for transitioning persons through HHS' MFP demonstration. MFP provides that supportive services made available to institutionalized persons will continue to be available when an individual transitions to community-based housing (See Section D, Resources for a List of MFP Organizations). For example, FHEO was successful in negotiating a Voluntary Compliance Agreement (VCA) with the Cuyahoga Metropolitan Housing Authority (CMHA) that requires CMHA to partner with the Ohio MFP grantee in order to receive referrals from consumers ready to transition from institutions to the community and create a local preference for such consumers.

Coordination with other agencies, such as an MFP grantee agency or any services organizations, should not be exclusive and must not result in the denial of available housing or services to persons with certain types or categories of disabilities or in preferences for clients of a particular service agency. Suggested VCA language is as follows:

(Name of PHA) agrees, as part of its overall efforts, to provide affordable, accessible housing for persons with disabilities in its serving communities, to become an active coordinating agency with HHS/Office for Civil Rights in addition to the National Disability Rights Network, local Center for Independent Living, the MFP state grantee agency and/or another applicable agency/organization. (Name of PHA) will work closely with named organizations/agencies to facilitate applications by or on behalf of disabled individuals transitioning from institutions into community-based housing. Such partnerships must not result in the denial of available housing or services to persons with certain types or categories of disabilities or in preferences for clients of a particular service agency. In addition, working with other agencies cannot result in requiring beneficiaries to accept services as a condition of occupancy. As part of its quarterly and semiannual reporting requirements, (Name of PHA) will provide the Department with updated information on outcomes of these partnerships.

3. Other Suggested Methods of Compliance

The following are additional examples of the types of activities HUD may also incorporate into VCAs for PHAs to adopt in an effort to comply with their Section 504/ADA obligations and to further the goals of Olmstead and community integration for persons with disabilities (this is not an inclusive list):

- Adopt policies that allow for PHA staff to take applications at the institutions where persons with disabilities currently reside.
- Partner with local organizations such as the local Center for Independent Living & the National Disability Rights Network.
- Perform targeted outreach to ensure information regarding accessible units reaches eligible individuals in nursing homes and other institutions *See 24 C.F.R. § 8.6(b)*.
- Create waiting list preferences for persons exiting institutions who require accessible units.
- Disseminate notices of the opening of HCV waiting lists to institutions identified by state MFP agencies, Medicaid agencies, and other local partner agencies.
- Adopt a policy that takes into account and provides support to address the challenges of locating accessible housing when considering requests for extensions of a HCV. *See 24 C.F.R. § 8.28(a)(4)*.
- Adopt specific policies to encourage private landlords with accessible units, including tax credit assistance properties to participate in HCV programs. *See 24 C.F.R. § 8.28*.
- Encourage private landlords to make accessibility modifications to private units and use a bonus payment from administrative fee reserves as an incentive.

C. Training Opportunities/Conferences

Education and outreach is an effective tool to disseminate information. FHEO Regional and Field Office Directors and staff should consider:

- Participating at conferences, symposiums and focus groups that reach advocates and consumers who are disabled, as well as the housing providers, etc. Following the issuance of this guidance, Headquarters plans to develop a PowerPoint presentation on Section 504/Title II of the *ADA/Olmstead* which can be used for this purpose. Each Region can tailor the PowerPoint presentation to meet the needs of the specific audience.
- Participating in local conferences of disability rights organizations that give staff the opportunity to provide information on housing resources.

- Collaborating with regional HHS/OCR staff to conduct joint PHA trainings (*See* Section D, Resources bullet 4 below for contact information).

D. Resources

- New Freedom Initiative, Executive Order 13217: “Community Based Alternatives for Persons with Disabilities,” and the Housing Choice Voucher Program (PIH Notice 2005-05). <http://www.hud.gov/offices/pih/publications/notices/05/pih2005-5.pdf>
- Non-Discrimination and Accessibility for Persons with Disabilities: Notice PIH 2010-26 (HA) <http://www.hud.gov/offices/pih/publications/notices/10/pih2010-26.pdf>
- *Olmstead* Decision <http://www.law.cornell.edu/supct/html/98-536.ZS.html>
- Secretary Donovan Letter of June 22, 2009 (See Attached)
- Money Follows the Person Grantees Contact List (See Attached)
- HHS/Office for Civil Rights Regional Staff: <http://www.hhs.gov/ocr.office/about/rgn-hqaddresses.html>