



U.S. Department of Housing and Urban Development

Public and Indian Housing

Special Attention of:
Directors of Office of Public Housing;
Regional Directors; Public Housing
Agencies and Non-Profit
Disability Organizations Administering
Housing Choice Voucher Programs

Notice PIH 2005-5 (HA)

Issued: February 1, 2005

Expires: February 28, 2006

Cross References:

Subject: New Freedom Initiative, Executive Order 13217: "Community-Based Alternatives for Individuals with Disabilities," and the Housing Choice Voucher Program

1. PURPOSE. This Notice explains President Bush's New Freedom Initiative and Executive Order 13217 and provides guidance to public housing agencies (PHAs) and HUD field staff on initiatives that can be implemented to assist families with a person with disabilities (which may include an individual person with disabilities) in their search for housing under the Housing Choice Voucher program. In addition, this notice clarifies issues related to issuance and preservation of certain types of special purpose vouchers for disabled families (where the head, spouse or sole member is a person with disabilities).

2. BACKGROUND.

A. NEW FREEDOM INITIATIVE. In February 2001, President Bush unveiled his New Freedom Initiative. The purpose of the New Freedom Initiative is to promote the full participation of persons with disabilities in all areas of society. This initiative's major goals are to ensure that all Americans have the opportunity to learn and develop skills, engage in productive work, make choices about their daily lives and participate fully in community life.

Key components of the initiative are (1) increasing access to assistive technologies, (2) expanding educational opportunities, (3) increasing the ability of individuals to integrate into the workforce, and (4) promoting full access to community life. The Initiative's fourth component includes a commitment by President Bush to promulgate an Executive Order that supports the most integrated community-based settings for persons with disabilities.

B. EXECUTIVE ORDER 13217: "COMMUNITY-BASED ALTERNATIVES FOR INDIVIDUALS WITH DISABILITIES." On June 18, 2001, President Bush signed Executive Order 13217 promoting community-based alternatives, rather than institutional

settings, for individuals with disabilities. The Executive Order also called for designated Federal agencies, including HUD, to assist the States and localities to swiftly implement the U.S. Supreme Court's 1999 decision in *Olmstead v. L.C.* In *Olmstead*, the Supreme Court construed Title II of the Americans with Disabilities Act (ADA) to require States, whenever possible, to place qualified persons with disabilities in community settings rather than in institutions, whenever treatment professionals determine that such placement is appropriate, the affected persons do not oppose such placement, and the State can reasonably accommodate the placement, taking into account the resources available to the State and the needs of others with disabilities. The Court held that States must administer their services, programs and activities "in the most integrated setting appropriate to the needs of qualified individuals with disabilities."

In addition to requiring swift implementation of the *Olmstead* decision, the Executive Order directed the Department of Health and Human Services (HHS) to coordinate an effort by HUD and the other Federal agencies to evaluate their own policies, programs, and regulations to determine whether any should be revised or modified to improve the availability of community-based services for qualified persons with disabilities. The Order directed that this evaluation focus on removing barriers that impede opportunities for community placement for persons with disabilities. The results of HUD's self-evaluation of its programs, policies and regulations, along with those of the other agencies, were incorporated into a comprehensive report entitled *Delivering on the Promise: Compilation of Individual Federal Agency Reports of Actions to Eliminate Barriers and Promote Community Integration*, which was delivered to President Bush on March 25, 2002. This report may be obtained from the World Wide Web at www.hhs.gov/newfreedom.

The Department is issuing this Notice as an enhancement to the New Freedom Initiative and Executive Order 13217 to ensure that families with a disabled person can find and rent housing in the community.

3. **APPLICABILITY.** This Notice is applicable to all PHAs administering the Housing Choice Voucher program.
4. **EFFECTIVE DATE.** This Notice is effective upon publication.
5. **IMPLEMENTATION SUGGESTIONS.**
 - A. **VOUCHER TERM.** PHAs should be generous in establishing reasonable initial search terms and subsequent extensions for families with a disabled person. Sixty days is the minimum voucher term. However, there is no maximum term. A PHA may approve a longer term in accordance with its administrative plan. In setting its policy concerning the length of the voucher term, a PHA may wish to contact agencies that work with families with a disabled person for advice on reasonable search terms. Although search terms should be generous to maximize the family's opportunity to find suitable housing,

the term may not be indefinite.

- B. **REFERRAL SERVICES.** In addition to providing families with a disabled person a list of accessible units known to the PHA, a list of local supportive service and disability organizations that may provide such assistance as counseling services and funding for moving expenses or security deposits should be identified in the information packet given to voucher applicants at the briefing session. These organizations should include state protection and advocacy agencies, Centers for Independent Living, State Medicaid agencies, and disability advocacy groups that represent individuals with a variety of disabilities.
- C. **HOUSING SEARCH ASSISTANCE.** PHAs should offer specialized housing search assistance to families with a disabled person to locate accessible units if requested. Trained PHA staff or a local supportive service or disability organization may be able to provide this service. The PHA may, depending on current year appropriations, receive hard-to-house fees of \$75 per family to assist a family with a disabled person locate suitable housing, including accessible housing.
- D. **COOPERATIVE EFFORTS WITH OTHER GOVERNMENTAL AGENCIES.** In conjunction with the PHA Plan process, PHAs should work with other local governmental agencies serving the disabled in setting policies and sharing resources. PHAs may provide a preference or a set-aside (limiting the number of families on a waiting list eligible for certain preferences) for admission of families with a disabled person. However, a PHA may not provide a preference or set aside for a specific disability. Other governmental or non-governmental agencies may provide available resources for such assistance as housing search counseling, moving expenses, security deposits and utility deposits.

State Medicaid agencies and their local offices administer the Federal Medicaid Program, which is funded by the U.S. Department of Health and Human Services (HHS). Medicaid is an important resource to assist PHAs in meeting the *Olmstead* challenge of providing community-based services to individuals with disabilities. To assist persons with disabilities transitioning out of institutional settings, PHAs are encouraged to contact their State Medicaid agencies, or the local office of these agencies, to determine the availability of Medicaid home and community-based services (HCBS) waivers and other resources under the Medicaid Program.

- 6. **USE OF SPECIAL PURPOSE VOUCHERS.** Housing Choice Vouchers for disabled families have been awarded under various “special purpose” voucher programs: Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans; Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments; Mainstream Housing Opportunities for Persons with Disabilities (both five-year awards under the Section 811 Program of Supportive Housing for Persons With Disabilities and one-year awards under the Housing Certificate

Fund); and the Project Access Pilot Program (formerly Access Housing 2000).

A PHA or non-profit disability organization that receives special purpose vouchers under the programs listed above is obligated to issue the number of vouchers awarded to families in the target population defined by the Notice of Funding Availability (NOFA) regardless of the term of the funding increment. Pursuant to the intent of Congress in recent Appropriations Acts, these vouchers, to the extent practicable, must continue to be issued to non-elderly disabled families upon turnover. To the “extent practicable,” means that all non-elderly disabled families on a PHA’s waiting list have been issued these turnover vouchers, and PHA outreach efforts specifically directed to non-elderly disabled families has yielded no eligible applicants. Those vouchers issued under the Section 811 Program of Supportive Housing for Persons With Disabilities must be issued to the target population of both elderly and non-elderly disabled persons upon turnover during the initial five-year funding increment and upon funding renewal.

Failure to serve disabled families as required will result in forfeiture of the vouchers. Issuance and continued use of these special purpose vouchers will now be tracked in the Public Housing Information Center (PIC). Please reference Notice PIH 2004-13 (HA) issued on August 5, 2004.

According to the NOFAs for Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans, Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments and Mainstream Housing Opportunities for Persons with Disabilities, PHAs are required to, among other things, assist applicants in gaining access to supportive services, when requested by an individual; identify funding sources to cover the cost of any needed unit modifications; and provide technical assistance to unit owners for making reasonable accommodations or making units accessible to persons with disabilities. Voucher funding, however, may not be used to pay for unit modifications.

Subject to Congressional appropriations, the Department intends to renew funding increments awarded under both the Section 811 Program of Supportive Housing for Persons With Disabilities and the Housing Certificate Fund.

- 7. SPECIAL HOUSING TYPES.** Although PHAs may approve the use of special housing types for their general waiting list population, the PHA **must** permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities. Such special housing types include: single room occupancy housing, congregate housing, group homes, shared housing, cooperative housing, and manufactured homes when the family owns the home and leases the manufactured home space. To determine if the homeownership option should be offered as a reasonable accommodation, please reference 24 CFR 982.625(d)(1) and (2).

In shared housing, the regulations prohibit the assisted person from being a relative by blood or marriage to a resident owner. Although other regulations permit the leasing of a rental

unit from certain relatives when needed as a reasonable accommodation for a person's disability, the Department has not established a similar regulatory provision to allow an assisted person to share a home with a relative.

Mainstream vouchers funded out of Section 811 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) earmarked for supportive housing for persons with disabilities may not be used to support project-based vouchers, but may be used to support tenant-based assistance under the homeownership option.

8. **DEFINITION OF A "FAMILY."** A group of two or more **non-related** disabled persons living together or one or more **non-related** persons with disabilities living with one of more live in aides meets the definition of "family" provided under the Housing Choice Voucher Program regulations at 24 CFR 982.201(c). The PHA has the discretion to determine if any other group of persons qualifies as a family.
9. **EXCEPTION PAYMENT STANDARDS.** One of the purposes of an exception payment standard is to ensure that a family with a person with disabilities can rent a unit that meets the disabled person's needs specific to the disability. On a case-by-case basis, as a reasonable accommodation, a PHA may approve a payment standard up to 110 percent of the Fair Market Rents (FMR) if its payment standards are set below 110 percent of the FMR. Such special payment standards must be requested by the family, and subsequently approved as necessary, for a reasonable accommodation by the PHA **after** a family with a disabled person or an individual person with disabilities locates a unit. The HUD Field Office Public Housing Director can approve exception payment standards between 110 percent and 120 percent of the FMR as a reasonable accommodation; Headquarters must approve any exception payment standards higher than 120 percent of the FMR.
10. **EARNED INCOME DISALLOWANCE.** When determining the annual income of a participant family that includes persons with disabilities under the Housing Choice Voucher program, the determination must exclude an increase in annual income due to earnings in accordance with 24 CFR Section 5.617. HUD believes that the exclusion of an increase in annual income due to earnings will help persons with disabilities obtain and retain employment, which is an important step toward economic self-sufficiency.
11. **INFORMATION CONTACT.** Inquiries about this notice should be directed to the staff in the Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, at (202) 708-0477.

_____/s/_____
 Michael Liu, Assistant Secretary
 for Public and Indian Housing

