



CONSORTIUM FOR CITIZENS
WITH DISABILITIES

September 4, 2008

Lillian Deitzer
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U.S. Department of Housing and Urban Development
451 Seventh Street SW
Washington, DC 20410

By Overnight Mail and Electronic Mail to Lillian_L._Deitzer@hud.gov

**Re: Comment Request: Management Reviews of Multifamily Housing Projects
Docket No. FR-5191-N-21
Agency Form No. HUD-5834, OMB Control No. 2502-0178**

Dear Ms. Deitzer:

Please accept this letter as the comments of the Consortium for Citizens with Disabilities (CCD) Housing Task Force concerning extension of form HUD-9834, entitled *Management Reviews of Multifamily Housing Projects*. See, 73 Fed. Reg. 39330 (July 9, 2008). CCD is a coalition of national consumer, advocacy, provider, and professional organizations advocating on behalf of people with disabilities. CCD's Housing Task Force works to increase access to decent, safe, affordable, and accessible housing for all people with disabilities, and to protect rights guaranteed to people with disabilities under the Fair Housing Act and other civil rights laws.

The CCD Housing Task Force supports renewal of HUD-9834 because a crucial addendum to the form results from resolution of a disability discrimination complaint involving the Office of Multifamily Housing. Use by multifamily reviewers of the addendum protects access by qualified people with disabilities to assisted housing and monitors owner compliance with the disability rights requirements of Section 504 of the 1973 Rehabilitation Act. The balance of this letter explains the basis of CCD's support and offers suggestions for several improvements to the Management Review form.

1. Consortium for Citizens with Disabilities v. U.S. Department of Housing and Urban Development.

The Housing Task Force is party to a Voluntary Conciliation Agreement with the U.S. Department of Housing and Urban Development known as *Consortium for Citizens with Disabilities v. HUD*. The VCA resolves a disability discrimination complaint brought by CCD against the Office of Multifamily Housing in the implementation of Title VI-D of the Housing Community Development Act of 1992. Title VI-D permits owners of certain multifamily properties to adopt eligibility limitations and selection preferences affecting access to assisted housing for elders and non-elders with disabilities. The CCD complaint alleged that

implementation of Title VI-D had the intent and effect of excluding qualified people with disabilities from participation in multifamily housing in excess of the authority granted to HUD by the 1992 HCDA. Among other provisions, under the VCA, the Office of Multifamily Housing agreed to find ways to use already existing monitoring methods to assure multifamily owner compliance with Title VI-D and civil rights laws prohibiting disability discrimination. A copy of the VCA is attached for your information.

2. *HUD-9834 and Addendum B.*

Addendum B of the current HUD-9834 resulted from negotiations between CCD and the Office of Multifamily Housing about implementation of the monitoring and compliance matters addressed in the VCA. Addendum B gathers project information in five areas related to compliance with Title VI-D, civil rights laws, and civil rights-related program requirements associated with multifamily housing:

- *Title VI-D Compliance Conclusions.* On Addendum B, page 2, multifamily reviewers enter basic information about project characteristics related to Title VI-D, including occupancy designations for elders, people with disabilities, and families, sources of federal assistance, number of units, and date of first occupancy. It includes blocks within which a reviewer indicates owner compliance or non-compliance with Title VI-D.
- *Part A: Occupancy, Architectural Access, and Program Access.* Part A of the Addendum is an owner certification of compliance with Title VI-D occupancy standards, and the architectural and program access requirements of HUD's Section 504 regulations:
 - (a) Part A, Section I is an owner certification that gathers information needed to assess owner compliance with HUD Title VI-D regulations and the corresponding mandates of Chapter 3 of Handbook No. 4350.3, *Occupancy Requirements of Subsidized Multifamily Housing Programs*.¹ Multifamily owners must indicate whether they use eligibility limitations and selection preferences for elderly families and disabled families. It requires the owner to identify the contractual documents that are the legal basis for the eligibility limitations and selection preferences, and it is where the owner reports on the number of units available to elders and people with disabilities.
 - (b) In Section II, the owner identifies the number of dwelling units that are accessible to people with mobility impairments and sensory disabilities, as required by HUD Section 504 rules. *See*, 24 C.F.R. Part 8, Subpart C.
 - (c) Section III requires the owner to indicate whether the owner is responsible for appointing at least one person to coordinate Section 504 responsibilities. It is also where the owner indicates whether alternative methods of communication are

¹ Title VI-D regulations are codified at 24 C.F.R. §880.612a (selection preferences for elderly families over disabled families in properties assisted under Section 8 New Construction contracts), §881.601 (New Construction rules made applicable to Section 8 Substantial Rehabilitation contracts), and §883.701 (to same effect, Section 8 housing finance agency contracts). Chapter 3 of the *Occupancy Handbook* addresses the additional standards for Title VI-D occupancy in properties with Section 8 contracts and also HUD-assisted properties receiving other forms of assistance.

available at the property for people with hearing or vision disabilities. These requirements are mandated by Section 504 rules. *See*, 24 C.F.R. §8.53 (coordinator) and §8.6 (alternate forms of communication).

- *Part B: On-Site Limited Monitoring of Civil Rights-Related Program Requirements.* In Part B of the Addendum, the multifamily reviewer makes a threshold determination of compliance with a range of civil rights-related program requirements deriving from program regulations and procedural guidelines safeguarding the housing rights of people with disabilities and other classes protected by civil rights laws. This procedure is mandated by HUD civil rights enforcement protocols in which negative findings by multifamily reviewers are communicated to the Office of Fair Housing and Equal Opportunity. *See*, 64 Fed. Reg. 55304 (October 12, 1999), *Notice of Responsibility with HUD for Civil Rights Front-End Reviews of HUD Programs*. Among the compliance factors examined in Part B that affect people with disabilities are whether the owner is maintaining data indicating the level of participation by people with disabilities in the development as required by 24 C.F.R. §8.55(b), and whether the project waiting list reflects applicant requests for reasonable changes in owner policies as mandated by 24 C.F.R. §8.33, and for admission to accessible dwelling units as required by 24 C.F.R. §8.27.
- *Part C: Program Access Review.* In Part C, the multifamily reviewer makes an independent determination of the veracity of the owner Part A, Section III certifications regarding alternative forms of communication. The reviewer also uses Part C to determine if the owner maintains Section 504 grievance procedure policies, as required by 24 C.F.R. §8.53(b).
- *Part D: Project Documents.* Part D is a checklist of documents collected by multifamily reviewers that corroborate the owner certifications and reviewer findings in Parts A, B, and C. The project tenant selection plan is among the documents listed on Part D. A review of a tenant selection plan is one method reviewers may use to verify that an owner is complying with Title VI-D requirements.

3. *CCD Supports Continued Use of the HUD-9834.*

Under the Paperwork Reduction Act, 44 U.S.C. §3501, it is the responsibility of federal agencies to “ensure the greatest possible public benefit from and maximize the utility of information created, maintained, used, shared and disseminated by... the Federal Government” and to “improve the quality and use of Federal information to strengthen decision making, accountability, and openness in Government and society.” CCD agrees with HUD’s supporting statement for OMB approval of the HUD-9834. The supporting statement says that the information collected by the form is needed to assure that multifamily housing is maintained and managed at a high quality level, consistent with agency regulations, the *Occupancy Handbook*, and the regulatory and contractual agreements affecting individual multifamily properties. More particularly, the complaint in *Consortium for Citizens with Disabilities v. HUD* was motivated by concerns that people with disabilities were improperly excluded from assisted multifamily housing. Addendum B addresses those concerns because it helps assure owner compliance with Title VI-D and Section 504.

4. *Additional Comments on the Content of HUD-9834.*

(a) *Owner Certifications.* The proposed instructions to Addendum B clarify that all questions in the owner certifications must be completed, and make it clear that failure to complete the certifications may warrant enforcement action. The instructions also clarify that it is the *owner*, not the management agent that signs the certification. CCD agrees with these changes. In its revised form, the HUD-9834 emphasizes that failure to provide information and acts of non-compliance are viewed as serious breaches, warranting action under HUD enforcement rules.

(b) *Counting Accessible Units.* The instructions for Part A, Section II of Addendum B instructs owners to enter the number of *subsidized* units that meet Uniform Federal Accessibility Standards in the block that counts “mobility accessible units.” Units that include accessible features such as grab bars but are not UFAS-compliant may not be counted. The instructions go on to say that “Unsubsidized units are not required to meet the requirements of UFAS, however, those units should be counted if they are fully accessible to people who use wheelchairs.” CCD disagrees with the assertion that unassisted units are not subject to Section 504’s architectural access requirements.² However, the instructions should make it clear that unsubsidized units may be counted *only if they are fully compliant with UFAS.*

(c) *Transition Plans and Self-Evaluations.* HUD’s Section 504 regulations governing architectural access in assisted housing require multifamily owners to assure that HUD-assisted projects are “readily accessible and usable” by people with disabilities. Owners may elect to use several alternative methods for achieving architectural access. As a practical matter, most access is achieved through structural changes to common areas and dwelling units. Owners were required to develop transition plans for completing structural changes by January 11, 1989. *See*, 24 C.F.R. §8.24. Owners must also complete self-evaluations in order to identify and remove barriers to program access by people with disabilities. Self-evaluations should have been completed by July 11, 1989. 24 C.F.R. §8.51.

The *Occupancy Handbook* encourages multifamily owners to update both the transition plans for architectural access and the self-evaluations for program access. “Updates are particularly important if there have been alterations to units or units have been added or demolished.” *Occupancy Handbook*, par. 2-34(C) (self-evaluation). *See also*, par. 2-34 (E)(1) (to same effect, transition plans). They are also important for those properties that are refinanced or recapitalized through the such activities as renewal of Section 8 Housing Assistance Payments contracts and mortgage restructuring in the Mark-to-Market program.

No part of the HUD-9834 collects or reviews transition plans and self-evaluations. No part of the form gathers information needed to determine if an owner completed the barrier removal activities required in connection with transition plans or self-evaluations. No part of the form assesses whether transition plans and self-evaluations are updated. CCD urges HUD to add blocks to the HUD-9834 for these purposes.

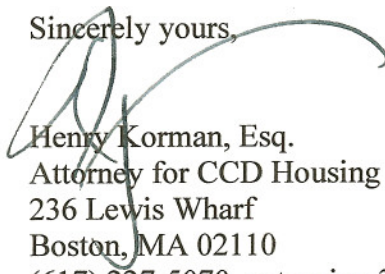
² The accessibility requirements of Section 504 apply to all units in a development. *See*, 24 C.F.R. §8.22(b) (5%-2% requirements apply to “total dwelling units” in a project).

5. *Conclusion.*

CCD supports renewal of the HUD-9834, with the changes described in these comments. The form is necessary to carry out HUD's general obligations to assure that multifamily housing is maintained and managed at a high quality level, consistent with agency regulations, the *Occupancy Handbook*, and the regulatory and contractual agreements affecting individual multifamily properties. More importantly, the Housing Task Force believes that it is an essential element of the Voluntary Conciliation Agreement.

We appreciate your consideration of the comments. Please feel free to contact Henry Korman or any of the Co-Chairs of the Housing Task Force if you have questions or concerns.

Sincerely yours,



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

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

AGREEMENT

BETWEEN

CONSORTIUM FOR CITIZENS WITH DISABILITIES,
MATTHEW BAUSCH

AND

THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

I. Introduction

On January 17, 2001, members of the Consortium for Citizens with Disabilities CCD Housing Task Force¹ ("CCD Housing Task Force") and Matthew Bausch, an individual with disabilities, filed a complaint pursuant to 24 C.F.R. 9.170 against the U.S. Department of Housing and Urban Development ("HUD" or "Department"). [The complainants hereafter will be collectively referred to as "CCD".] On April 4, 2002, counsel for the complainants requested that Salvatore Pierro, an individual with disabilities, be added as a complainant. On June 3, 2002, the Department notified CCD's counsel that Mr. Pierro had been added as a complainant.² The Part 9 complaint alleges that HUD policies and administrative practices with respect to the admission and occupancy to multifamily developments covered by Title VI-D of the Housing and Community Development Act of 1992, 42 U.S.C. 13601 *et seq* ["Title VI-D"] discriminate against non-elderly persons with disabilities.

The Department is committed to assuring nondiscrimination on the basis of disability in HUD-conducted and HUD-funded programs and activities as provided for by Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, ["Section 504"], 24 C.F.R. 5.105(a), and the Department's implementing regulations, 24 C.F.R. Parts 8 and 9; as well as Executive Order 13217, "Community-Based Alternatives for Individuals with Disabilities," and President George W. Bush's New Freedom Initiative.

The CCD Housing Task Force and the Department agree that it is in their respective interests to settle this matter voluntarily through this Agreement pursuant to 24 CFR 9.170(g)(2). This Agreement reaffirms the Department's commitment to safeguarding and expanding opportunities for persons with disabilities to participate in HUD-assisted and -conducted programs and activities; resolves the pending Part 9 complaint, and sets forth a general framework for some of the actions the Department plans to undertake to deliver upon the commitment of the George W. Bush Administration and the Department to provide for equal opportunity for persons with disabilities in HUD-conducted and HUD-assisted programs.

Through this Agreement, the Department makes no admission that its policies or practices pertaining to either HUD-conducted or HUD-assisted programs and activities have failed to comply with the nondiscrimination and equal opportunity mandates of Section 504 and HUD's implementing regulations. HUD also maintains that the scope of 24 CFR Part 9 is limited to HUD-conducted programs. See 24 CFR 9.102.

¹ The following organizations are members of the CCD Housing Task Force: National Alliance for the Mentally Ill, the Technical Assistance Collaborative ("TAC"), United Cerebral Palsy, National Association of Protection and Advocacy Systems, Arc, National Association of Developmental Disabilities Councils, American Network of Community Options and Resources, and Paralyzed Veterans of America.

² Mr. Pierro also requested that HUD take action pursuant to its Part 8 regulation, and that request was referred to the New York/New Jersey Office of Fair Housing and Equal Opportunity for appropriate action.

II. General Provisions

A. The Department shall continue to operate its HUD-conducted programs and activities in a manner that does not discriminate on the basis of disability, as provided for under Section 504 and the Department's implementing regulations. No qualified individual with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity HUD conducts. 24 CFR 9.130(a). See also 24 CFR 9.130(b) & (d) (providing examples of prohibited conduct).

B. The Department shall continue to implement President George W. Bush's New Freedom Initiative and Executive Order 13217 "Community-Based Alternatives for Individuals with Disabilities." The Department will continue to seek and evaluate the feasibility of ways to improve community integration of people with disabilities through HUD's programs and activities, and continue to participate in the Interagency Council on Community Living.

C. The Department will continue through regulation, guidance, monitoring, and enforcement to keep recipients of HUD financial assistance aware of their obligations to operate their programs and activities in a manner that does not violate Section 504 or HUD's implementing regulations at 24 C.F.R Part 8. The Department's Office of Fair Housing and Equal Opportunity will continue to enforce Section 504 and 24 CFR Part 8 through complaint investigations and compliance reviews.

D. CCD and the Department recognize that performance of the commitments set forth in Paragraph III are premised on the belief that the affected HUD Offices will have sufficient budget and staffing resources to conduct the actions and activities described. If the Department believes it has insufficient budget and staffing to perform an action set forth in Paragraph III, it shall notify CCD how it will proceed in light of those circumstances.

E. This Agreement will become effective upon the date of the last signature. The Agreement shall remain in effect for one year or until the completion of the actions set forth in Paragraph III whichever occurs first.

F. In the event that actions set forth in Paragraph III remain on-going 300 days after the effective date of the Agreement, the parties will meet to discuss what further implementation, if any, the Department plans to undertake after the Agreement expires.

III. Specific Provisions

A. Self-Evaluation

1. The Department has commenced the self-evaluation of its HUD-conducted programs as mandated by 24 CFR 9.110. Whereas the Secretary's Task Force on Disability Issues ["Task Force"] is responsible for oversight and completion of the self-evaluation, the Office of Fair Housing and Equal Opportunity (FHEO) is taking a lead role in coordination of the self-evaluation.

The self-evaluation is being conducted consistent with the general principles set forth in Department of Justice (DOJ) TAG 87-1.

2. The self-evaluation is being conducted in two phases: Phase 1 covering HUD-conducted programs and activities; and Phase 2 covering the accessibility of HUD facilities.

- a) Phase 1: Based on DOJ guidance, especially TAG-88-12, and a review of other agencies' self evaluations, questionnaires were developed and distributed to Headquarters office directors to determine practices and procedures and determine what barriers exist for persons with disabilities. Evaluation of the questionnaires will result in an inventory of barriers, which will then be analyzed for solutions that will address each barrier. The questionnaires cover: overall policies, equal opportunity to participate, communications, meetings; contracting with external organizations, and complaint processing.
- b) Phase 2: FHEO in conjunction with the Office of Administration (Admin) will consist of a physical accessibility review of 9 of HUD's 10 Regional Office. [The Philadelphia Office is scheduled to move in early FY 2005, and thus the Department will evaluate the new space rather than the existing space.] These reviews cover the elements set forth in DOJ TAG 88-11. Upon completion of these accessibility reviews a list of barriers will be compiled and then assessed for methods to address each barrier. FHEO and Admin will consult with GSA with respect to the barriers identified and possible solutions.

3. Barring any unforeseen budgetary, staffing or other constraints, the Department projects that Phase 1 shall be completed by September 30, 2004 and Phase 2 shall be completed by November 1, 2004. Additionally, the Department is exploring inclusion of aspects of the self-evaluation in its annual Quality Management Review of selected HUD offices.

4. HUD will notify the public about the self-evaluation and seek comments on barriers persons with disabilities encounter in HUD-conducted programs and activities through a notice published in the Federal Register notice and placed on the Department's web site, www.hud.gov.

5. Until both phases of this self-evaluation are completed and the results made public (e.g., Federal Register notice, or posting on www.hud.gov), FHEO representatives who serve on the Task Force, or their designees, will update CCD on a quarterly basis (i.e., within 90 days from the effective date of the Agreement, and every 90 days thereafter) on the status of the self-evaluation and the activities outlined above.

B. Multifamily Housing Inventory

1. In March 2003, the Department's Office of Housing completed and placed on HUD's website, www.hud.gov, an inventory designed to assist prospective applicants with disabilities locate units in HUD insured and HUD subsidized multifamily properties that may serve them. See <http://www.hud.gov/offices/hsg/mfh/hto/inventorysurvey.cfm>. During the process of creating this

inventory, the Department received valuable suggestions from CCD and industry and consumer groups interested in housing opportunities for the elderly and persons with disabilities. HUD has published a notice in the Federal Register, 69 Fed. Reg. 17440 (Apr. 2, 2004), informing the public that the inventory is available on HUD's web page and how it can be used.

2. HUD will continue to make the inventory available to the public on its website. The inventory includes:

- a) a list of all HUD-assisted and HUD-insured multifamily properties that are designated for occupancy by elderly families, disabled families, or both, including "covered Section 8 projects" as defined in Section 651 of Title VI-D, and "other federally assisted housing" as defined in Section 658 of Title VI-D
- b) the number of dwelling units in each such property that are designated of occupancy only by elderly families including, but not limited to occupancy designations by reason of the selection preference for elderly families as permitted by 42 USC § 13611
- c) the number of dwelling units in each such property that are designated for occupancy only by disabled families, including but not limited to the reservation of units for disabled families required by 42 USC § 13618; and
- d) the number of dwelling units in each such property that are equipped with special features designed to accommodate all persons with disabilities irrespective of age.

3. The Department and CCD recognize that this inventory of units available for occupancy by persons with disabilities and/or the elderly has limitations. For example, the inventory does not establish applicant eligibility based on an owner's tenant selection plan, waiting list information, vacancies and unit availability, tenant selection preferences, or types of accessible features in particular units. While prospective applicants need to make individual inquiries to the inventoried properties to determine if the specific features in an "accessible" unit will meet their individual needs and to obtain information regarding eligibility and tenant selection, this inventory will help them identify where to direct those inquiries.

4. Acknowledging that owners may change their occupancy policies and the value of the inventory as a tool to assist low income households seeking housing, the Office of Housing is committed to providing updates of the inventory. The Office of Housing is evaluating and will continue to evaluate efficient and cost-effective means of producing updates of this information, as well methods for integrating the inventory's information into its other databases such as TRACS and REMS. However, updates may require taking the inventory off HUD's web page for short time periods. The Office of Housing will seek to minimize the time that the inventory is unavailable to the public.

5. The Office of Housing will meet with CCD within six (6) months of the signature of this Agreement to discuss the status of the efforts set forth in Paragraph III.B.

C. Title VI-D Monitoring & Compliance Efforts

The Office of Housing has revised Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, to provide enhanced guidance to owners/housing providers covered by Title VI-D. The Office of Housing also will take the following actions:

1. Education and Training

- a) At the end of FY 2003, the Office of Housing provided its staff with satellite training on the changes to Handbook 4350.3. Given the limited amount of funding available and that the training had to be completed by the end of the Fiscal Year, there was insufficient time to allow for notice to and participation of affected housing providers, management and owner organizations, and organizations that provide housing assistance to the elderly and persons with disabilities. The Office of Housing has created CD-ROMs with the training that are being distributed to Field Offices so that groups that were unable to attend the training can obtain the information that was disseminated.
- b) Provided that FY2004 funds are available, the Office of Housing will provide a follow up satellite broadcast training for organizations that provide housing assistance to the elderly and persons with disabilities, affected housing providers, management and owner organizations, and HUD employees. All HUD Field Offices will be requested to provide notice of the training and an opportunity to attend to these members of the public. As is customary with all HUD training, the Office of Housing will develop Questions and Answers to facilitate HUD employees understanding of the revised changes.

2. **Monitoring and Compliance.** CCD acknowledges that the Department has on-going monitoring and compliance activities currently underway, including management reviews, audit procedures, physical inspections by the Real Estate Assessment Center. The Office of Housing will evaluate how it can incorporate Title VI-D staff monitoring and compliance requirements into management reviews conducted by the Performance Based Contract Administrators and reviews conducted by Field Offices. In addition, the Office of Housing will evaluate how it can incorporate these requirements in the physical inspections conducted the Real Estate Assessment Center. The Department and CCD recognize that these evaluations must take into account the budgetary and staffing constraints.

D. Housing Needs Study

1. The Department recognizes the limitations of its Worst Case Needs Housing Study in capturing the needs of a population of people comprised of individuals who receive SSI, adjusted for an additional number of people with physical disabilities identified from the AHA Housing Modification Supplement. The definition of "disability" for purposes of determining eligibility in the Department's programs is broader than the categories identified in the Worst Case Needs Housing Study.

2. HUD's Office of Fair Housing and Equal Opportunity will facilitate dialogue within the Department, and in particular with HUD's Office of Policy Development and Research, to explore how HUD could conduct more effective research to describe quantitatively the housing needs of persons with disabilities, especially non-elderly persons with disabilities.

3. FHED will meet with CCD within six (6) months from the effective date of this Agreement to discuss the status of this dialogue and receive input from CCD.

IV. Signatures

For Consortium for Citizens with Disabilities and Matthew Bausch:

Henry Korman
Signature

Attorney for CCD & Matthew Bausch
Title

June 4, 2004
Date

Michael Allen
Signature

Attorney for CCD and Matthew Bausch
Title

June 4, 2004
Date

For the U.S. Department of Housing and Urban Development:

Carolyn Peoples

Carolyn Peoples
Assistant Secretary for
Fair Housing & Equal Opportunity

9/29/04
Date

J. C. Weicher

Dr. John C. Weicher
Assistant Secretary for
Housing/Federal Housing Commissioner

10/7/04
Date