



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

SPECIAL ATTENTION OF:

Regional Managers; Office of Public Housing
Directors; Program Center Coordinators;
Public Housing Agencies; Resident
Management Corporations

NOTICE PIH-2012-31 (HA)

Issued: June 29, 2012

This notice remains in effect until
amended, superseded or rescinded

Cross reference:

PIH Notices 2005-5 and 2011-51

Subject: Assisted housing for persons with disabilities under *Olmstead* implementation efforts to provide community-based options rather than institutional settings.

1. Purpose: This guidance to public housing agencies (PHAs) describes actions PHAs may take to assist persons with disabilities transitioning from institutions and persons at serious risk of institutionalization access PHA-assisted housing. This guidance supplements prior guidance in PIH Notice 2005-5 on community-based alternatives for individuals with disabilities.

2. Background: The *Olmstead* decision refers to the June 1999 Supreme Court ruling in *Olmstead v. L.C.*, 527 U.S. 581 (1999), where the Court held that Title II of the Americans with Disabilities Act (ADA) prohibits the unjustified segregation of individuals with disabilities. The court's opinion provided a directive that public entities must serve qualified individuals with mental and physical disabilities in community settings rather than in institutions when such services are 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's ruling is based upon the regulations implementing Title II, which require that public entities administer their services, programs and activities "in the most integrated setting appropriate to the needs of qualified individuals with disabilities." See 28 CFR 35.130(d). The Court encouraged states to develop comprehensive and effective plans to provide services to individuals with disabilities in the most integrated settings. See, *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead vs. L.C.* <http://www.ada.gov/olmstead/index.htm>.

The Department of Justice and the courts interpret the regulations implementing Section 504 of the Rehabilitation Act of 1973 (Section 504), which applies to PHAs and other entities receiving financial assistance from HUD, as imposing the same integration mandate. See 24 CFR 8.4(d).

Staff in HUD's Office of Fair Housing and Equal Opportunity (FHEO) enforces Section 504 and Title II of the ADA, in part, by conducting compliance and monitoring reviews. HUD's Section 504 regulations impose an affirmative obligation on PHAs to assess the housing needs of persons

with disabilities in their service area, which includes persons transitioning from institutions and persons at serious risk of institutionalization.

HUD plays a role in furthering *Olmstead* implementation by helping persons with disabilities access affordable, integrated housing opportunities. There are a variety of actions that PHAs may take under currently existing authority to meet the housing needs of persons with disabilities transitioning from institutions or at serious risk of institutionalization. These actions, identified below, may be taken whether or not the PHA's state or local public entity is subject to outstanding *Olmstead*-related litigation, enforcement activities, or undertaking affirmative *Olmstead* planning and implementation efforts.

3. Actions: The actions presented below are examples of how PHAs may partner with their appropriate jurisdiction to address identified local housing needs:

A. Establish a local admission preference: Recent collaborative efforts between HUD and the U.S. Department of Health and Human Services (HHS) include Secretary Donovan's June 2009 letter to PHAs urging adoption of a local admission preference for persons with disabilities who are ready to exit institutions. The letter provides detailed information on HHS' Money Follows the Person (MFP) Demonstration, a national grant program to identify individuals in institutions who wish to transition to the community, and for whom necessary supportive services are coordinated.

PHAs may develop a local preference for individuals ready to exit institutional care. PHAs may include in this preference persons at serious risk of institutionalization. The preference may apply to HCV and/or Public Housing programs. The preference may be limited to a set number of vouchers or units or a percentage of vouchers or units as they become available.

PHAs incorporate such a preference in written policies for their HCV and/or Public Housing programs and may open waiting lists strictly to people to whom the preference applies. When opening the waiting list, PHAs give public notice in a local newspaper of general circulation, by minority media and other suitable means. Such notices comply with federal nondiscrimination laws in stating where and when to apply and any limitations on who may apply. Upon an adequate number of persons with disabilities meeting the preference, the PHA may again close the waiting list. PHAs may also leave their waiting list open only for this population, while keeping the waiting list closed for all other applicants.

When adopting a new preference, PHAs also ensure that current applicants on the waiting list who qualify for the preference receive the benefit of the preference and move up accordingly on the waiting list. Applicants under this local preference may be assessed for readiness to transition, meaning the actual issuance of a voucher or offering of a public housing unit may be timed to coincide with an individual's exit/release plan.

To ensure that individuals with various disabilities are eligible to receive assistance under this preference, PHAs cannot restrict the preference to those referred or approved by a single state agency or to persons with specific disabilities or diagnoses, unless such a restriction is a HUD-approved remedial action.

Remedial actions in response to *Olmstead*-related litigation or enforcement, including a settlement agreement, court order or consent decree, or in response to a public entity's documented, voluntary affirmative *Olmstead* planning and implementation efforts, require approval by HUD's Associate General Counsel for Fair Housing.

In all other instances, the preference applies broadly to persons transitioning from institutions, possibly including persons at serious risk of institutionalization, as may be determined by the PHA. Appropriate supportive services are provided by state MFP entities or other support service agencies and partnering organizations. The appropriate services may include case management and personal care.

HUD-funded programs or activities must be operated in a way that provides the most integrated setting appropriate to the needs of individuals with disabilities benefiting from any preference as required by 24 CFR part 8.4(d). Thus, when offering preferences within a PHA's public housing program, a PHA must ensure that units occupied by persons with disabilities are not clustered in a particular building, floor or within certain sections within a larger development.

- B. Dedicate non-elderly disabled (NED) vouchers: PIH Notice 2011-32 provides guidance to PHAs awarded special vouchers for non-elderly people with disabilities concerning the requirement to re-establish these vouchers for use by the intended population and remain with that population upon turnover. PHAs may serve non-elderly persons with disabilities transitioning from institutions with NED vouchers by establishing a preference for a dedicated number of the NED vouchers and adopting the preference in accordance with regular HCV program requirements.
- C. Leverage Section 811 funds within public housing: Under a 2012 demonstration program, Section 811 Project Rental Assistance (811 PRA) provides funds to state housing agencies or other appropriate housing agencies for use as project rental assistance applied to new or existing affordable housing units in which capital has been provided through low-income housing tax credits (LIHTC), federal HOME funds, or other state and local sources. A maximum of 25% of the total units in eligible properties can be provided 811 PRA funds, be used for supportive housing for persons with disabilities, or have any occupancy preference for persons with disabilities. Section 811 PRA funds may be applied to PHA mixed finance or other alternative funding developments. PHAs in states awarded 811 PRA funding are encouraged to work with their states and partnering agencies to identify potential projects. For more information on program requirements see HUD's Section 811 PRA notice of funding availability (NOFA).
- D. Enhance outreach: Seek new ways to ensure information regarding the openings of waiting lists reaches eligible individuals who may be ready to transition from institutions and persons at serious risk of institutionalization. Expanded outreach may include advertising the opening of waiting lists to social service agencies, nursing homes, board and care homes, psychiatric hospitals, mental health facilities, and institutions and hospitals for individuals

with disabilities in the local service area. PHAs may choose to contact the facilities via Twitter, Facebook, websites or newsletters.

- E. Develop an accessible housing list: Enhance the list of known accessible HCV units by adding information about partially accessible units in the area, including accessible features and bedroom size for each unit. Present the need for accessible housing to private providers and share the list of outreach agencies to interested landlords. Encourage private landlords to make accessibility modifications to private units and identify and encourage private landlords with accessible units to participate in HCV programs. PHAs are required to make accessible public housing units available to eligible households through a lease stipulation requiring non-mobility impaired applicants who accept residence within an accessible unit to subsequently transfer to a non-accessible unit when such a unit becomes available. *See* 24 CFR 8.27(b).
 - F. Provide flexibility: Adopt a policy to address the challenges related to portability and locating accessible housing when considering requests for extensions of a HCV. *See* 24 CFR 8.28(a) (4). Permit flexible application procedures/locations, including “in home” application processes.
 - G. Seek service-based resources: Centers for Medicare and Medicaid Services (CMS) released the “Community Living Initiative” letter to State Medicaid Directors on May 20, 2010, reaffirming previous Olmstead policies and offering tools to gain greater achievements. States may access technical assistance for long-term services and supports; promote affordable housing to maximize community living opportunities; advance home and community based services; support infrastructure reforms; share capacities through Home and Community Based Services (HCBS) participants; network with aging and disability resources centers (ADRCs); and assist discharge planning.
4. Training: Education is an effective tool to disseminate information. PHA and local HUD staff are encouraged to:
- A. Participate in conferences, symposiums and focus groups that reach advocates and consumers who have disabilities;
 - B. Participate in local conferences of disability rights organizations and provide information on housing resources; and
 - C. Collaborate with regional or local Health and Human Services Office of Civil Rights staff to conduct joint trainings.
5. Additional Resources: For further information or assistance, contact appropriate PIH and/or FHEO field staff. Additional guidance is also available electronically:
- A. A guide to the Medicaid program for housing professionals, see: [Medicaid Primer](#)
 - B. PIH Notice 2011-32; Policies and Procedures for non-elderly disabled (NED) vouchers, see: http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/pih
 - C. New Freedom Initiative, Executive Order 13217: “Community Based Alternatives for Persons with Disabilities,” and the Housing Choice Voucher Program PIH Notice 2005-05,

- see: <http://www.hud.gov/offices/pih/publications/notices/05/pih2005-5.pdf>
- D. Non-Discrimination and Accessibility for Persons with Disabilities Notice PIH 2010-26, see: <http://www.hud.gov/offices/pih/publications/notices/10/pih2010-26.pdf>
- E. HUD Section 811 Project Rental Assistance Demonstration NOFA, http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/grants/section811pt1/demoNOFA.
- F. *Olmstead* Decision, see <http://www.law.cornell.edu/supct/html/98-536.ZS.html>
- G. Secretary Donovan letter of June 22, 2009, see: <http://www.olmsteadva.com/mfp/downloads/tn.pdf>
- H. FHEO field monitoring guidance, see: <http://portal.hud.gov/hudportal/documents/huddoc?id=disabilitiestransitioning.PDF>
- I. Money Follows the Person, see: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Support/Balancing/Money-Follows-the-Person.html>
- J. HHS/Office for Civil Rights Regional Staff directory, see: <http://www.hhs.gov/ocr/office/about/rgn-hqaddresses.html>
- K. Homelessness and special needs partnerships between community planning and public housing see PIH Notice 2011-51
at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/pih/11pihnotices

/s/

Sandra B. Henriquez, Assistant Secretary for
Public and Indian Housing