

Henry Cisneros
Secretary
Department of Housing and Urban Development
451 Seventh St. SW
Washington, DC 20410

January 23, 1995

Dear Secretary Cisneros.

On behalf of the individuals and organizations who are listed on the following pages, and on behalf of the many others who have not yet had an opportunity to read this report, but who we know will also enthusiastically support its positions, we submit this document for your immediate and serious consideration.

In our daily lives, people with disabilities face many, many obstacles. As activists at the grassroots level, in recent years many of us have focused our efforts on overcoming barriers to "mainstream" educational opportunities, barriers to medical insurance, barriers to transportation and barriers to getting jobs. More and more, we are now focusing our attention on the discriminatory housing programs for persons with disabilities - most of them funded, and often created, by HUD. With HUD's latest efforts to "reinvent" itself, we hope there is a sincere willingness to actually assess the needs of, and actually involve true representatives of, persons with disabilities - one of the largest groups of HUD's "customers".

This report is only a brief introduction to the many serious problems persons with disabilities encounter with HUD's programs. We are in the process of forming a national coalition of individuals and organizations interested in future actions regarding these issues. We request that, as your "customers", we be involved with, be kept informed about, and be given the opportunity to react to proposed housing policies regarding persons with disabilities. To facilitate future communications and interactions with HUD, we request that an individual be identified to act as a contact person and liaison with each of HUD's organizations (Thea Spires, Special Assistant in the Office of the Secretary, has been especially helpful and responsive to us, and we would welcome the opportunity to continue to work with her in such a capacity.)

Thank you for receiving our comments and recommendations. We look forward to learning, very soon, from your office about opportunities to begin immediately to work with HUD to develop meaningful national housing policy for persons with disabilities.

Sincerely, for the National Action Coalition for Disability Rights in Housing.


Becca Vaughn

Topeka Independent Resource Center
Topeka, Kansas
913.233.4572


Karen Tameley

Atlantis Community, Inc.
Denver, Colorado
303.733.9324


Jeanne Elliott

World Institute on Disability
Oakland, California
510.251.4336

cc: Carol Rasco, Roberta Achtenberg, Nicholas Retsinas, Joseph Shuldin, Andrew Cuomo, William Gilmartin, Helen Dunlap, Jacqui Lawing, Thea Spires

Supporting Individuals and Groups

World Institute on Disability
510 Sixteenth St., Suite 100
Oakland, California 94612

ADAPT
201 S. Cherokee
Denver, Colorado 80223

Pennsylvania Coalition of Citizens with Disabilities
Linda Anthony, Executive Director
The Executive House
101 S. Second St., Suite 4
Harrisburg, Pennsylvania 17101

Concrete Change
Eleanor Smith
1371 Metropolitan Avenue, SE
Atlanta, Georgia 30316

Center for Independent Living, Berkley
Micheal Donnelly, Executive Director
2539 Telegraph Avenue
Berkeley, California 94704

Atlantis Community, Inc
12 Broadway
Denver, Colorado 80203

Disability Activists
Dennis Jackson
3811 W. Seventh St. #19
Topeka, Kansas

Disabled in Action
Consumer Connections
Philadelphia, Pennsylvania

Liberty Resources, Inc.
1 Winding Way #108
Philadelphia, Pennsylvania

Topeka Independent Living Resource Center
Mike Oxford, Executive Director
501 SW Jackson
Topeka, Kansas

Supporting Individuals and Groups (cont.)

Karen Carter

Member, National *Action* Coalition for Disability Rights in Housing
Berkley, California

Josie Byzek

Member, National *Action* Coalition for Disability Rights in Housing
101 S. Second St., Suite 4
Harrisburg, Pennsylvania 17101

Stephanie Thomas

Member, National *Action* Coalition for Disability Rights in Housing
1339 Lamar Sq., DR #B
Austin, Texas 78704

Responding to HUD's "Housing for Persons with Disabilities"

...

Debunking the Myths and Recommending Policies WE Can Live With

Mini-Institutions, like the industry-operated group homes, "shared living" and "transitional" programs, are not considered "housing" for persons without disabilities because, in fact, such institutions are NOT housing...

- from the report

People with disabilities and grassroots advocacy organizations nationwide
- "customers" without the resources to have lobbyists in Washington -
respond to "special needs" housing programs and HUD's recent "Blueprint"

National Action Coalition for Disability Rights in Housing

c/o 501 SW Jackson St. • Suite 100-B • Topeka, Kansas • 66603-3300 • 713.233.0772 vofy • Fax 713.233.1541

Executive Summary

Reacting to myths that are rooted in prejudice and ignorance, HUD has developed mini-institutions, not housing, for persons with disabilities. These mini-institutions serve the interests of politicians, the housing and service industries, and some families, but not persons with disabilities. Instead of listening only to the self-interests of the housing and services industries, HUD needs to start communicating directly with persons with all types of disabilities in order to understand our housing needs and our fair housing concerns, and then develop programs that respond to us - one of HUD's largest "customer" groups.

In light of the dramatic changes proposed by HUD's "Blueprint", it is critical that the needs of persons with disabilities are not, again, ignored, or our fates purposely left to the states and communities - where we will be expected to compete against the well-funded, well-connected local lobbyists for the housing and services industries. We believe that it is the role of the federal government to advocate for and protect the most disenfranchised, the most vulnerable to abuse and discrimination. We believe it is the role of HUD to champion the housing and fair housing goals advocated by persons with disabilities.

We recommend numerous, specific actions that would begin to assure that, in the new system, the needs of people with disabilities will be a mandated priority, that the resources developed will be consumer-controlled, and that our civil and fair housing rights will be protected. Examples from the three categories of recommendations include:

- Require that "disability" be a prime eligibility category for federal housing assistance.
- Retain the current federal preferences, and make having a disability an "enhancer" of any federal, state or local preference
- Prohibit states and communities from restricting funds to specific diagnostic or disability groups, and prohibit "set-asides" on the basis of diagnosis or category of disability.
- Require that all programs for persons with disabilities be based on the consumer-survivor and independent living models of consumer control, consumer choice, full integration and freedom from service requirements.
- Prohibit any linkage of services to housing; prohibit any eligibility or tenancy requirements related to the need or use of services.
- Introduce a federal statute that would require housing providers to treat a federal certificate as income, and prohibit discrimination on the basis of "status as a recipient of federal housing assistance".

With few exceptions, HUD's housing programs for persons with disabilities are paternalistic, demeaning mini-institutions with program requirements that violate the spirit and the letter of fair housing and civil rights laws. These programs, no matter how "well intentioned", are shaped by society's prejudices, irrational fears and ignorance about persons with disabilities. The housing and service industries capitalize on these fears and prejudices as they influence HUD and Congress to, using the outmoded medical model, design mini-institutions that meet the business interests and convenience of the industries. Today, HUD's programs for persons with disabilities meet the needs of politicians, the housing industry, the service industry and some "family groups" - but these programs do not meet the housing needs of persons with disabilities, and these programs contain basic elements that violate principles of civil rights and fair housing laws.

It is disturbing that the current HUD administration has apparently failed to recognize the discriminatory treatment of persons with disabilities in HUD programs, and has failed, as well, to recognize the need to involve actual persons with disabilities when developing housing policy. Despite repeated attempts during the past year to persuade HUD to establish a disability advisory group to work cooperatively with the Department on housing and fair housing matters affecting persons with disabilities, it is our understanding that HUD staff, instead, continues to meet with industry representatives and Washington lobbyists to discuss disability policy issues. With the exception of Helen Dunlap, Deputy Assistant Secretary for Multifamily Housing, and Thea Spires, Special Assistant in the Office of the Secretary, to our knowledge no other member of HUD's administration has made an effort to provide an opportunity for actual persons with disabilities and their designated advocates to discuss recommendations about federal housing policy for persons with disabilities.

MYTHS

From all appearances, HUD has been developing programs for persons with disabilities based on eight myths. These myths have been invented and perpetuated by society, by the housing and services industries, and by HUD.¹

The myths that underlie HUD's housing policies for persons with disabilities include the following:

Myth 1

Housing providers and service providers know better than persons with disabilities how best to meet the needs of persons with disabilities. The housing and service industries are effective spokespersons and advocates for persons with disabilities, and the housing and service industries are the real "stakeholders" in housing resources for persons with disabilities. It is HUD's role to advocate on behalf

¹ We include in "housing and service industries" those thousands of non-profit housing developers and service providers who may be affiliated with disability organizations but who operate housing and/or service programs that are not consumer-controlled, consumer-directed, integrated, and free of service-related requirements.

with disabilities should be of the mini-institution and contiguous types. Finally, aside from the service-related issues, people with disabilities want to live in disability-exclusive environments where they will feel at home among their "own kind".

Myth 6

It is legal and reasonable to "set aside" a certain percentage of a program's funds for persons with a particular diagnosis or type of disability (e.g. "mental illness", "AIDS", "Deaf", etc.)

Myth 7

The so-called civil and fair housing "rights" of persons with disabilities are not really equivalent to civil rights related to race, color, religion, etc. For example:

- Not complying with Section 504's structural accessibility requirements is not really discrimination, whereas refusing to rent to an African American is truly illegal;
- Requiring a social worker to co-sign a lease because the applicant is a person with a mental disability, is reasonable, whereas requiring a male of some sort to co-sign a lease because the applicant is female is a real civil rights violation.

Since HUD has limited resources, HUD should focus fair housing enforcement and compliance efforts on *real* discrimination issues of race, gender, etc., and trust the social service professionals and the housing industry to do what's best for those with "special needs" and, therefore, where a "special" interpretation, looser application, and lighter enforcement of civil rights laws is appropriate.

Myth 8

Only housing where persons with disabilities actually live needs to be physically and programmatically accessible and needs to provide "reasonable accommodations." The percentage of accessible homes should be roughly equivalent to the percentage of people with disabilities. People with disabilities do not need to visit, attend meetings at the homes of, or have as clients people *without* disabilities who live in *inaccessible* housing. Universal, basic access is expensive, complex and unneeded.

These are, indeed, all myths. Not one of them reflects reality.

It is time for HUD to get in touch with reality by involving persons with disabilities in the process of shaping federal housing policy.

Cisneros and housing activists:

Mike Auberger; Bob Kafka from Austin; Becca V, Karen Tamley;

set up hsg for pwd office, like AIDS

revisit policy

talk to chicago re townhouses and whole use of townhouses

try to do better at enforcement

232 nursing home insurance program: at first resistant, but then
said we should take a look at what we should do

Access fund for all communities that get CDBG money

wanted disab housing conf: he countered with a working group that
produces real change

Betsy, Marg Millner; meeting taped;

Retsinas commitment: hearings around the country on nursing homes

Betsy/Bonnie point persons

AIDS advocates will get to decide who runs office;

CPD: CDBG: can be used by municipality; polling places, curb cuts; McKinney, HOPWA; HOME: don't like letting HOME be used for diagnosis specific housing

Marca met Secretary; mtg monthly w/AIDS providers; wants to start meeting reg'ly w/disability

Milstein:

11/7/95

couple of changes since we met in July; Betsy then wrote memo to Secretary; she will fax to us; Lori surprised we knew

1. '92/'93 regs allowed de-mixing and allows elderly only; consumer gps like regs; only a few housing auths applied; Hill turned this around; HR 117 amendment to Lazio's housing bill, which reauthorizes progs, and prohibits da&a from elderly; allows disabled-only or elderly-only housing; sap: no problem, good bec. elderly should be separate, regs are difficult

Ellen Webber, Legal Action Center

2. ADAPT showed up saying stop funding nursing homes and instead support . So Nick Retsinas, Assistant Secy of Housing (Dunlop, Millner); made some commitment, but she doesn't know -- Assisted Housing

Eleanor Smith: complain re failure to enforce req for new public housing being accessible

Townhouses: public housing: Mary Ann Russ (will be Kevin Marchman)

3. Section 236 low-income housing program that Congress defunded: HUD told folks in Calif that 504 doesn't apply; not true; should be easy; Julian's office is investigating

1. de-link housing and service: dislike HUD reinvention; Affordable Housing Fund; permits non-profits to get \$ for people w/AIDS, CP, MH, etc.; Also don't like that

Cuomo theory; homeless people, need to get their lives together, on pain of losing housing

Was always a policy, but reinvention reiterated

2. how much they dislike segregated housing

3. only listens to providers, not consumers

(tenant based vouchers, etc.)

Last NOFA for 811 (hsg for pwd): can turn the money into rental vouchers instead of tenant-based housing; Congress did algo; but HUD said services and housing don't have to be linked

811 created in '90; 202 still elderly

Sec 232 insurance program for nursing homes

Sec 236, 221d3: assisted housing: denying 504

CPD: CDBG: can be used by municipality; polling places, curb cuts; McKinney, HOPWA; HOME: don't like letting HOME be used for diagnosis specific housing

Marca met Secretary; mtg monthly w/AIDS providers; wants to start meeting reg'ly w/disability

services integration
cc Mott/ASAP
enforcement/voucher
Let me go
Diana OK

"market" (in the same ways that are proposed for the housing authorities).

Reality 2

Mini-institutions, like the industry-operated group homes, "shared living" and "transitional" programs, are not considered "housing" for persons without disabilities because, in fact, such institutions are NOT housing. When group homes, shared living arrangement and sets of contiguous apartments have mandated services incorporated into the facility, these programs are *treatment facilities*, and should not be permitted to be considered "housing" for anyone - including persons with disabilities.

The vast majority of people with disabilities, just like the vast majority of people without disabilities, do not want to live in stigmatizing, unnatural "projects" where people are forced to live together on the basis of criteria dictated by the government or the provider. There are many variables - like proximity to work, stores and schools, safety concerns, access to transportation, etc. - that determine where people, including persons with disabilities, choose to live. "Projects", including mini-institutions for persons with disabilities, do not offer any choices. Certificates do offer choice, and that is what persons with disabilities want, need, and deserve. With certificates, a person with a disability may choose to live alone in an apartment, with others in an apartment or a house, in a "boarding home", or maybe even a group home - but the reality is that people with disabilities want the opportunity to decide, among a variety of choices, where they will live.

Reality 3

"Supportive services" should not be provided as part of housing programs for persons with disabilities. There should be a clear and complete separation between the housing and any services a person with a disability might receive. Any services a person needs and freely chooses to receive should be provided in a way that is distinct from the housing and should be "attached" to the PERSON, not the housing - so that wherever the person chooses to live, the services will follow the person and be there regardless of the type of housing chosen.

Requiring supportive services only in housing programs for persons with disabilities is a "special term and condition" imposed because of the disability of the tenants. Imposing special terms and conditions on the basis of disability is a violation of fair housing law, the ADA² and section 504.

Requiring supportive services can be a deterrent to the development of units for persons with disabilities. Even though there may be housing stock or development options available, because a provider does not want to get involved in service delivery issues, the provider is deterred from developing the housing units through a "disability program." Consequently, persons with disabilities are denied housing for reasons totally unrelated to housing. We are denied housing opportunities for reasons related to

² The ADA applies to those housing programs that would meet the definition of types of state and local government programs covered by Title II of the Act.

and Section 504 law⁴.

b. Housing programs that offer certain services invariably limit tenancy to those who need and/or use such services. Therefore, an individual with a disability who is eligible for the housing, but who does not need or refuses the services, will be denied housing because of reasons related to *services*, not housing - which constitutes different treatment because of disability.

c. Most people with disabilities do not want to be forced to be segregated with only other persons with disabilities. Most people with disabilities want to live - whether in an apartment building, a neighborhood of single family homes, a condominium community or a cooperative - with a variety of different types of individuals and families, some with disabilities and some without disabilities. But the important point is not *who* individuals with disabilities choose to live with, beside, or near - the important point is that individuals with disabilities *have a choice*.

Reality 6

According to Section 504, it is not legal to "set aside" a percentage of funds of a "general disability program" for persons with particular diagnoses or disabilities.⁵ It may make *political* sense to set aside a certain amount of resources for a particular diagnosis-specific group (i.e. the group that has the greatest political clout and the highest paid lobbyist), but it does not make humanistic sense to split up very limited resources on the basis of diagnosis. Anyone who knows even a little bit about disabilities knows that within any diagnostic group there are greatly divergent natures and severity of impairment. It should be the goal of HUD's programs to reach the neediest. Distributing housing resources on the basis of diagnosis or "category" of disability will not achieve this goal because in any diagnosis-specific group there will be some who are seriously impaired by the disease/injury, while others with the same diagnosis will have very mild impairments, and, therefore, less degree of need. Similarly, at the same time, there will be individuals with different diagnoses who will be much more seriously impaired - and, therefore, in greater need - than many of those with the "eligible" diagnosis.

Federal housing resources should be available to the neediest, and, in addition to considerations related to current living situation - "neediest" should be based on the degree of disabling *effects* of a disease/injury/diagnosis - not simply the diagnosis or category of disability, alone. For example, while it does not make sense to provide priority assistance simply on the basis of the diagnosis of AIDS (because of the gamut of possible degrees of severity of symptoms), it does make sense to provide assistance

⁴ Section 504 prohibits segregation "...unless such action is necessary to provide qualified individuals with handicaps with housing, aids benefits, or services that are as effective as those provided to others." 24 CFR §8.4(b)(iv).

⁵ Section 504 specifies the only situations when program benefits may be restricted to a certain class of individuals with disabilities: "...A specific class of individuals with handicaps may be excluded from a program if the program is limited by Federal statute or Executive order to a different class of individuals." 24 CFR §8.4(c)(1).

confirms an alarming degree of need⁶. One of the roles of the federal government, and, therefore, HUD, is to address the needs of the most disenfranchised, the most neglected and those who are experiencing serious discrimination throughout the nation. To date, HUD's efforts to fulfill its responsibilities regarding persons with disabilities have been, at best, misguided, and, at worst, openly hostile.

It is our understanding that HUD is in the process of developing policies and legislation that will be necessary to implement the new reinvention "Blueprint" proposed by the department on December 19, 1994. In light of HUD's poor treatment of persons with disabilities in the past, it is imperative that HUD not continue to alienate, humiliate and discriminate against persons with disabilities by not including actual persons with disabilities in policy discussions and the development of programs.

Furthermore, we suggest that HUD's consideration of the impact of the "Blueprint" on persons with disabilities revolve around the answers to three basic questions:

Consideration A: Fair Share

What statutory provisions must be built into the federal "formula grant" and "block grant" distribution process to ensure that at least a certain base percentage of federal housing resources will be available, on a priority basis, specifically to meet the housing needs of persons with disabilities?

Consideration B: Consumer Control

What statutory provisions or policies are necessary to ensure that programs and activities under this new system will be consistent with the independent living and consumer-survivor models of consumer-control, consumer-choice, integrated living options and freedom from mandated services?

Consideration C: Protection of Rights

How can it be guaranteed that rights of persons with disabilities under the fair housing laws, the ADA and section 504 will be monitored, protected and defended? How can a knowledgeable and empowered national network be created to assess and monitor the industries' compliance with section 504, the ADA, and the Fair Housing Act? How can past, current and future lack of compliance with the civil rights and fair housing laws be remedied.

The following recommendations are some of our first thoughts in response to these three critical questions. We look forward to working with HUD staff to further explore these and other housing and fair housing policy issues.

⁶ See: Worst Case Needs for Housing Assistance in the United States in 1990 and 1991. A Report to Congress

individual who is homeless and does not have a disability. Having a disability, in and of itself, would not qualify as a distinct preference, but would be considered an "enhancement" of an individual's or family's need for housing, and, therefore, would enhance priority for resources.

A-6. Advisory and "citizen" boards.

Require that a disability advisory board be established at the federal level, and require "citizen boards" to be established at state and local levels. The boards would participate in the development and monitoring of housing policy.

- a. Membership on the federal disability advisory board must be restricted to persons with disabilities.
- b. The state and local boards must have at least two persons with disabilities, at least one person representing the needs of individuals with physical disabilities, and at least one person representing the needs of persons with mental disabilities.
- c. All of the boards shall exclude non-consumer housing and service providers.

A-7. Prohibit "set-asides" based on TYPE of disability.

Allowing states and communities to earmark a certain percentage of federal assistance for persons with disabilities - as a general class, and allowing priorities for assistance based on severity of need related to the effects of disease, disability or injury (e.g. "terminally ill" or "institutionalized", however, prohibit states and communities from restricting funds on the basis of types of disabilities.

- a. Prohibit funds, programs, or any other type of "set-asides" for diagnosis-specific groups (e.g. AIDS, paraplegia, etc.), or for a particular "category" of persons with disabilities (e.g. mental disability, developmental disabilities).

A-8. Track need.

Require agencies who are administering housing programs to continue to take applications even when all program funds have been expended - this is one means of tracking unmet need.

A-9. Reasonable accommodations.

With every application or informational packet regarding a housing program, require the inclusion of specific information about the rights of persons with disabilities to request reasonable accommodations of any rule, policy, procedure, or service (see Recommendation C-6 regarding standard "Reasonable Accommodation Form".) Also include examples of accommodations, such as raising the allowable Fair Market Rent (FMR) amount because the monthly rent for a unit that has been modified by a private housing provider to meet an individual's specific structural needs may necessarily exceed the "standard" FMR - which is based on an average inaccessible unit.

A-10. Prohibit use of funds for services unrelated to housing.

Prohibit the use of any federal funds, including and especially any portion of monies identified for persons with disabilities, to pay for service coordination, services, or any other non-housing related activities.

A-11. "Work" exemptions.

Exempt persons with disabilities from any program requirements related to "work",

provide for consumer choice.

c. All programs must allow integration into the larger community (individuals with disabilities should be living together or in contiguous units only if the individuals with disabilities have freely chosen such arrangements from an array of integrated housing options.)

B-4. Prohibit Segregation.

Prohibit forced segregation on the basis of diagnosis, disability, category of disability, service need, or service use.

B-5. Prohibit linkage of housing with services.

Prohibit any linkage of services to housing. Prohibit all mandatory service requirements related to development of housing programs, eligibility for housing, tenancy or ownership, eviction or foreclosure, and intimidation or coercion (including actions to force involuntary treatment), or any other illegal use, or threat of withdrawal of services related to housing.

a. Prohibit requirements that housing providers develop any sort of services package or a list of available community services.

b. Prohibit assessments by housing providers of the "service needs" of potential tenants. (Many questions are already prohibited by fair housing law.)

B-6. Restrict who administers programs.

Prohibit the use of non-profit service providers to administer housing programs. Prohibit diagnostic- or category-specific disability organizations from administering housing programs.

B-7. Modify certificate/voucher program(s).

Modify the current certificate/voucher programs in the following ways (some changes would affect all HUD customers.)

a. Have just a voucher program. Combine the best aspects of the certificate program with the flexibility of the voucher program. Allow total (country-wide) portability.

b. Allow the vouchers to be used in either a mortgage or rental situation. The vouchers could be used to supplement personal income in order to meet mortgage responsibilities, or the vouchers could be used to cover part of, or the entire monthly rent.

c. Create a federal law that would require housing providers (including banks and mortgage companies) to treat vouchers as income, and would disallow the denial of housing or a mortgage on the basis of someone's status as a recipient of housing assistance (e.g. a federal or state voucher.)

d. Develop a special component of the voucher program that would provide funds needed for structural modifications and other "reasonable accommodations/modifications".

e. Prohibit service providers, diagnosis-specific non-profit housing providers, and any other entities affiliated with a particular disability or services for persons with specific disabilities from being administrators of the voucher (or any other housing) program for persons with disabilities.

Housing Act, the ADA and HUD policy to set aside a percentage of funds, or establish a priority for a particular disability group when those funds were designated by Congress to be for persons with disabilities in general.

C-7. Standard eligibility forms.

Develop and require the use of standard eligibility forms that do not make illegal inquiries regarding the nature or severity of a person's disability.

C-8. Standard reasonable accommodation forms.

Develop and require the use of standard reasonable accommodation request and response forms.

C-9. Add "status as a recipient of public assistance".

Amend the Fair Housing Act to include prohibitions on discrimination because of a person's "status as a recipient of public assistance".

C-10. Involve citizens boards.

Require the federal, state and local "citizens boards" to review all HUD documents to determine if the materials accurately reflect current law. Rewrite and/or redesign as necessary to ensure that "disability" is listed as among the "protected classes" or areas of unlawful considerations.

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Housing Resources for Persons with Disabilities

***Debunking the Myths
and
Establishing Policies We Can Live With***

With few exceptions, HUD's housing programs for persons with disabilities are paternalistic, demeaning mini-institutions with program requirements that violate the spirit and the letter of fair housing and civil rights laws. These programs, no matter how "well intentioned", are shaped by society's prejudices, irrational fears and ignorance about persons with disabilities. The housing and service industries capitalize on these fears and prejudices as they influence HUD and Congress to, using the outmoded medical model, design mini-institutions that meet the business interests and convenience of the industries. Today, HUD's programs for persons with disabilities meet the needs of politicians, the housing industry, the service industry and some "family groups" - but these programs do not meet the housing needs of persons with disabilities, and these programs contain basic elements that violate principles of civil rights and fair housing laws.

It is disturbing that the current HUD administration has apparently failed to recognize the discriminatory treatment of persons with disabilities in HUD programs, and has failed, as well, to recognize the need to involve actual persons with disabilities when developing housing policy. Despite repeated attempts during the past year to persuade HUD to establish a disability advisory group to work cooperatively with the Department on housing and fair housing matters affecting persons with disabilities, it is our understanding that HUD staff, instead, continues to meet with industry representatives and Washington lobbyists to discuss disability policy issues. With the exception of Helen Dunlap, Deputy Assistant Secretary for Multifamily Housing, to our knowledge no other member of HUD's administration has made an effort to provide an opportunity for actual persons with disabilities and their designated advocates to discuss recommendations about federal housing policy for persons with disabilities.

MYTHS

From all appearances, HUD has been developing programs for persons with disabilities based on eight myths. These myths have been invented and

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perpetuated by society, by the housing and services industries, and by HUD.¹

The myths that underlie HUD's housing policies for persons with disabilities include the following:

Myth 1

Housing providers and service providers know better than persons with disabilities how best to meet the needs of persons with disabilities. The housing and service industries are effective spokespersons and advocates for persons with disabilities, and the housing and service industries are the real "stakeholders" in housing resources for persons with disabilities. Therefore, when developing housing policy regarding people with disabilities, it is appropriate to have the participation of industry representatives and it is not necessary to have any participation by actual customers with disabilities.

Myth 2

Mini-institutions - like industry-controlled group homes, "shared living" and single room occupancy programs - can be considered "housing" for persons with disabilities, even though such programs are not considered "housing" for persons without disabilities. People with disabilities do not need privacy, do not seek independence, nor do they live with partners or have families. Therefore, it is appropriate for public monies to continue to support the development of mini-institutions as "housing" for persons with disabilities.

Myth 3

"Supportive services" must be provided in all housing for persons with disabilities. Individuals with disabilities are incapable of independent living - without professionally managed services. Individuals with disabilities need someone to watch over them and they need a "continuum of care", not simply housing. HUD is doing a favor for people with disabilities by requiring housing providers to incorporate services into all housing programs for persons with disabilities. Likewise, the practice, especially in group homes, of establishing "resident contribution" levels (for rent plus "services") that often are equal to nearly 100% of the total monthly income of the individual with a disability is a fair and healthy practice because the individual is receiving all that s/he needs in the home and, therefore, anything additional the individual would want to spend money for would be frivolous and therefore a waste of taxpayers' welfare dollars.

¹ We include in "housing and service industries" those thousands of non-profits such as the ARC, OCP, AIDS groups and many "mental health organizations", who may be affiliated with disability organizations but who operate housing programs that are not consumer-controlled, consumer-directed, integrated, and free of service-related requirements.

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Myth 4

The distinguishing feature of each housing program for persons with disabilities must be the services package that must be incorporated into the housing. The services packages must be designed for distinct diagnostic groups (such as AIDS, mental retardation, head injury), or, at least, distinct "categories" of disabilities such as "physical", "emotional" and "developmental".

Myth 5

People with the same or similar disabilities all need the same supportive services, and people with different disabilities never need similar supportive services. Therefore, people with disabilities should live with people with like disabilities so that it will be more convenient for the service industry to provide services. Furthermore, because mini-institutions and contiguous apartment units provide the most convenient arrangements in which to provide services, the majority of housing options for persons with disabilities should be of the mini-institution and contiguous types. Finally, aside from the service-related issues, people with disabilities want to live in disability-exclusive environments where they will feel at home among their "own kind".

Myth 6

It is legal and reasonable to "set aside" a certain percentage of a program's funds for persons with a particular diagnosis or type of disability (e.g. "mental illness", "AIDS", "Deaf", etc.)

Myth 7

The so-called civil and fair housing "rights" of persons with disabilities are not really equivalent to civil rights related to race, color, religion, etc. For example: not complying with Section 504's structural accessibility requirements is not really discrimination, whereas refusing to rent to an African American is truly illegal; or, requiring a social worker to co-sign a lease because the applicant is a person with a mental disability, is reasonable, whereas requiring a male of some sort to co-sign a lease because the applicant is female is a real civil rights violation. Since HUD has limited resources, HUD should focus fair housing enforcement and compliance efforts on *real* discrimination issues of race, gender, etc., and trust the social service professionals and the housing industry to do what's best for those with "special needs" and, therefore, where a "special" interpretation, looser application, and lighter enforcement of civil rights laws is appropriate.

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Myth 8

Only housing where persons with disabilities actually live needs to be physically accessible and needs to provide "reasonable accommodations."

These are, indeed, all myths. Not one of them is true.

It is time for HUD to get in touch with reality by involving persons with disabilities in the process of shaping federal housing policy.

An important question is: Whose "reality" are we suggesting HUD include in policy discussions? We believe that every person, with or without a disability, is unique and has unique, individualized perceptions and a unique view of "reality". Consequently, no one person can fully represent the views of all others, as no person with a disability can represent every opinion of all other people with disabilities. Nevertheless, even though the "reality" of one person might differ in some details with the "reality" of another, most who share the same basic experience will agree on what is pure myth and what is basic reality about that experience.

REALITY

After years of personal experience as persons with disabilities and as advocates for thousands of other persons with all types of disabilities, it is our position that the reality about people with disabilities and housing is very different from the myths that underpin HUD's current policies. We believe that the reality for the vast majority of persons with disabilities is as follows:

Reality 1

People with disabilities are the best and most reliable source of information about their housing and fair housing needs.

Some families of persons with disabilities, while loving and well-intentioned, tend to want the most "protective" environment so that they - the family - won't "have to worry" about the individual with the disability. Unless the family member is also the guardian of the individual with the disability, the wishes of the family member, while appreciated, must be secondary to the wishes of the person with the disability.

The housing industry and service providers are *not* representatives of persons with disabilities. These industries are *not* advocates for persons with

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disabilities. The only "stake" most of these industries have in housing policy is a financial stake - not a legitimate philosophical interest. Many of the positions advocated by these industries are contrary and harmful to the interests of persons with disabilities.

The only housing or service providers who are exceptions to this "reality" are those providers who are entirely consumer-directed and who operate according to the consumer-survivor and independent living models that require programs to be consumer-controlled, fully integrated and free of service-related requirements.

Reality 2

Mini-institutions, like the industry-operated group homes, "shared living" and "transitional" programs, are not considered "housing" for persons without disabilities because, in fact, such institutions are NOT housing. When group homes, shared living arrangement and sets of contiguous apartments have mandated services incorporated into the facility, these programs are *treatment facilities*, and should not be permitted to be considered "housing" for anyone - including persons with disabilities.

Reality 3

"Supportive services" should not be provided as part of housing programs for persons with disabilities. There should be a clear and complete separation between the housing and any services a person with a disability might receive. Any services a person needs and freely chooses to receive should be provided in a way that is distinct from the housing and should be "attached" to the PERSON, not the housing - so that wherever the person chooses to live, the services will follow the person and be there regardless of the type of housing chosen.

Requiring supportive services only in housing programs for persons with disabilities is a "special term and condition" imposed because of the disability of the tenants. Imposing special terms and conditions on the basis of disability is a violation of fair housing law, the ADA and section 504.

Requiring supportive services can be a deterrent to the development of units for persons with disabilities. Even though there may be housing stock or development options available, because a provider does not want to get involved in service delivery issues, the provider is deterred from developing the housing units through a "disability program." Consequently, persons with disabilities are denied housing for reasons totally unrelated to housing. We are denied housing opportunities for reasons related to "services" - discriminatory reasons that are not used to deny housing to persons without disabilities.

Requiring services in housing for persons with disabilities is not a

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"favor" for persons with disabilities, but, rather, it is probably viewed by some in the housing and service industries as a "favor" to them. Some in the housing industry want services because (after losing legal battles to exclude "frail elderly" from elderly housing and to exclude younger persons with disabilities from its "family" housing) the industry wants some "protections" that these "frail" and "dangerous" people will be monitored so that they won't damage the building or hurt business by "upsetting" other residents. This is the standard paternalistic, blatantly discriminatory attitude that pervades the housing industry and is nurtured by many in the services industry.

The reality is: As long as persons with disabilities meet the same, legitimate tenancy requirements that all other tenants must meet (paying rent on time, keeping the unit clean, and abiding by other standard lease requirements), they have every right to remain in their housing - without interference or special conditions. If anyone - with or without a disability - violates lease provisions, tenant-landlord laws (and possibly civil rights laws) will take effect. Whether or not a person uses services is irrelevant and outside of the housing provider's legal right to make inquiries or legal authority to dictate.

Reality 4

Housing programs for persons with disabilities should NOT be designed on the basis of the types of services needed by persons with disabilities. Housing programs for persons with disabilities should be based on the HOUSING needs - not the service needs - of persons with disabilities. Likewise, eligibility for housing should not be based on the need for particular services, but, just like housing for persons without disabilities, eligibility for housing should be based on criteria related to income and need for housing.

Reality 5

Segregation on the basis of service need is neither appropriate nor legal.

a. Since there are no restrictions on how service packages may be designed, it is very easy to shape a package that will effectively exclude individuals with certain disabilities and include only individuals with certain other disabilities - thus such "service segregation" is tantamount to segregation on the basis of disability². We believe such

² For example, allowing programs to segregate on the basis of need for services, would mean that a provider could restrict services to: "substance abuse counseling"; daily AA meetings; seminars on addictive behavior; and career and financial counseling. Thus the provider is virtually assured that tenancy will be restricted to individuals with the disability of substance abuse.

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segregation is a blatant violation of fair housing and Section 504 law³.

b. Housing programs that offer certain services invariably limit tenancy to those who need and/or use such services. Therefore, an individual with a disability who is eligible for the housing, but who does not need or refuses the services, will be denied housing because of reasons related to services, not housing - which constitutes different treatment because of disability.

c. Most people with disabilities do not want to be forced to be segregated with only other persons with disabilities. Most people with disabilities want to live - whether in an apartment building, a neighborhood of single family homes, a condominium community or a cooperative - with a variety of different types of individuals and families, some with disabilities and some without disabilities. But the important point is not *who* individuals with disabilities choose to live with, beside, or near - the important point is that individuals with disabilities *have a choice*.

Reality 6

According to Section 504, it is not legal to "set aside" a percentage of funds of a "general disability program" for persons with particular diagnoses or disabilities.⁴ It may make political sense to set aside a certain amount of resources for a particular diagnosis-specific group (i.e. the group that has the greatest political clout and the highest paid lobbyist), but it does not make humanistic sense to split up very limited resources on the basis of diagnosis. Anyone who knows even a little bit about disabilities knows that within any diagnostic group there are greatly divergent natures and severity of impairment. It should be the goal of HUD's programs to reach the neediest. Distributing housing resources on the basis of diagnosis or "category" of disability will not achieve this goal because in any diagnosis-specific group there will be some who are seriously impaired by the disease/injury, while others with the same diagnosis will have very mild impairments, and, therefore, less degree of need. Similarly, at the same time, there will be individuals with different diagnoses who will be much more seriously impaired - and, therefore, in greater need - than many of those with the "eligible" diagnosis.

³ Section 504 prohibits segregation "...unless such action is necessary to provide qualified individuals with handicaps with housing, aids benefits, or services that are as effective as those provided to others." 24 CFR §8.4(b)(iv).

⁴ Section 504 specifies the only situations when program benefits may be restricted to a certain class of individuals with disabilities: "...A specific class of individuals with handicaps may be excluded from a program if the program is limited by Federal statute or Executive order to a different class of individuals." 24 CFR §8.4(c)(1).

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Federal housing resources should be available to the neediest, and, in addition to considerations related to current living situation - neediest should be based on the degree of disabling *effects* of a disease/injury/diagnosis - not simply the diagnosis or category of disability, alone.

Reality 7

Our civil rights are no less clear and no less valid than others. HUD, however, appears to turn its head when it comes to monitoring the compliance of housing authorities and other providers with Section 504, the ADA and the Fair Housing Act. HUD's own programs, like "Shelter Plus Care", "Supportive Housing", and Section 811, are blatantly discriminatory - at HUD's suggestion (via legislative initiatives).

Reality 8

Even if the civil rights were fully and vigorously enforced, people with disabilities would still be denied "full use and enjoyment" of housing. In addition to the housing where persons with disabilities actually reside, other housing - for example, that of the family, friends, neighbors and business clients of persons with disabilities, as well as property that is for rent or sale - should be accessible in order for persons with disabilities to have meaningful opportunities to be full and independent members of their communities. By "access" we mean both structural accessibility (e.g. ramps, widened doorways, use of non-toxic paints and materials, etc.) and procedural accessibility (e.g. suspension of "pet" rules for individuals visiting with therapeutic animals).

RECOMMENDATIONS

There is no question that persons with disabilities are among those in greatest need of housing assistance and civil rights protection. HUD's own, extremely conservative research confirms an alarming degree of need⁵. One of the roles of the federal government, and, therefore, HUD, is to address the needs of the most disenfranchised, the most neglected and those who are experiencing serious discrimination throughout the nation. To date, HUD's efforts to fulfill its responsibilities regarding persons with disabilities have been, at best, misguided, and, at worst, openly hostile.

It is our understanding that HUD is in the process of developing policies and

⁵ See: Worst Case Needs for Housing Assistance in the United States in 1990 and 1991. A Report to Congress

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legislation that will be necessary to implement the new reinvention "Blueprint" proposed by the department on December 19, 1994. In light of HUD's poor treatment of persons with disabilities in the past, it is imperative that HUD not continue to alienate, humiliate and discriminate against persons with disabilities by not including actual persons with disabilities in policy discussions and the development of programs.

Furthermore, we suggest that HUD's consideration of the impact of the "Blueprint" on persons with disabilities revolve around the answers to three basic questions:

A. What statutory provisions must be built into the federal "formula grant" and "block grant" distribution process to ensure that at least a certain base percentage of federal housing resources will be available, on a priority basis, specifically to meet the housing needs of persons with disabilities?

B. What statutory provisions or policies are necessary to ensure that programs and activities under this new system will be consistent with the independent living and consumer-survivor models of consumer-control, consumer-choice, integrated living options and freedom from mandated services?

C. How can it be guaranteed that rights of persons with disabilities under the fair housing laws, the ADA and section 504 will be monitored, protected and defended? How can a knowledgeable and empowered national network be created to assess and monitor the industries' compliance with section 504, the ADA, and the Fair Housing Act? How can past, current and future lack of compliance with the civil rights and fair housing laws be remedied.

The following recommendations are some of our first thoughts in response to these three critical questions. We look forward to working with HUD staff to further explore these and other housing and fair housing policy issues.

A. What statutory provisions must be built into the federal "formula grant" and "block grant" distribution process to ensure that at least a certain base percentage of federal housing resources will be available, on a priority basis, specifically to meet the housing needs of persons with disabilities?

Some obvious ways to ensure that at least a percentage of resources are dedicated to meet the housing needs of persons with disabilities would include: retaining "disability" as a basic eligibility category and requiring states/communities to meet the needs of the basic categories before using residual resources to

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address any other population; retain and modify the federal preferences so that having a disability would be considered an "enhancer" of housing needs; retain the current federal definition of "disability"; require the establishment of advisory and citizens boards.

The following includes elaborations of the ideas noted above, as well as additional ideas.

A-1. Retain "disability" as an eligibility category (along with "families", "elderly", etc.) for federal housing resources. Require that federal housing money first be used to meet the needs of those in the established eligibility categories before states/localities may use residual funds to address community needs that are different from the federal categories.

A-2. For purposes of determining eligibility for federal housing funds, retain the definition of "disability" currently used to determine eligibility for the Section 811 program, and require all state and local recipients of formula/block housing and community grants to use this definition.

A-3. Retain the current "federal preferences" and clarify (with statutory amendments, where necessary) that:

- a. Those individuals who are "homeless" must be the top priority of all states and communities.
- b. The definition of "homeless" includes those persons with disabilities who are in institutions. State psychiatric hospitals, nursing homes, intermediate care facilities, group homes, so-called "transitional" facilities, "shared living" programs and residential treatment facilities are "institutions."
- c. If housing is inaccessible it is "substandard."⁶
- d. If someone cannot return to her/his home for reasons related to her/his disability, that person is to be considered "involuntarily displaced" and eligible for that federal preference.

A-4. Allow local preferences to be added, but only after federal preferences, and only if the local preferences are based on low income and demonstrated need.

A-5. Make having a "disability" an "enhancer" of any federal, state, or local preference. For example, anyone who is homeless and also has a disability would be served before an individual who is homeless and does not have a disability. Having a disability, in and of itself, would not qualify as a distinct preference, but would be considered an "enhancement" of an individual's or family's need for

⁶ "Inaccessible" includes not only structural barriers, but toxic materials for persons with multiple chemical sensitivity disabilities, lack of visual alarms for person with hearing impairments, interpersonal conflicts with management staff for persons with emotional disabilities, lack of textured warning surfaces for persons who are blind, etc.

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housing, and, therefore, would enhance priority for resources.

A-6. Require that a disability advisory board be established at the federal level, and require "citizen boards" to be established at state and local levels. The boards would participate in the development and monitoring of housing policy.

a. Membership on the federal disability advisory board must be restricted to persons with disabilities.

b. The state and local boards must have at least two persons with disabilities, at least one person representing the needs of individuals with physical disabilities, and at least one person representing the needs of persons with mental disabilities.

c. All of the boards shall exclude non-consumer housing and service providers.

A-7. Prohibit states and communities from restricting funds to persons with particular types of disabilities.

a. Prohibit funds, programs, or any other type of "set-asides" for diagnosis-specific groups (e.g. AIDS, paraplegia, etc.), or for a particular "category" of persons with disabilities (e.g. mental disability, developmental disabilities).

A-8. Require agencies who are administering housing programs to continue to take applications even when all funds have been expended - this is one means of tracking unmet need.

A-9. With every application or informational packet regarding a housing program, require the inclusion of specific information about the rights of persons with disabilities to request reasonable accommodations of any rule, policy, procedure, or service (see Recommendation C-6 regarding standard "Reasonable Accommodation Form".) Also include examples of accommodations, such as raising the allowable Fair Market Rent (FMR) amount because the monthly rent for a unit that has been modified by a private housing provider to meet an individual's specific structural needs may necessarily exceed the "standard" FMR - which is based on an average inaccessible unit.

A-10. Prohibit the use of any federal funds, including and especially any portion of monies identified for persons with disabilities, to pay for service coordination, services, or any other non-housing related activities.

A-11. Exempt persons with disabilities from any program requirements related to "work", and do not penalize or exclude persons with disabilities for reasons solely related to employment (or lack of employment) issues. For example,

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resources that are made available on a priority basis to individuals who are "working or preparing for work" must also be equally available to otherwise eligible persons who, because of their disabilities, are unable to work or prepare for work.

A-12. Require each community to develop a program that provides funds to make - where it is financially "reasonable" and technically feasible - new and existing single-family and multifamily housing (not already required to be accessible under the Fair Housing Act of 1988) accessible to persons with all types of disabilities. Accessibility will include the removal of structural and material barriers, and the removal of "procedural" and regulatory barriers.

B. What statutory provisions or policies are necessary to ensure that programs and activities under this new system will be consistent with the independent living and consumer-survivor models of consumer-control, consumer-choice, integrated living options and freedom from mandated services?

B-1. Take the money now going to existing programs that do not meet the standards of the consumer-survivor and independent living models, and redirect that money to go directly to the residents with disabilities in those programs.

- a. Stop funding group homes and, instead, give each current resident a certificate or voucher, or assist eligible residents to obtain a mortgage to purchase their own home.
- b. Stop funding "transitional", "supportive", "shared" and similar types of programs, and, instead, give each current resident a certificate or voucher, or assist eligible residents to obtain a mortgage to purchase their own home.
- c. Prohibit funds identified for housing for persons with disabilities to be used to build or otherwise directly subsidize psychiatric facilities, nursing homes, intermediate care facilities or other types of institutions.

B-2. Require that housing resources available on a priority basis for people with disabilities include at least as many choices as are available for persons without disabilities, including priorities for home-ownership (single family, condos, co-ops, etc.), rent-with-option-to-buy, single family home rental programs, apartment rentals, etc.

B-3. Require that all expenditure of federal monies be in ways that are consistent with independent living and consumer-survivor models.

- a. All programs must provide for consumer control.
- b. Each individual program, and the array of programs when viewed as a whole, must provide for consumer choice.
- c. All programs must allow integration into the larger community (individuals with disabilities should be living together or in contiguous units only if the individuals with disabilities have freely chosen such arrangements from an

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array of integrated housing options.)

B-4. Prohibit forced segregation on the basis of diagnosis, disability, category of disability, service need, or service use.

B-5. Prohibit any linkage of services to housing. Prohibit all mandatory service requirements related to development of housing programs, eligibility for housing, tenancy or ownership, eviction or foreclosure, and intimidation or coercion (including actions to force involuntary treatment), or any other illegal use, or threat of withdrawal of services related to housing.

a. Prohibit requirements that housing providers develop any sort of services package or a list of available community services.

b. Prohibit assessments by housing providers of the "service needs" of potential tenants. (Many questions are already prohibited by fair housing law.)

B-6. Prohibit the use of non-profit service providers to administer housing programs. Prohibit diagnostic- or category-specific disability organizations from administering housing programs.

B-7. Modify the current certificate/voucher programs in the following ways (some changes would affect all HUD customers.)

a. Have just a voucher program. Combine the best aspects of the certificate program with the flexibility of the voucher program. Allow total (country-wide) portability.

b. Allow the vouchers to be used in either a mortgage or rental situation. The vouchers could be used to supplement personal income in order to meet mortgage responsibilities, or the vouchers could be used to cover part of, or the entire monthly rent.

c. Create a federal law that would require housing providers (including banks and mortgage companies) to treat vouchers as income, and would disallow the denial of housing or a mortgage on the basis of someone's status as a recipient of housing assistance (e.g. a federal or state voucher.)

d. Develop a special component of the voucher program that would provide funds needed for structural modifications and other "reasonable accommodations/modifications".

e. Prohibit service providers, diagnosis-specific non-profit housing providers, and any other entities affiliated with a particular disability or services for persons with specific disabilities from being administrators of the voucher (or any other housing) program for persons with disabilities.

B-8. Develop a tax credit program (similar to the program for ADA-related access modifications) for housing providers who make structural modifications and/or programmatic accommodations needed by persons with disabilities.

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C. How can it be guaranteed that the fair housing rights of persons with disabilities will be monitored, protected and defended? How can a knowledgeable and empowered national network be created to monitor the industries' compliance with section 504, the ADA, and the Fair Housing Act?

C-1. Amend Section 504 and the Fair Housing Act to substitute the term "disability", in its appropriate forms, for "handicap/s".

C-2. Keep the functions of monitoring and enforcing compliance with federal fair housing laws at the federal level. Do not "contract out" these responsibilities to state and local enforcement entities. Provide funds to at least one consumer-controlled organization in every state to conduct monitoring activities of the industries (housing, banking, real estate, etc.) to ensure compliance with applicable federal civil rights laws.

C-3. Require states and communities who are the prime recipients of the formula/block grants to withhold monies from any provider who has been determined by either HUD or the state consumer-controlled monitoring organization to be in significant non-compliance with applicable civil rights and fair housing laws, and who refuses to enter into a cooperative agreement to design and implement a corrective plan approved by HUD.

C-4. Publish and widely disseminate notices clarifying that Section 504, the Fair Housing Act, the ADA⁷, and HUD policy prohibit segregation on the basis of diagnosis or "category" of disability (i.e. "developmentally disabled", physically disabled", "chronically mentally ill").

C-5. Publish and widely disseminate notices clarifying that it is a violation of the Fair Housing Act, Section 504, the ADA and HUD policy to impose special terms and conditions because of the disability of person seeking housing, and that, since mandatory service requirements constitute special terms and conditions, imposing mandatory service requirements in housing programs for persons with disabilities is a violation of civil rights laws.

C-6. Publish and widely disseminate notices that it is a violation of Section 504, the Fair Housing Act, the ADA and HUD policy to set aside a percentage of funds for a particular disability group when those funds were designated by Congress to be for persons with disabilities in general.

C-7. Develop and require the use of standard eligibility forms that do not

⁷ The ADA applies to those housing programs that would meet the definition of types of state and local government programs covered by Title II of the Act.

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make illegal inquiries regarding the nature or severity of a person's disability.

C-8. Develop and require the use of standard reasonable accommodation request and response forms.

C-9. Amend the Fair Housing Act to include prohibitions on discrimination because of a person's "status as a recipient of public assistance".

C-10. Require the federal, state and local "citizens boards" to review all HUD documents to determine if the materials accurately reflect current law. Rewrite and/or redesign as necessary to ensure that "disability" is listed as an among the "protected classes" or areas of unlawful considerations.

National Action Coalition

for Disability Rights in Housing

Diana Fortina
Old Executive Office Building
Room 224
Washington D.C. 20500

July 12, 1995

Dear Ms. Fortuna:

Thank you for your interest in meeting with the National Action Coalition for Disability Rights in Housing in an attempt to understand the housing issues of grave concern to the lives of people with disabilities.

Enclosed is the initial report and recommendations, we sent to HUD in late January, as well as some additional reports. One responds to the new Community Partnerships Act legislation. This is currently in DRAFT form so we would appreciate if it would only be for your review with the purpose of understanding our position. Lastly I have included a summary sheet on what we do and do not want in ANY housing legislation, as well as our recent letter to HUD.

We would very much like the opportunity to have a conference call with you sometime late next week, to discuss some of these issues in more detail.

I will try to contact you on Tuesday, to see if this is a possibility. At that time, I hope I can give you some more specific dates of when our members will be in Washington.

Thank you again for your interest. We look forward to talking to you soon. If you have questions, feel free to contact me at (303) 733-9324.

Sincerely,

Karen Tamkey

Housing Director, Atlantis Community Inc., Coalition Member

Jackie Lawry

Ed Wimp

Aretha Wins

Margaret Walker

David Voss

D. R. Brown

Dianna Cook - Lee consultant

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TOLHC blueprint
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501 SW Jackson Suite 100-B Topeka, Ks. 66603

v/tdd 913-233-4572 fax 913-233-5072

1988 - FFA Act amended to add PwD
Then ADA

Problems

No enf of 504, info dissemination
Continue to bld segregated h's

1. diagn-spec/^{rec}
2. ~~link~~ link hsg to serv^{rec}
(vouchers-choice)
vs provider
3. enforcement

American Community Partnership Act - not yet passed

Sec 811 - split out 202/811 - 92 - oldesters complained

Non-A diagn-specific

Required service plan w/applic. i HUD/NICL
"service coordinators"

Tons of programs

Fams w/o disabs get vouchers

Affordable Hsg Fund - Targeting is OK
if set aside (Comm Opp Fund)

~~HUD~~

H Reps - elim HUD

Based on need; medical model - bad

5% requirement - w/ any federal \$

600 progs - consolidate

National Action Coalition
for
Disability Rights
in
Housing

c/o 501 SW Jackson St. Suite 100-B Topeka, Kansas 66603-3000 913.233.4572 v/tty fax 913.233.5072

Who We Are:

We are a national, cross-disability coalition who, through an array of activities including education, lobbying, publicity and legal action, work on the federal, state and local levels to ensure that the civil and human rights of persons with disabilities are recognized and fully honored in the provision of housing, and that the independent living and consumer/survivor models - based on consumer control, consumer choice, integrated living and visiting options and freedom from mandated services - are followed in the development and management of housing.

The coalition includes individuals, groups and advocates of persons with all types of disabilities; we operate in ways that affirm the civil and human rights of people regardless of their disability, gender, race, ethnicity, national origin, religion, sexual orientation, age or color.

What We Do:

1. Through a national, cross-disability, grassroots network, we gather and circulate information on housing and fair housing issues, and we recommend and support proactive and re-active efforts to influence such issues.
2. Through political, educational, legal and other actions, we assist coalition members to act locally, and we support coalition representatives to act nationally to defend and further the housing and fair housing rights of persons with all types of disabilities.
3. Through direct action, concerted advocacy and multi-targeted educational campaigns, we seek to ensure that all federal, state and local, both private and public housing programs are accessible and available to, and do not discriminate against, people with all types of disabilities.
4. As a coalition, we use the gamut of options - including education, negotiation, publicity, demonstrations, and filing complaints - to assist coalition members as well as specific individuals with disabilities in the exercise of their civil and human rights related to housing.
5. We participate in the development and monitoring of both private and public housing resources, programs, practices and legislation, and we take whatever legislative, regulatory or legal action necessary to change those programmatic/legislative elements that are adverse to persons with disabilities.
6. We organize and coordinate an annual housing conference.

National Action Coalition

for Disability Rights in Housing

TO: HUD LIAISONS

FROM: THE NATIONAL ACTION COALITION FOR DISABILITY RIGHTS IN HOUSING

DATE: July 11, 1995

The National Action Coalition for Disability Rights in Housing has made a strong commitment through time and limited financial resources to work with HUD because we truly want to see a just and equal national housing policy for people with disabilities. We hope that you have learned about the issues of grave concern to us. Those major issues being (but not limited to) :

- 1) Enforcement of Section 504 and Fair Housing Accessibility Laws, and new ways to increase accessible housing stock
- 2) Delinkage of MANDATORY services from housing
- 3) Elimination of Diagnosis Specific Housing and Targeting, specifically eliminating Section 6 of the new legislation.

We will provide at our next meeting, a summary sheet of what we do and do not want included in any housing legislation.

As we continue to emphasise, we are not industry representatives and we are not high paid lobbyists. What we represent are the customers, the advocates and the people with disabilities themselves, whom these policies and programs effect.

This letter serves to sum up many of the frustrations we have felt and the roadblocks preventing any policy changes as they relate to people with disabilities.

Over the past five months the Coalition presented our case, made numerous requests for information and has been promised responses from each of the departments related to our concerns. Here are the issues we see lacking:

* In late February we were promised by HUD staff a meeting with Secretary Cisneros at our March 20th meeting. To date, despite numerous written and telephone contacts, no such meeting has occurred. Your staff agreed to assist us in securing such a meeting.

* We requested at our first (March 20th) meeting that you respond to our recommendations by outlining which areas your department has the commitment and authority to change. While we understand some issues are being addressed by HUD to date, no written comments have been received by the Coalition.

* After three face to face meetings and continuous written information stating our position and concerns, HUD's new legislation continues to include all of the outdated patronizing, medical model jargon and policies, it contained PRIOR to our meetings. Any changes which may have been made, have not been brought to the attention of the coalition.

* We have invited members of your staff to meet in a small, informal setting outside of the meetings to further discuss our concerns and issues, with no response.

* We have openly invited members of HUD who develop legislation, to visit model housing programs which illustrate our position.

* We have asked to be given the opportunity to present testimony, and attend relevant housing meetings which your department sponsors. All of the meetings we have attended (2), have been at the persistence of our members, not by the invitation of your department to all of our coalition.

* We felt that the June 19th meeting was the first hope of truly forming a working partnership to address these issues. We were very pleased and thankful to have had the full attendance of Betsy Julian and her agreed commitment from FHEO to work on many of our issues. We look forward to working on the issues discussed at the meeting, but over the past three weeks have not received any communication from her office.

Please understand that the coalition has appreciated the opportunity to meet and work with members of HUD. These meetings are undoubtedly unprecedented in the history of the disability community. Yet in order to feel as if we are moving together towards a national housing policy that not only reflects the needs and desires of your CUSTOMERS but upholds civil rights laws protecting people with disabilities, we need responses to the above issues.

While the National Action Coalition has, and will continue to meet with members of congress and other national housing and fair housing agencies we need to know from HUD: WHAT COMMITMENT, WHAT AUTHORITY AND WITHIN WHAT TIMELINE YOU HAVE TO IMPLEMENT OUR POLICY CHANGES WE HAVE RECOMMENDED.

The coalition is interested consulting with HUD, however we would need responses to these issues and any funding options which may be available to us, before a next meeting date is set. In addition it would be extremely helpful to have from HUD, a concrete outline of the direction of our working relationship.

Thank you in advance for your attention and commitment to working towards needed and appropriate changes in housing policies for people with disabilities. Please feel free to contact Becca Vaughn at (913) 233-4572 or Karen Tamley at (303) 733-9324 with questions or concerns, or mail any correspondence to the below address.

THE NATIONAL ACTION COALITION FOR DISABILITY RIGHTS IN HOUSING

**National Action Coalition
for
Disability Rights in Housing**

**What We Want and Do Not Want
in Housing Legislation**

Legislation must:

- 1. Provide for more housing vouchers for ALL persons with incomes at or below 30% of Median Family Income (MFI).**
 - a. At least 50% of the vouchers must go to persons whose income is at or below 30% of MFI.
 - b. Vouchers must be usable for homeownership or rental.
 - c. The process for determining fair market rents (FMRs) must be reviewed and improved in ways that make more rental housing available. FMRs for accessible units must accurately reflect market rates for *comparable, accessible* units.

- 2. Provide for the conversion of all project-based assistance, that now goes to public and private housers, into vouchers that will go directly to persons of low-income.**
 - a. Convert all project-based 811 funds into vouchers for persons with disabilities.
 - b. Provide for community advocacy organizations, not housers like the public housing authorities or service providers, to administer the rental voucher program.

- 3. Provide for a "reasonable modification" fund for persons with disabilities who need to make structural changes to a home/rental unit.**

- 4. Include statutory language that requires all housers, banks and mortgage companies to treat a federal assistance housing voucher as "income", and include language that makes any discrimination on the basis of a person's status as a holder of a voucher illegal.**

- 5. Retain the current "federal preferences" and clarify that :**
 - a. Those individuals who are "homeless" must be the top priority of all states and communities;
 - b. The definition of "homeless" includes those persons with disabilities who are in institutions. State psychiatric hospitals, nursing homes, intermediate care facilities, group homes, so-called "transitional" facilities, "shared living" programs and residential treatment facilities are "institutions".
 - c. Housing that is "inaccessible" is "substandard".
 - d. If someone cannot return to her/his home for reasons related to her/his disability, that person is to be considered either "homeless" or "involuntarily displaced" (depending upon the individual's circumstances.)

6. Allow local and state preferences, but only if they are secondary to federal preferences, and only if the local and state preferences:

- a. are based on low-income status;
- b. are based on demonstrated need for housing;
- c. do not violate civil rights and fair housing laws.

7. Use the Fair Housing Act's definition of "disability" (i.e. having a physical or mental impairment that significantly affects a major life activity.)

8. Make "having a disability" an "enhancer" of any federal, state, or local preference.

9. Require the creation of advisory and "citizen" boards. Require that a disability advisory board be established at the federal level, and require that "citizens boards" (that must include advocates and persons with disabilities) be established at state and local levels.

10. Prohibit "set-asides" or "targeting" based on subgroups of persons with disabilities or TYPE of disability.

- a. Prohibit "targeting" based on service needs.

11. Prohibit use of funds for services unrelated to housing. Prohibit the use of any federal housing funds, including and especially any portion of monies identified for housing for persons with disabilities, to pay for service coordination, services, or any other non-housing related activities.

12. Exempt persons with disabilities from any program requirements related to work.

13. Require that all new single-family homes and multifamily projects are "visit-able". All newly constructed homes must have at least one entrance that is wheelchair accessible.

14. Require that at least 2% of all new single-family homes and multifamily projects are accessible to persons with multiple chemical sensitivity or environmental illness.

At least 2% of all newly constructed homes must be free of materials that are known toxins to

many individuals with the disability of multiple chemical sensitivity or environmental illness.

14. Require that all expenditure of federal monies be in ways that are consistent with independent living and consumer-survivor models.

15. Prohibit forced segregation on the basis of diagnosis, disability, category of disability, service need, or service use. Prohibit group homes, apartment buildings, floors or wings, "transitional" or "supportive" housing, or any other form of housing from segregating on the basis of diagnosis or service need or use.

16. Prohibit linkage of housing with services. Prohibit any linkage of services to housing. Prohibit all mandatory service requirements related to development of housing programs, eligibility for housing, tenancy or ownership, eviction, or foreclosure, and intimidation or coercion (including actions to force involuntary treatment), or any other illegal use, or threat of withdrawal of services related to housing.

17. Prohibit diagnosis- or category-specific disability organizations from administering housing programs.

18. Establish an "access tax credit" for housing providers who make structural modifications and/or programmatic accommodations needed by persons with disabilities.

19. As a condition of receiving CDBG funds, require communities to include in their code enforcement the monitoring of residential new construction for compliance with the Fair Housing Act.

20. Require that a primary purpose of federal housing funds is to guarantee the fair housing rights of persons with disabilities.

**TYPES
OF HOUSING PROGRAMS**

Housing Legislation Must <u>Provide for</u>	Housing Legislation Must <u>Prohibit</u>
<u>Homeownership</u> 1. Voucher and Mortgage Programs examples: - single family - condo - co-op 2. "Reasonable modification" fund for persons with disabilities who need assistance making housing (including housing programs) accessible.	Prohibit project-based assistance, for example: - group homes - shared living - segregated apartments** - disability-specific** - disability-only** - elderly-only - family-only Prohibit services linked to housing, for example: - transitional housing - supportive housing - group homes - residential treatment facilities
<u>Rental</u> 1. Voucher Program examples: - private apartments - private homes - private room - with others of choice - emergency shelters - temporary housing 2. "Reasonable modification" fund for persons with disabilities who need assistance making housing (including housing programs) accessible.	Prohibit traditional homeless shelters based on the "shared living" model (anything that provides less privacy than a private sleeping area for each person.)

** Unless such housing meets the Section 504 condition that such segregated housing is necessary in order to provide housing for a specific group that is as effective as housing for other groups. For example, in order to provide housing for persons with environmental illness or multiple chemical sensitivity, that housing may need to be segregated from other housing because of the toxic materials that are present in "standard", integrated housing.

**ADMINISTRATION
OF PROGRAMS**

Housing Legislation Must <u>Provide for</u>	Housing Legislation Must <u>Prohibit</u>
<u>A federal disability advisory board</u> comprised only of: -persons with disabilities -advocates of persons with disabilities	Prohibit any non-consumer-controlled housing or service providers, but, especially, disability-specific providers of housing and/or services, from being on the federal advisory board, or the state and local boards.
<u>State and local citizen boards</u> -must include persons with disabilities.	
<u>Types of agencies</u> that may administer voucher or mortgage programs: -community-based -non-housers -non-service providers	Prohibit any non-consumer-controlled housing or service providers, but, especially, disability-specific providers of housing and/or services, from administering any housing programs.
<u>Independent living and consumer-survivor models:</u> -require that all expenditure of federal monies be in ways that are consistent with independent living and consumer-survivor models.	Prohibit industry-owned and managed "special" housing for persons with disabilities. Prohibit "behavioral contracts", special terms and conditions, "voluntary treatment agreements", or any other attempts to reduce/deny the civil and fair housing rights of persons with disabilities.
<u>Housing only</u> -require that federal housing funds be used only for housing - not for non-housing services, nor for institutions (eg. group homes, supportive housing, etc.)	Prohibit use of funds for "supportive services", "service coordinators", meals, transportation, medical treatment, and any other service unrelated to housing.
<u>Prohibit linkage of housing with services.</u> Prohibit all mandatory service requirements related to development of housing programs, eligibility for housing, tenancy or ownership, eviction, or foreclosure, and intimidation or coercion (including actions to force involuntary treatment), or any other illegal use, or threat of withdrawal of services related to housing.	
<u>Prohibit forced segregation on the basis of diagnosis, disability, category of disability, service need, or service use.</u>	
<u>FMR determination process to be improved</u> -the process for determining fair market rents (FMRs) must be reviewed and improved in ways that make more rental housing available. -FMRs for accessible units must accurately reflect market rates for comparable, accessible units.	Prohibit the FMR for accessible units to be the same as, or less than accessible units unless there is documentation that comparable, accessible units are truly equal to or less than the cost of inaccessible units.

VOUCHER PROGRAM

Housing Legislation Must <u>Provide for</u>	Housing Legislation must <u>Prohibit</u>
<u>Conversion of all project-based assistance into vouchers that will go directly to persons of low income.</u> a. convert all project-based 811 and 202 funds into vouchers for persons with disabilities. b. convert all other project-based assistance, that now goes to public and private housers, into vouchers for all eligible households.	Prohibit project-based assistance, especially to disability-specific, gender-specific, race-specific, and other illegal projects.
<u>Vouchers for three types of housing programs:</u> -homeownership -rental -emergency shelter	Prohibit restrictions on use of vouchers: -all eligible households must be allowed to use the vouchers to live anywhere they choose (eg. a homeless person must be allowed to use the voucher to purchase a home - if they are otherwise qualified.) -there must be no residency requirements
<u>Reasonable modification fund</u> for both rental and homeownership programs, must be a fund for modifications needed by persons with disabilities.	"Modernization" monies should not be provided to public housing projects nor to private projects - but, rather, funds should be given directly to the individuals to make whatever structural changes they need wherever they want to live.
<u>Voucher equivalent to "income"</u> -voucher must be treated as "income" by <u>all</u> housers, banks, mortgage companies, etc. -adverse treatment because of status of holder of a voucher must be illegal.	Prohibit denial of housing or any other discrimination because of a person's status as a recipient of a voucher.
<u>Portability</u> - must be able to take and use a voucher anywhere in the country.	Prohibit residency requirements or geographic limitations on the use of vouchers.
<u>Prohibit the linkage of voucher availability to services, service needs, involuntary commitment or any other non-housing or "treatment" requirements.</u>	
<u>Prohibit the requirement that persons with disabilities perform any type of work in order to be eligible for a voucher. However, a person with a disability may not be prohibited from VOLUNTEERING to participate in a work program.</u> - the housing program that requires others to work must provide for child care, transportation, personal attendant and other costs associated with individuals participating in the work program.	

ELIGIBLE AND PRIORITY POPULATIONS

Housing Legislation Must Provide for	Housing Legislation Must Prohibit
Basic Eligibility Categories: - persons with disabilities - families with children - elderly	Prohibit eligibility criteria related to ability to work.
Definition of "Disability" use Fair Housing Act's definition of "disability".	Prohibit eligibility criteria that includes asymptomatic conditions as "disabilities".
Homeless: highest priority population - retain current definition - include persons with disabilities in institutions - include persons who are living in inaccessible units as living in "substandard" housing	Prohibit disability-specific and work-related priorities. Do not require individuals or families to stay in shelters to be considered homeless.
2nd Priority: involuntarily displaced if someone cannot return to her/his home for reasons related to her/his disability, that person is to be considered either "homeless" or "involuntarily displaced" (depending upon the individual's circumstances.)	
3rd Priority: paying more than 30% of income for housing includes those in group homes and other institutions who must surrender almost all of their monthly income for "housing" and "services" (including meals).	
"Having a disability" as an "enhancer" of any priority status.	
Income Targeting at least 50% of federal resources should be targeted at persons who are at or below 30% of MFL	Prohibit income targeting aimed at those with higher incomes and that excludes those with lower incomes.
State/local preferences - allowable only if they are secondary to federal preferences - must be based on severity of housing need - must be for very low-income - may not violate civil rights and fair housing laws	Prohibit preferences that are based on residency, ability to work, diagnosis, service need, or other irrelevant criterion.
Any preferences must be based on <u>severity of housing need</u> . Any preferences or set-asides based on "disability subgroups", diagnosis, service need, age, ability to work or other irrelevant criterion <u>must be prohibited</u> .	

ACCESS

Housing Legislation Must <u>Provide for</u>	Housing Legislation Must <u>Prohibit</u>
<u>Visit-ability</u> - at least one entrance of all new single-family and multifamily homes built with federal assistance must be "visit-able".	
<u>Environmental illness/MCS access</u> - at least 2% of all new single-family and multifamily homes built with federal assistance (including mortgages) must be made accessible to persons with multiple chemical sensitivity or environmental illness. - all renovations using federal financial assistance must use materials and practices that are non-toxic to persons with mcs/ei, in general.	
<u>Access tax credit</u> - a federal "access tax credit" must be established for housing providers who make structural modifications and/or programmatic accommodations needed by persons with disabilities.	
<u>Local code enforcement of FHAA new construction guidelines</u> - as a condition of receiving any HUD funds (including CDBG funds), communities must be required to include in their code enforcement the monitoring of new residential construction for compliance with the Fair Housing Act.	
<u>Local commitment to Fair Housing Laws</u> - as a condition of receiving any HUD funds, communities must have a fair housing compliance procedure and must clearly prohibit segregation of any individuals on the basis of "considerations" prohibited by the Fair Housing Act and Section 504 (i.e. race, color, religion, sex, nationality, familial status, or disability)	