



Summary of HUD Guidance for Olmstead Implementation

Background: On June 4th, HUD released guidance about how HUD-assisted housing providers can support implementation of Olmstead. Olmstead refers to the 1999 Supreme Court decision, *Olmstead v. L.C.*, which affirmed that the unjustified segregation of individuals with disabilities is an illegal form of discrimination. CSH is pleased this document has been released and had been encouraging the Department to release clear guidance to help communities that are creating supportive housing understand how to best comply with the letter and spirit of the law. The guidance includes an overview of HUD's role in Olmstead implementation, background information on Olmstead and the Integration Mandate under Section 504 and the American with Disabilities Act, and then a helpful set of 9 question and answers.

Who Does this Apply to? The scope of the guidance is limited to HUD funding and programs. Recipients of HUD funds include, but are not limited, to: states, units of local government; public housing agencies; and developers of multifamily properties. Recipients do not include the individual beneficiaries of HUD-funded programs and activities.

What You Need to Know: HUD's guidance opens with a description of the imperative of providing community-based housing that allows consumer choice for individuals with a disability who have historically faced discrimination that limited their choices of living environment. HUD affirms its commitment to providing meaningful choices for people with disabilities to choose their housing and supportive services, and states that it is exploring how it can fund additional integrated housing units scattered throughout communities. **The guidance does not offer any new funding proposals or changes to existing laws or regulations.**

The Department acknowledges that through enforcement efforts by the Department of Justice, litigation by groups representing individuals with disabilities, and voluntary Olmstead-related planning and implementation, state and local governments are taking actions to assist individuals with disabilities to transition out of institutions and other segregated settings and into integrated housing. HUD indicates that its housing programs play a significant role in ensuring that individuals leaving institutions and those who are at serious risk of institutionalization receive the necessary support services and housing so they may live throughout the community. The Department encourages housing providers to consider the housing needs of their communities and their state and to partner with state and local governments to provide additional community-based, integrated housing opportunities.

Key Elements of the Guidance Advocated for By CSH

The following are some important points included in the guidance that CSH had advocated for:

Emphasis on the need for new affordable, integrated housing opportunities: The guidance acknowledges the need for new units for communities to comply with the mandates of Olmstead. Additional affordable units are needed for people exiting institutions, for those who are at-risk of institutionalization, and are also

needed if communities are to construct new multi-family developments that are not primarily for persons with disabilities.

Affirming that certain federal funding streams are permitted to provide housing or services limited to individuals with disabilities: The guidance affirms that programs such as McKinney-Vento, Project Based Section 8, HOPWA, Section 811, VASH and other specific programs are statutorily permitted to operate housing or services limited to individuals with disabilities or individuals with specific disabilities or diagnoses. Further, the guidance does not change the requirements for any existing HUD-funded or assisted housing programs, including programs that have explicit statutory authority to operate housing occupied exclusively by individuals with disabilities or individuals with specific types of disabilities or diagnoses.

Inclusion of people who are at-risk of institutionalization in planning to meet the mandates under Olmstead: *Olmstead v L.C.* included people who are at-risk of institutionalization as a class vulnerable to discrimination. HUD's guidance emphasizes this point so that communities know to include not only those people who are exiting institutions, but also those at-risk of institutionalization (including people with disabilities who are currently chronically homeless or in institutions such as jail or shelters), in their planning for community-based housing and supportive services.

Clarification on how communities can provide housing preferences to people covered under Olmstead while still in compliance with fair housing law. HUD includes a clarification of how communities can use preferences – which give priority to a designated subgroup of eligible individuals – to assist people covered by Olmstead move into housing in the community. The guidance affirms that general preferences for individuals with disabilities who are transitioning from or at serious risk of entering an institutional setting are permissible. It also clarifies that preferences for individuals with *specific disabilities* may be authorized in connection with remedial actions undertaken pursuant to Department of Justice enforcement, *Olmstead*-related settlements or litigation, and state and local governments' voluntary planning efforts. Preferences for individuals with specific disabilities do require approval by HUD's General Counsel's office, but the Department is committed to streamlining the approval process. The guidance also clarifies that a public housing agency is permitted to authorize a preference consistent with the provisions of a grant awarded under Section 811 Project Rental Assistance (PRA) even when such a preference may be for individuals with specific disabilities or diagnoses (or for individuals referred from agencies or institutions that exclusively provide services for individuals with specific disabilities or diagnoses).

A community-wide vision in implementing Olmstead: The guidance states, "A critical consideration in each state is the range of housing options available in the community for individuals with disabilities and whether those options are largely limited to living with other individuals with disabilities, or whether those options include substantial opportunities for individuals with disabilities to live and interact with individuals without disabilities."