

# Opening Doors

A HOUSING PUBLICATION FOR THE DISABILITY COMMUNITY

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TECHNICAL ASSISTANCE  
COLLABORATIVE, INC. (TAC)  
AND THE CONSORTIUM FOR  
CITIZENS WITH DISABILITIES  
(CCD) HOUSING TASK FORCE

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## What's Wrong With This Picture? An Update on the Impact of Elderly Only Housing Policies on People with Disabilities

by Ann O'Hara, Emily Miller, and Maura Collins Vershuys

### Overview

**B**eginning in 1992, the federal government enacted sweeping changes to federal housing laws which made it legal to restrict or exclude non-elderly people with disabilities from certain affordable rental housing. Specifically, these "elderly only" laws allowed owners of federally subsidized housing to restrict or exclude non-elderly people with disabilities (defined as adults under age 62) from moving into public and assisted housing funded by the U.S. Department of Housing and Urban Development (HUD).

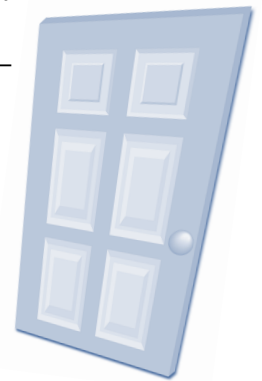
Using data from HUD and two federal studies, the Technical Assistance Collaborative (TAC) and the Consortium for Citizens with Disabilities Housing Task Force (CCD Housing Task Force) have recently updated our assessment of the impact of elderly only laws on the supply of federally subsidized housing available for people with disabilities. The analysis shows that hundreds of thousands of studio and one-bedroom federally subsidized housing units are now legally "off-limits" to people with disabilities looking for affordable housing.

Specifically, these data and reports indicate that between 268,500 and 293,500 units of federally subsidized housing are currently designated elderly only. This estimate is on target with TAC's original estimate of 273,000 units made in 1996 and published in the May 1997 issue of *Opening Doors*. The data also suggest that more

subsidized housing owners will designate additional units of housing as elderly only in the months and years to come.

In a cruel irony, these restrictive federal housing laws took effect shortly after other important federal laws – specifically the Fair Housing Amendments Act of 1998 and the Americans with Disabilities Act (ADA) of 1990 – were enacted to *promote* community integration, *increase* access by people with disabilities to subsidized housing, and *end* housing discrimination. These civil rights laws, along with improvements in community based support strategies, prompted a substantial increase in the number of people with disabilities seeking housing assistance in the late 1980s and early 1990s.

Given this increase in demand, the legalization of elderly only housing policies potentially spelled disaster for non-elderly people with disabilities – *unless they could be mitigated by a substantial increase in other HUD funding targeted to people with disabilities*. Civil rights attorneys and disability advocates were also concerned about the incredible complexity of elderly only laws and policies. It was feared that the owners of these buildings lacked the capacity



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# Opening Doors

A housing publication for the disability community

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The Technical Assistance Collaborative, Inc. is a non-profit organization that provides state-of-the-art technical assistance and training to housing and human service organizations so that they may achieve positive outcomes in their work on behalf of people who are disadvantaged and/or disabled. For more information, please contact Maura Collins Versluys, Technical Assistance Collaborative Inc., One Center Plaza, Suite 310, Boston, Massachusetts 02108. Phone: 617-742-5657 or Fax: 617-742-0509 or e-mail: info@tacinc.org.



The Consortium for Citizens with Disabilities (CCD) is a national coalition of consumer, advocacy, provider, and professional organizations who advocate on behalf of people of all ages with disabilities and their families. CCD has created the CCD Housing Task Force to focus specifically on housing issues that affect people with disabilities.

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## Editorial

What is wrong with this picture? It has been five years since TAC and the CCD Housing Task Force published our first policy report about the negative impact of “elderly only” housing policies. It has been over 10 years since we first warned federal officials about the potentially negative consequences of these laws – *unless a sustained and pro-active effort was made to prevent discrimination, create new housing for people with disabilities, and oversee the implementation of these laws by PHAs and HUD assisted housing providers.*

Perhaps the most surprising aspect of our work on this issue has been the difficulty we have had – and continue to have – in our effort to explain to federal officials what is a very simple story. Ten years ago, there were over one million units of HUD subsidized housing that people with disabilities could access, and now 25 percent of them are gone. It seems like it would be such a simple issue to quantify...with an inventory of HUD assisted housing!

For this issue of *Opening Doors*, we relied on data from HUD and two federally funded reports, including one conducted by the U.S. General Accounting Office (GAO). We must point out that despite our use of the information contained in the GAO report to assess the impact of elderly only housing designation, the GAO concluded in 1998 that elderly only designation had *not* negatively affected people with disabilities. Their conclusion was astonishing – and we believe erroneous – for several reasons:

1. The GAO came to the shocking conclusion that if owners had illegally implemented elderly only housing policies prior to 1992 – in other words, if they had previously discriminated against people with disabilities by illegally restricting occupancy to elderly households before the 1992 law was passed – these units somehow did not count when assessing the impact of the law; and

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to implement these laws properly and that an increase in housing discrimination directed towards people with disabilities was inevitable.

It has been almost a decade since federal elderly only housing policies were legalized. Since that time, TAC and the CCD Housing Task Force have monitored the implementation of elderly only housing laws and their effect on people with disabilities. Several federal studies have also examined elderly only housing practices. This issue of *Opening Doors* summarizes current HUD data and these various studies which – taken as a whole – provide a clear picture of the negative consequences that federal elderly only housing policies are having on people with disabilities who need federal housing assistance.

## Elderly Only Housing Laws

**B**efore 1992, according to federal law, owners of certain HUD subsidized housing developments were required to make these apartments available to both elderly households and non-elderly people with disabilities *on an equal basis*. Elderly only housing laws (beginning with the Housing and Community Development Act of 1992) fundamentally altered this equal access policy by permitting owners to greatly restrict or completely prohibit non-elderly people with disabilities from moving into these properties. These federal policies are often referred to as “elderly only designation” and affect two different types of HUD subsidized rental housing:

**1. HUD Public Housing:** Elderly/disabled public housing buildings owned by Public Housing Authorities (PHAs). Nationwide, there are approximately 500,000 studio and one-bedroom public housing units currently subsidized by HUD. This housing is affordable to the lowest income people with disabilities because generally tenants are required to pay only 30 percent of their income for rent and utilities; and

**2. HUD Assisted Housing:** Privately owned federally assisted housing financed through various HUD housing production programs (i.e. Section 236, Section 211(d)(3), Section 8 New Construction and Substantial Rehabilitation, etc.) that have been combined with long-term Section 8 contracts to make the housing affordable to the lowest income people. At the time that elderly only designation laws were passed, there were over 600,000 efficiency and one-bedroom units in HUD’s assisted housing “portfolio.”

It is important to note that before elderly only housing laws were passed, these 1.1 million apartments were virtually the only federally subsidized housing units available for people with disabilities, including units that were barrier free or that could be modified at no cost to the tenant. After the Fair Housing Amendments Act and the ADA were passed, it became much easier – at least theoretically – for people with disabilities to get on waiting lists and eventually move into this housing.

As the number of people with disabilities moving into this housing increased in the early 1990s, a great debate ensued which unfortunately pitted elderly households against non-elderly people with disabilities. The debate centered around the question of whether the “mixing” of elderly households and non-elderly people with disabilities in the same buildings was a feasible housing policy. In the end, Congress decided that the owners of these 1.1 million units could “reserve” them – subject to certain conditions discussed below – primarily for elderly households. Despite the obvious negative impact this decision would have on people with disabilities, until 1997 there was no new funding provided to make up for the loss of subsidized housing for people with disabilities.

Under the designation laws, PHAs are allowed to create disabled only buildings as well as elderly only buildings. Some policy

**As the number of people with disabilities moving into this housing increased in the early 1990s, a great debate ensued which unfortunately pitted elderly households against non-elderly people with disabilities.**

makers thought that by permitting disabled only buildings, the federal government would solve the problem of where younger people with disabilities could live. The disability community has always been opposed this “solution” because: (1) most people with disabilities do not want to live in disabled only housing; and (2) disabled only housing encourages PHAs to steer people with disabilities to poorly maintained housing in marginal neighborhoods while reserving the more attractive housing in desirable locations for elderly households.

## Elderly Only Designation Process

To assess the full impact of elderly only designation laws on the supply of subsidized housing available to people with disabilities, it is important to understand the basics of how designation policies are actually implemented by housing providers. The two types of HUD subsidized housing referenced earlier have very different requirements for designating elderly only housing.

### HUD Public Housing Requirements

PHAs *must* obtain HUD approval to designate public elderly/disabled housing buildings as elderly only. PHAs obtain HUD approval by submitting a PHA Allocation Plan which is intended to analyze the impact of the designation and propose alternative housing resources (i.e., Section 8 tenant-based vouchers) for people with disabilities. TAC’s review of a sample of PHA Allocation Plans indicates that some PHAs may not be requesting the Section 8 vouchers needed to replace the supply of public housing units that will no longer be available to people with disabilities.

### HUD Assisted Housing Requirements

Owners of HUD assisted privately owned housing are permitted to have elderly only policies *without* seeking HUD approval for

these policies. Because there are different rules that apply to the myriad of HUD programs in HUD’s assisted housing portfolio, the designation of this housing as elderly only has been very problematic. Currently, without contacting each of these properties individually, there is no way to determine if owners and managers of HUD assisted housing are properly using elderly only policies. As will be noted in the discussion below, this lack of an “inventory” of HUD assisted housing – combined with the complexity of the designation rules – has, at best, caused confusion and, at worst, fostered discriminatory tenant selection practices by owners and managers.

It’s important to note that non-elderly people with disabilities living in federally subsidized housing designated elderly only are protected from displacement under federal law. In other words, they should not be asked to move out, or be required to move out because the housing has been designated. Nor should they be encouraged or offered incentives, such as a Section 8 voucher, to move to other housing, unless it is clearly their preference and choice to move.

## Assessing the Impact of Elderly Only Housing

Assessing the impact of designation involves two important issues:

- Estimating the actual loss of HUD subsidized housing units available to people with disabilities as compared to the number of new subsidized housing resources created by Congress to off-set this loss; and
- Assessing the impact that designation has had on housing discrimination experienced by people with disabilities.

More housing units are designated as elderly only every day. Therefore, any assessment of the loss of housing from designation can be done only as a “point in time” estimate and will undoubtedly

increase as more buildings are designated in the future.

In 1996, TAC and the CCD Housing Task Force published *Opening Doors: Recommendations for A Federal Policy to Address the Housing Needs of People with Disabilities* which predicted the negative impact that elderly only designation would have on the supply of subsidized housing available for non-elderly people with disabilities. This report estimated that as many as 273,000 units of housing would be designated elderly only by the end of the year 2000. This estimate represented approximately 25 percent of the efficiency and one-bedroom apartments funded by HUD with project-based Section 8 subsidies.<sup>1</sup>

Exactly how accurate was the TAC/CCD Housing Task Force estimate when compared to information now available from other studies and reports? Again, because of differences in the law, the answer to this question must be provided in two parts:

1. The loss of HUD funded public housing units owned by PHAs; and
2. The loss of HUD assisted housing owned and managed by private owners.

## 1. Loss of HUD Funded Public Housing Units

**H**UD records indicate that through July 30, 2001, approximately 68,500 public housing units have been designated as elderly only. Since 1994 when HUD first began approving PHA Allocation Plans, approximately 186 PHAs have sought HUD's permission to exclude non-elderly people with disabilities from some of their public housing buildings. As shown in **Table 1**, on average, approximately 9,153 units of public housing have been designated as elderly only each year since designation first became legal. [NOTE: These estimates do not include those units that may have been illegally designated elderly only without seeking HUD approval.]

Elderly only designation has involved many of the largest PHAs in the United States, as well as numerous medium and smaller PHAs. **Table 2** on pages 6 and 7 lists a random sampling of the PHAs that have HUD approved Allocation Plans and the dates they were approved. Some PHAs have designated virtually all of their studio and one-bedroom

**Table 1: Tracking the Annual Designation of Elderly Only Public Housing**

Year	Number of PHAs That Submitted Approved Plans for Elderly Only Designation	Total Number of Elderly Only Units Designated
1995*	26	23,613
1996	12	3,668
1997	44	8,289
1998	25	5,038
1999	25	15,090
2000	38	7,728
Through July 2001	20	5,218
<b>Total</b>	<b>191**</b>	<b>68,644</b>

\*The 1995 figures include four Allocation Plans that were approved in late 1994.

\*\*13 PHAs that submitted approved Allocation Plans have applied a second time to HUD for additional units to be allocated elderly only. These PHAs have been counted twice, once for each year that they submitted an approved plan.

## Table 2: A Selection of Public Housing Agencies

State	Housing Authority	Number of Units Designated Elderly Only	Date Allocation Plan Approved
AZ	Phoenix Housing Authority	264	12/30/97
CA	Kern County Housing Authority	150	08/31/98
CA	Oakland Housing Authority	383	07/05/01
CA	Santa Barbara City Housing Authority	142	03/14/97
CO	Boulder Housing Authority	95	09/09/97
CT	Torrington Housing Authority	198	7/19/01
CT	Vernon Housing Authority	136	08/17/00
DC	District of Columbia Housing Authority**	392	11/30/99
DE	Wilmington Housing Authority	100	11/06/96
FL	Tampa Housing Authority	600	09/07/99
FL	Miami Dade Housing Authority	381	08/06/99
GA	Fulton Housing Authority	223	08/28/00
IA	Des Moines Housing Authority	190	03/09/01
IA	Keokuk Housing Authority	50	01/30/01
IL	Chicago Housing Authority	9,950	12/01/95
IN	New Albany Housing Authority	365	08/21/00
KS	Lawrence Housing Authority	144	05/24/99
KY	Newport Housing Authority	198	12/18/95
LA	New Orleans Housing Authority	168	07/24/98
MA	Cambridge Housing Authority	817	04/09/97
MA	Worcester Housing Authority	861	09/20/96
MD	Baltimore City Housing Authority	157	06/10/98
MD	Montgomery County Housing Authority	453	10/27/95
MI	Dearborn Housing Authority	313	08/17/00
MI	Livonia Housing Commission	158	12/18/00
MN	Minneapolis Housing Authority	2,718	11/08/94
MN	Duluth Housing Authority	396	06/17/95
MO	Poplar Bluff Housing Authority	210	06/15/95
MO	Columbia Housing Authority	147	04/21/00
MO	Kansas City Housing Authority**	179	04/05/99

## with Units Designated Elderly Only\*

State	Housing Authority	Number of Units Designated Elderly Only	Date Allocation Plan Approved
MS	Tennessee Valley Housing Authority	50	03/30/95
NC	Durham Housing Authority	389	07/10/01
NC	City of Charlotte Housing Authority	727	07/30/98
ND	Burleigh County (Bismark) Housing Authority	166	06/30/95
NE	Omaha Housing Authority	268	08/08/97
NH	Dover Housing Authority	184	04/25/97
NJ	Millville Housing Authority	300	11/06/95
NM	Albuquerque Housing Authority	146	09/10/96
NV	Las Vegas Housing Authority	570	11/27/98
NY	New York City Housing Authority	9,849	6/10/99
NY	Rochester Housing Authority	904	12/18/95
OH	Cuyahoga Metropolitan Housing Authority	2,499	01/18/01
OH	Dayton Housing Authority	714	09/06/95
OK	Oklahoma City Housing Authority**	705	07/31/00
OK	Shawnee Housing Authority	122	11/14/97
OR	North Bend Housing Authority	50	06/25/99
PA	Lehigh County Housing Authority	190	02/24/00
PA	Allegheny County Housing Authority	781	06/02/00
RI	City of Newport Housing Authority	110	01/16/98
RI	Providence Housing Authority	398	04/10/95
SD	Butte Housing Authority	66	09/13/00
TN	Memphis Housing Authority	80	11/22/00
TN	Chattanooga Housing Authority	610	03/20/97
TX	San Antonio Housing Authority	2,350	04/24/95
TX	Dallas Housing Authority	319	04/10/95
VA	Hampton Redevelopment and Housing Authority	120	08/21/98
VT	Brattleboro Housing Authority	166	11/06/97
WA	Seattle Housing Authority	131	02/03/00
WI	Milwaukee Housing Authority	1,241	09/30/94
WV	Wheeling Housing Authority	306	12/05/96

\*There are currently 186 PHAs that have Allocation Plans. This table represents only a sample of these PHAs.

\*\*This Housing Authority has submitted more than one Allocation Plan for elderly only designation. The number of vouchers represents the total designated and the date approved is the most recent approval date.

For HUD's most up-to-date and complete listing of approved Allocation Plans go to [www.hud.gov/offices/pih/centers/sac/designated](http://www.hud.gov/offices/pih/centers/sac/designated). HUD is currently working on the organization and clarity of this chart. If you need assistance analyzing your local information, please email [info@tacinc.org](mailto:info@tacinc.org) for help.

units as elderly only leaving no supply of public housing for non-elderly people with disabilities. Other PHAs have left one or two buildings as “mixed” elderly/disabled buildings; although, in practice, these buildings can end up being occupied primarily by people with disabilities. Other PHAs have limited elderly only housing policies to one building, or a portion of a building, in a larger complex.

Fortunately, it is not difficult to keep track of the number of public housing units that have been designated. HUD maintains a web site ([www.hud.gov/offices/pih/centers/sac/designated](http://www.hud.gov/offices/pih/centers/sac/designated)) so that interested citizens can determine if a PHA has actually received HUD approval to designate housing, including the number of units designated and the date of the HUD approval.

HUD’s web site also indicates which PHAs are awaiting approval of Allocation Plans recently submitted to HUD. As of July 31, 2001, HUD was reviewing 14 Allocation Plans from PHAs seeking to designate a total of over 2,000 public housing units as elderly only. These elderly only pending plans are included in **Table 3**. Under the law, HUD must respond to a PHA within 60 days of the submission to either approve or reject the plan, or to request

additional information. The burden is on HUD to review the plan promptly since a PHA Allocation Plan is automatically approved after 60 days if HUD does not respond.

As mentioned earlier, designation laws also permit PHAs to create disabled only housing with HUD approval. According to HUD records, only approximately 1,187 public housing units have been designated as disabled only by 14 PHAs. This provision of the law has been troubling for the disability community because it has the potential to severely limit housing choices for people with disabilities and could increase the stigma associated with disabilities. To date, no assessment or review of disabled only housing has been done, so the impact of these designations on people with disabilities is unclear. **Table 4** on page 9 includes a complete list of all PHAs that have received HUD approval to designate disabled only housing.

### Designation Estimates through 2005

Based on the rate of designation indicated by HUD’s data, TAC and the CCD Housing Task Force project that as many as 54,000 more units of public housing may be

**Table 3: Public Housing Agency Allocation Plans Pending HUD’s Approval for Elderly Only Designation as of July 31, 2001**

State	Housing Authority	Number of Units To Be Designated Elderly Only
DC	District of Columbia Housing Authority	655
FL	Miami Beach Housing Authority	200
KS	Lawrence Housing Authority	150
KS	Newton Housing Authority	100
KY	Housing Authority of Louisville	59
LA	Jennings Housing Authority	40
MN	South St. Paul Housing Authority	296
MO	St. Louis Housing Authority	40
PA	Cumberland County Housing Authority	50
PA	Allegheny County Housing Authority	100
PA	Altoona Housing Authority	366



designated elderly only from 2001 through 2005. This estimate is based on the fact that an average of 9,000+ units have been designated each year since 1995 (9,000 units x 6 years = 54,000 units). Because the number of PHAs seeking permission to designate units as elderly only has increased in 2000 and 2001, this estimate can be considered conservative.

If this estimate proves accurate, it will mean that almost 25 percent of the elderly/disabled public housing financed by the federal government – more than 110,000 units – will have been removed from the housing supply available to people with disabilities. This loss of housing opportunity will have occurred at a time when the demand for affordable housing from people with disabilities has never been greater. With virtually no new construction of public housing being authorized by Congress, it is clear that people with disabilities will increasingly be “shut-out” of federally funded public housing.

## 2. Loss of HUD Assisted Housing Units

Assessing the loss of HUD assisted housing units has been much more difficult for two reasons. First, owners of this type of housing can implement elderly only policies *without* seeking HUD approval. Owners must keep documentation in their files that proves they have implemented designation properly, but, unlike PHAs, they are not required to submit any type of plan to HUD. Second, the designation rules for HUD assisted housing owners are *extremely* complicated. For example, some projects must maintain a small set-aside of units (up to 10 percent) for non-elderly people with disabilities, while others are not required to do so. As will be discussed later, because of these confusing rules – as well as for other reasons – some owners have not implemented elderly only designation properly.

TAC and the CCD Housing Task Force have assessed the loss of HUD assisted

**Table 4: HUD Funded Public Housing Units Designated Disabled Only as of July 31, 2001**

State	Housing Authority	Number of Units Designated Disabled Only	Date Allocation Plan Approved
AR	Texarkana Housing Authority	8	11/16/99
IL	Springfield Housing Authority	288	12/21/94
MA	Cambridge Housing Authority	128	04/09/97
MA	Brockton Housing Authority	253	10/27/97
MA	Quincy Housing Authority	94	10/16/96
MI	Saginaw Housing Commission	95	05/30/97
NJ	Lakewood Township Housing Authority	28	04/14/97
NJ	Housing Authority of Gloucester County	20	03/09/98
NY	New York City Housing Authority	13	09/18/97
NY	Kingston Community Development Authority	21	11/01/95
NY	City of Buffalo Housing Authority	174	07/17/98
PA	Franklin County Housing Authority	6	02/20/98
RI	North Providence Housing Authority	11	08/05/97
VT	Brattleboro Housing Authority	48	11/06/97

**It appears certain that between 200,000 and 225,000 units of HUD assisted housing are no longer available to non-elderly people with disabilities because of elderly only restrictions.**

housing in several localities (including the Commonwealth of Massachusetts and in Oakland County, Michigan) and concluded that at least 50 percent of HUD assisted housing owners had implemented elderly only housing policies. Information in two federal studies appears to confirm this loss of housing for people with disabilities, and suggests that it may be higher. These federally funded studies are:

- A HUD funded study titled *Assessment of the Loss of Housing for Non-Elderly People with Disabilities* completed by Abt Associates in 2000; and
- A U.S. General Accounting Office (GAO) report titled *Assisted Housing Occupancy Restrictions on Persons with Disabilities* completed in 1998.

Both studies were based on a sample of projects that were eligible to designate housing as elderly only.<sup>2</sup> Because HUD does not currently have an inventory of elderly only assisted housing, the researchers were required to determine if properties selected actually qualified as elderly/disabled housing before they could begin to assess the implementation of elderly only policies.

Both studies found that a substantial majority of HUD assisted housing owners were using elderly only tenant selection practices for some or all of the units in the property. In 1998, the GAO study found that 71 percent of owners had tenant selection policies or practices that restricted or prohibited people with disabilities from moving into their housing developments. The Abt Associates study (which was conducted two years after the GAO study and based on a much smaller sample) found that 64 percent of owners were using elderly only tenant

selection practices to restrict prohibit non-elderly people with disabilities from moving into their properties.

Using the information obtained from the two federal studies, it appears certain that between 200,000 and 225,000 units of HUD assisted housing are no longer available to non-elderly people with disabilities because of elderly only restrictions.<sup>3</sup> This conclusion reinforces the earlier estimates made in the 1996 TAC/CCD Housing Task Force report.

## Study Findings

The HUD funded study by Abt Associates surveyed 50 federally assisted housing properties in 10 Metropolitan Statistical Areas. The researchers also assessed the physical condition of the properties. This study found that 32 out of the 50 developments had some elderly only housing tenant selection practices in place. Only 36 percent of the properties surveyed considered adults with disabilities under age 62 on an equal basis with elderly households for eligibility purposes as was required by all owners prior to the designation laws. The specific findings from the study are documented below.

### Findings from HUD Funded Abt Associates Study

Projects that did not admit non-elderly people with disabilities	9
Projects that had set-asides only for people with mobility impairments (typically 5% of the units)	19
Projects that had a fixed set-aside for non-elderly people with disabilities (typically 10% or less of the units)	4
Projects that had no restrictions on non-elderly people with disabilities	18
<b>Total</b>	<b>50</b>

Researchers interviewed the property managers and found that the written tenant selection policies for these developments *did* not always match the admission procedures described during the interviews. Nor did the development's occupancy patterns fit the patterns expected by the researchers, given the

policies. As stated in the study, “[t]hese data suggest managers may have employed practices that illegally discriminate against people with disabilities.” This discrimination and other inconsistencies are explored on page 12.

## Total Loss Compared to New Resources

From HUD’s PHA Allocation Plan data and the information contained in the HUD and GAO studies, TAC and the CCD Housing Task Force estimate that between 268,500 and 293,500 units of HUD public housing and HUD assisted housing are no longer legally available to people with disabilities because of elderly only housing policies. The data that supports this estimate is provided in **Table 5**. This estimate is consistent with – and may be slightly higher than – the TAC/CCD Housing Task Force estimate of 273,000 units made in 1996.

Fortunately, Congress, in a bi-partisan effort led by Congressman Rodney Frelinghuysen of New Jersey, immediately responded to the TAC/CCD Housing Task Force estimate originally published in 1996, and began appropriating funding for new Section 8 vouchers for people with disabilities negatively affected by the implementation of elderly only policies. Since 1997, Congress has appropriated a total of \$210 million in new Section 8 funding specifically for this purpose – creating over 30,000 new vouchers that have been distributed to PHAs since that time.

These vouchers have helped people who were on HUD public and assisted housing waiting lists, as well as people who might have applied at some future time if the housing had not been designated. However, given the magnitude of the loss of units which is now more clearly verified, it is obvious that 30,000 vouchers cannot possibly make up for the loss of almost 300,000 subsidized units – including most of the supply of barrier free or accessible units that are needed by people with mobility or sensory impairments.

## HUD Assisted Housing “Inventory” Needed

As mentioned earlier, under the elderly only designation laws, HUD assisted housing owners are not required to request or obtain HUD approval to designate their properties. The CCD Housing Task Force and TAC believe that this flexibility in the law has led to some of the housing discrimination described in the HUD funded Abt Associates study. It has also hampered efforts to determine the full impact of elderly only designation laws because there has been no on-going mechanism to track designation activity in HUD assisted housing.

The Abt Associates study clearly indicates that a centralized database of HUD assisted housing properties with and without elderly only policies – in other words an “inventory” of HUD assisted housing – is needed to ensure that elderly only designation is implemented properly. The inventory would help people with disabilities learn which properties have units that are restricted to elderly households and which properties still admit both elderly and disabled households (including those that have specific set-asides of units for people with disabilities that are required by law). An inventory of HUD assisted housing that is available to people with disabilities looking for housing would go a long way towards addressing housing discrimination and would also permit HUD to accurately measure the full impact of elderly only designation laws.

It is obvious that 30,000 vouchers cannot possibly make up for the loss of almost 300,000 subsidized units.

**Table 5 : 2001 TAC/CCD Housing Task Force Estimate of the Loss of Subsidized Housing**

Estimated HUD Public Housing Units Lost to People with Disabilities	68,500
Estimated HUD Assisted Housing Lost to People with Disabilities	+ 200,000 to 225,000
<b>Total Subsidized Housing Units Lost as a Result of Elderly Only Designation</b>	<b>268,500 to 293,500</b>

## Discrimination Evident From HUD Study

Without some additional federal intervention, people with disabilities will continue to be the victims of housing discrimination practiced by some HUD assisted housing providers unless more monitoring and oversight is forthcoming from HUD.

Some of the most important information contained in the HUD funded Abt Associates and GAO reports is the evidence of housing discrimination directed towards people with disabilities as a direct outcome of elderly only housing policies. For example, the studies indicate that:

- Some HUD assisted housing owners may have had elderly only housing policies in place prior to 1992, when these policies would have been illegal. In fact, some properties surveyed had never admitted any people with disabilities under age 62 to any of the units in the development;
- Managers of HUD assisted housing admitted to “steering” people with disabilities away from their properties, even though they were eligible; and
- Property managers are sometimes unfamiliar with the written tenant selection policies for the development, and/or made decisions that were inconsistent with current written policies.

The following quote is taken directly from the Abt study’s Executive Summary of *Assessment of the Loss of Housing for Non-Elderly People with Disabilities*:

Managers do report illegal discriminatory practices that could discourage people with disabilities from applying for HUD-assisted housing, even though the potential applicant is eligible under the property’s occupancy policy. Fair housing testing to determine how potential applicants are treated by managers would identify those who are inappropriately limiting access to housing for people with disabilities.

The factors which the HUD study found to most influence tenant selection policies of HUD assisted housing managers are also

extremely important for federal policy makers, and the disability community to note. The study found that:

- Creating a comfortable living environment for elderly residents was often cited as managers’ primary goal, even when the HUD funding agreement required that non-elderly people with disabilities also be served;
- Managers of properties in better condition and in better neighborhoods are more likely to change their policies to restrict new admissions to elderly applicants. Less desirable properties had higher rates of occupancy by people with disabilities; and
- Some managers with higher occupancy rates for people with disabilities plan to “manage their way” to lower occupancy rates by selecting elderly applicants for vacancies rather than people with disabilities. In other words, they plan to implement elderly only tenant selection practices to reduce the number of people with disabilities living in their developments.

It is reasonable to conclude from this information that, without some additional federal intervention, people with disabilities will continue to be the victims of housing discrimination practiced by some HUD assisted housing providers unless more monitoring and oversight is forthcoming from HUD. The current attitudes of assisted housing owners and managers also means that more high quality HUD assisted housing is likely to be designated in the months and years to come, and that people with disabilities will only have access to the lowest quality units in HUD’s assisted housing portfolio.

The CCD Housing Task Force began asking HUD to undertake this inventory in 1997. Congress has also directed HUD to conduct such an inventory. In 1999, in a report accompanying HUD's appropriation bill, the House Committee on Appropriations directed HUD:

To establish, maintain, and publish annually, an inventory of all housing that is designated in whole or in part for occupancy by elderly families, disabled families, or both. The inventory shall include, but not be limited to, the number of apartments in buildings designated for occupancy only by elderly families, the number of apartments in buildings designated for occupancy only by disabled families, and the number of apartments in buildings with special features designed to accommodate disabled persons. HUD is directed to work with the Committee in developing this inventory and to complete and publish it no later than March of 2000.

*House Report 106-286*

As of January 20, 2001 when the last HUD Administration left office – and 10 months past the deadline established by Congress – the HUD assisted housing inventory had still not been made available.

HUD's failure to provide this inventory, as well as the evidence of discrimination evident in the studies described earlier, prompted the CCD Housing Task Force to file a formal fair housing complaint with HUD on January 17, 2001. This complaint, which was filed under Section 504 of the Rehabilitation Act of 1973, alleges that HUD's failure to make public a list of properties that limit occupancy by non-elderly people with disabilities has harmed people with disabilities by unlawfully excluding them from federally assisted housing. In addition, the complaint states that the lack of an inventory has interfered with HUD's implementation of the

## How to Obtain the Housing Studies Mentioned

*Assessment of the Loss of Housing for Non-Elderly People with Disabilities* by Abt Associates and funded by HUD in 2000 can be obtained by calling HUD User at 1-800-245-2691 (TDD: 1-800-483-2209) or by going online to [www.huduser.org/publications/pdf/nonelderly.pdf](http://www.huduser.org/publications/pdf/nonelderly.pdf)

*Assisted Housing Occupancy Restrictions on Persons with Disabilities* by the General Accounting Office in 1998 can be obtained by calling (202) 512-6000; (TTD: (202) 512-2537) or searching online at [www.gao.gov](http://www.gao.gov) and clicking on "Search Archives."

congressionally mandated program of special Section 8 vouchers intended for people with disabilities negatively impacted by elderly only designation.

## Current Status of Elderly Only Designation Issues

The CCD Housing Task Force Co-Chairs met with HUD Secretary Mel Martinez in July of 2001 to discuss HUD's role in managing and monitoring the implementation of elderly only designation policies by PHAs and HUD assisted housing owners. Secretary Martinez, who was confirmed by Congress earlier this year, pledged to complete the inventory of HUD assisted housing as soon as possible, and to address the housing discrimination issues raised in the CCD Housing Task Force's fair housing complaint, which is still pending.

Congress appears committed to continuing the policy of providing new vouchers for people with disabilities negatively affected by elderly only housing policies. As this issue of *Opening Doors* went to press, both House and Senate versions of the next HUD budget – which will begin on October 1, 2001 – included approximately 6,000 new Section 8 vouchers specifically for this purpose. Unfortunately,

**HUD's failure to make public a list of properties that limit occupancy by non-elderly people with disabilities has harmed people with disabilities by unlawfully excluding them from federally assisted housing.**

**PHAs will continue to designate elderly only housing, and, *unless they are pressured by advocates*, may not ask HUD for the Section 8 vouchers needed to replace the housing no longer available to non-elderly people with disabilities.**

aside from continued support from Congress for new vouchers, there is not enough being done to create new subsidized housing units that people with disabilities can afford.

A more comprehensive approach to mitigate the impact of designation and produce new housing

units that are both affordable and accessible to people with disabilities is to also support the creation of a new federal housing production program targeted to the lowest income people including people with disabilities. Legislation to create this type of federal housing production program is now pending in the House (H.R. 2349) and Senate (S. 1248), and support for new affordable housing production is growing. To address the problems outlined in this article, it is essential that any final legislation include: (1) provisions to target substantial amounts of funding for households below 30 percent of median income; and (2) operating subsidies to ensure affordability for households with incomes as low as federal disability benefit levels. More information on pending legislation is available from the National Low Income Housing Coalition's web site ([www.nlihc.org](http://www.nlihc.org)).

Finally, it is important the disability community not lose focus on the potentially negative consequences of elderly only designation policies in local communities. PHAs will continue to designate elderly only housing, and, *unless they are pressured by*

*advocates*, may not ask HUD for the Section 8 vouchers needed to replace the housing no longer available to non-elderly people with disabilities. Some owners of HUD assisted housing are blatantly discriminating against younger people with disabilities, as described in the Abt Associates report, despite clear federal laws which prohibit this discrimination.

People with disabilities and their housing advocates must be vigilant about these issues in their communities in order to mitigate some of the harm caused by federal elderly only housing policies. To learn more about these

**TAC's Housing Center for People with Disabilities web site is expanding! Go to [www.tacinc.org](http://www.tacinc.org) and click "Housing" to read important news and legislative updates to the disability community.**

policies and what you can do, read Issue 1 of *Opening Doors* (available at [www.tacinc.org](http://www.tacinc.org)). If you have questions about PHA elderly only housing, check HUD's website [www.hud.gov/offices/pih/centers/sac/designated](http://www.hud.gov/offices/pih/centers/sac/designated). If you still have questions, e-mail [info@tacinc.org](mailto:info@tacinc.org) and TAC and the CCD Housing Task Force will forward your concerns directly to HUD for their consideration.

2. The GAO report concluded that as long as HUD assisted housing owners still admitted a few people with disabilities – even if it were only a small percentage of the units in a development or only to people with physical disabilities – the owner had not implemented elderly only housing. We believe that owners who were required to admit people with disabilities to all of the units in a development before 1992 – and now only admit people with disabilities to a few set-aside units – can be considered as having elderly only policies in place at their property!

Fortunately for people with disabilities, key members of Congress did not consider the GAO report as the “final word” on elderly only housing policies.

What *should* this picture look like? No one is arguing that elderly only housing laws should be undone. That approach was abandoned long ago, and was never realistic given the broad support for housing for elderly people. But what we have been arguing, and will continue to argue, is that federal housing policies have virtually ignored

people with disabilities, especially since 1992. The single exception is Congress’s commitment to provide new Section 8 vouchers linked to designation.

Thus far, HUD has completely ignored the discriminatory practices linked to designation. Section 811 funding, which could help replace the supply of lost housing, has been cut. Little effort has been made to ensure that state and local housing officials direct a reasonable amount of HOME funds towards projects which people with disabilities can afford.

Perhaps there is a little good news in this picture. Disability advocates are pleased to see the findings in the HUD funded study conducted by Abt Associates. More than any single document, the Abt Associates study proves what disability advocates have been saying for years about designation. TAC and the CCD Housing Task Force urge you to use this report to engage in a dialogue with public and assisted housing providers in your community. Convince them that they need to be thinking about both groups – people with disabilities as well as elderly households.

*The Editors*

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## Endnotes

<sup>1</sup> Section 8 certificates and vouchers are not considered project-based subsidies for the purpose of this analysis.

<sup>2</sup> The HUD study was not directed towards establishing a basis for precise estimates for the universe of affected properties. Rather, the overall approach used by Abt Associates to select the sample of properties was designed to provide an empirical basis for exploring several theories about the potential impact of elderly preferences. Nonetheless, TAC and the CCD Housing Task Force agree that the information gleaned from the HUD funded Abt Associates study along with similar findings in the GAO study, provides the best information currently available from which to estimate the impact of elderly only designation policies.

<sup>3</sup> This estimate was calculated conservatively, by using an average project size of 90 units (the averages in the studies range from 80-100 units per project) and an assumption that 64 percent of the 4,157 HUD assisted properties – or 2,660 properties – have elderly only restrictions in place. TAC also assumed that some number of these projects would have a small percent (typically 5 percent) of units for people with disabilities that have mobility impairments, and that some projects would have up to 10 percent of the units set-aside for people with disabilities, consistent with the provisions of the Housing and Community Development Act of 1992. Therefore, we discounted our estimate by 10 percent to allow for these factors.

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## **We Can Do This!**

### **A National Training Conference on Ending Homelessness for People with Mental Illnesses and/or Substance Use Disorders**

This national training conference, co-sponsored by TAC, will be held December 5-8, 2001 at the Omni Shoreham Hotel in Washington, D.C. This conference will feature whole and half-day training institutes and workshops focusing on the housing, treatment and support needs of people with mental illnesses and/or substance use disorders who are homeless. Training sessions will feature evidence-based and promising practices in service delivery and housing, as well as cross-cutting principles for promoting collaboration, systems change, and recovery. Further information on the conference agenda and registration will be made available in early fall 2001. For more information, contact the National Resource Center on Homelessness and Mental Illness at (800) 444-7415.

## **Opening Doors**

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