



NATIONAL COMMISSION ON FAIR HOUSING AND EQUAL OPPORTUNITY

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TESTIMONY OF HENRY KORMAN FOR THE CONSORTIUM FOR CITIZENS WITH DISABILITIES HOUSING TASK FORCE

To the Members of the National Commission on Fair Housing and Equal Opportunity:

Thank you for this opportunity to come before you today. I represent the Consortium for Citizens with Disabilities Housing Task Force (“CCD” or the “Housing Task Force”). CCD is a coalition comprised of dozens of national consumer, advocacy, provider, and professional organizations advocating on behalf of people with disabilities. The Housing Task Force works to increase access to decent, safe, affordable, and accessible housing for all people with disabilities, and to protect rights guaranteed to people with disabilities under the Fair Housing Act (“Title VIII”), Section 504 of the 1973 Rehabilitation Act (“Section 504”), Titles II and III of the Americans with Disabilities Act (the “ADA”), and other civil rights laws.

My remarks today focus on the intersection of civil rights considerations and implementation of Federal affordable housing programs. They are addressed to what CCD considers to be the most significant, practical issues affecting the ability to use Federal housing programs in order to establish real, integrated housing opportunities for people with disabilities in vibrant communities characterized by low poverty, racial integration, and access to jobs, good schools, transportation, recreation, and opportunities for full participation in civic and community life.

The Housing Needs of People With Disabilities

The basic civil rights issue facing people with disabilities and other protected classes in any context is equality of access and opportunity. The importance of that principle is magnified for people with disabilities in the affordable housing context because of disproportionately high rates of poverty and housing need.

People with disabilities are significantly and disproportionately poor compared to their counterparts without disabilities. Of the 49.7 million individuals with disabilities in the United States, 8.7 million live in poverty. That poverty rate of 17.6 % is two-thirds higher than the poverty rate for people without disabilities, 10.6 %. The poverty rate for individuals with disabilities of working age is double that of people without disabilities. Sixty-one percent of families with a household member with disabilities receive Social Security benefits, needs-based Supplemental Security Income (“SSI”), or public assistance, compared to 17.8 % of families where there is no person with a disability. The median income of families reporting full time earnings where the family includes a member with disabilities is nearly 16% less than other families.¹



Housing resources that serve all low-income people are scarce, and that scarcity is particularly burdensome for people with disabilities. Each year, the U.S. Department of Housing and Urban Development (“HUD”) prepares a congressional report estimating the number of unassisted, very low-income renter households with “worst case housing needs;” that is, families who pay more than half of their income for housing or live in severely substandard housing, or both. HUD measures the rate of worst case housing need among very low-income people with disabilities at 36.4%. While the agency acknowledges that the worst case needs study significantly undercounts both the total number of very low-income renter households with disabilities, and the number of those disabled families with worst case housing needs, the rate of need among disabled households is higher than any other group whose needs are measured by the report, including families with children and elderly families.²

For the 4 million people with disabilities who rely on SSI payments, the measure of housing need is particularly troubling. Research by CCD indicates that in nineteen states, the fair market rent standard used by HUD to measure the cost of a modest one bedroom apartment for purposes of the Section 8 Housing Choice Voucher program exceeds the entire amount of an individual monthly SSI payment. There is no state in the nation where the fair market rent is less than 71% percent of monthly SSI benefits.³

The Federal Obligation to Further Fair Housing

The entry point for understanding what it means to assure equality of access to Federal housing programs is the Federal responsibility to further fair housing.

You are certainly all familiar with the tragic history of the use of Federal housing and urban development programs as tools of discrimination, exclusion, and segregation. These conditions affect people with disabilities in the same way as other classes of people protected by civil rights laws. Institutions, halfway houses, and other segregated living environments are the historic so-called affordable housing made available to people with disabilities. Federal housing programs are uncertain in their commitment to people with disabilities, excluding some disabled households based on category of disability and in some programs excluding people with disabilities altogether.

One purpose of the Fair Housing Act is to reverse these conditions of segregation and exclusion by imposing on all Federal agencies an obligation to “administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further” the purposes of Title VIII.⁴ There is a well defined meaning to Federal responsibility to further fair housing:

- There must be no deliberate discrimination and no segregation in Federal housing programs, either by agencies of Federal government or by recipients of Federal funds.
- Federal agencies and their grantees must not adopt policies that have the effect of discriminating or perpetuating segregation.
- Federal agencies and their grantees must measure the civil rights impact of funding decisions.

- Federal agencies and their grantees must examine their programs and the local environments in which they operate to identify conditions of discrimination and segregation.
- Federal agencies and their grantees must act affirmatively to dismantle conditions of discrimination and segregation.
- Federal agencies and their grantees must utilize housing resources affirmatively, “to fulfill... the goal of open, integrated residential housing patterns and to prevent the increase of segregation” and “to assist in ending discrimination and segregation to the point where the supply of genuinely open housing increases.”⁵

For people with disabilities, these principles are implemented through a Federal civil rights apparatus that is derived from such legal authorities as:

- *Executive Order 11063*, which as amended forbids discrimination based on race, color, religion, gender, disability, family status, and national origin in the sale, leasing, rental, or other disposition of rental housing owned by the Federal government, rental housing financed with “loans, advances, grants, or contributions” of the Federal government, and in all housing financed with loans insured by the Federal government.⁶
- *Section 504 of the 1973 Rehabilitation Act*, which forbids discrimination against people with disabilities by recipients of Federal financial assistance, and by agencies of the Federal government.⁷
- *Fair Housing Amendments Act of 1988*, which extends the protections of Title VIII and the Federal obligation to further fair housing to people with disabilities and families with children.⁸
- *The Americans with Disabilities Act*, of which Title II forbids discrimination in programs and public services provided by state and local governments, and of which Title III forbids disability discrimination in public accommodations, including social services establishments, community residences, homeless shelters, and other places where people with disabilities live and receive services.⁹
- *Olmstead v. L.C.*, the Supreme Court decision upholding Department of Justice (“DoJ”) regulations requiring that public services be provided to people with disabilities in the most integrated setting appropriate to their individual needs.¹⁰
- *Executive Order 13217*, which instructs key Federal agencies to act collaboratively to assist states in achieving compliance with *Olmstead* in activities related to education, supportive services, employment, vocational rehabilitation, and housing.¹¹

These authorities are the platform through which Federal agencies carry out the obligation to further fair housing. When properly implemented, the civil rights apparatus they represent should result in tangible advances in equal access to integrated, high quality, housing opportunities for people with disabilities. The balance of this testimony addresses specific gaps



in the day-to-day Federal implementation of the responsibility to further fair housing that CCD believes can be and should be remedied.

Olmstead Implementation Must Assure the Availability of Housing for People with Significant Disabilities.

The tremendous force of the Supreme Court decision in *Olmstead* cannot be overstated. The principles of *Olmstead* require each and every state and local provider of supportive services to meet the service needs of people with disabilities in community-based settings, fully integrated into the fabric of community life. Most people with significant disabilities receive supportive services through the joint state-Federal Medicaid program. The principal mechanisms in the Medicaid program for implementing *Olmstead* are a series of initiatives that redirect the flow of Medicaid funds from institutions to community-based service options. Some of these initiatives consist of modifications of Medicaid program rules or statutes under the Home and Community Based Services waiver program. Others include the Money Follows the Person initiative, under which community-based services are tailored to individual needs. Still others involve self-directed community-based services. Because institutional environments generally serve a category of people with disabilities, and because *Olmstead* is focused on the rights of people in institutions or at risk of institutionalization, most of these programs target services to people within a specific category of disability such as people with developmental disabilities, people with mental illnesses, and people with head injuries or brain trauma.

Many housing programs take the opposite approach. Programs as diverse as public housing, tenant-based Section 8 Housing Choice Vouchers, subsidized multifamily housing, and Low-Income Housing Tax Credit (“LIHTC” or “Housing Credit”) housing may permit general selection preferences for people with disabilities. However, they forbid eligibility criteria or selection preferences for people who are individuals within a category of disability.

This conflict in policies often impedes the availability of housing for people with significant disabilities who are protected by *Olmstead*. Indeed, recent changes to the LIHTC statute suggest the possibility of a double problem. Those changes permit the use of Housing Credits in projects that serve people with “special needs... or who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group.”¹² Some policy-makers believe that the change does not alter the prohibition on targeting LIHTC units to people with specific disabilities. Others see the change as an opportunity to use LIHTC to construct large, disability segregated, multi-unit residential facilities serving only people within a category of disability.

These differences in policy perspectives miss the larger purpose of the responsibility to further fair housing. People with significant disabilities want the same housing opportunities desired by people who are not individuals with disabilities. They want to live in general occupancy developments, in integrated housing with people who are not people with disabilities, in units that are affordable, where they have the same rights under a lease as any other renter, and where they can choose to receive or not the supportive services they desire in their home or elsewhere. The policy conflict between the systems that provide supportive services and the programs that offer affordable housing must be resolved in a manner that achieves this desired outcome.

The Internal Revenue Service Should Adopt Comprehensive Policies Addressing the Obligation to Further Fair Housing in the Low-Income Housing Tax Credit and Tax-Exempt Bond Programs.

The largest current sources of affordable housing financing are the LIHTC and Tax Exempt Bond (“TEB” or “Bond”) programs. Housing Credits and a volume of TEB authority are allocated to the states and certain local governmental authorities under the Internal Revenue Code of 1986.¹³ The Internal Revenue Service (“IRS”) is charged with the supervision of the state and local governments that allocate LIHTC and issue Bonds, and the project owners that receive allocations of Housing Credits and loans of Bond proceeds.

Housing Credits are a direct and substantial Federal subsidy allocated to developers of affordable housing who sell them to investors in exchange for contributions of construction capital. TEB proceeds are loaned to affordable housing owners at interest rate discounts, and Bond borrowers often receive LIHTC. Despite the substantial IRS involvement in Federal affordable housing efforts, the agency promulgates only one civil rights-related rule applicable to the Housing Credit program: a regulation that says that LIHTC units must be available to the general public.¹⁴ The IRS interprets this rule to require compliance with the Fair Housing Act Accessibility requirements, and to forbid individual acts of discrimination actionable under the Title VIII.¹⁵ There are no civil rights rules in the Bond program. Absent from IRS LIHTC and TEB guidance are standards under which states and local jurisdictions are required to carry out activities that broadly advance fair housing and civil rights:

- *Marketing:* There no criteria for affirmative fair housing marketing, which are a standard feature of HUD’s multifamily housing programs.
- *Architectural Access:* LIHTC and TEB financing are state and local programs under Title II of the ADA. Public entities are required by Title II to assure that their programs and activities are accessible to people with disabilities, including programs and activities that are carried out by grantees.¹⁶ Housing Credits are a form of Federal subsidy to developers, subject to the requirements of Section 504.¹⁷ The IRS does not require that LIHTC or Bond financed projects comply with accessibility standards for new construction and rehabilitation of existing structures under Title II or Section 504. Consequently, only new construction is subject to the less rigorous standards of the Fair Housing Act Accessibility Guidelines.
- *Program Access:* There are no standards to assure program access to LIHTC and TEB housing through alternative forms of communication, self-evaluations of management policies, appointment of ADA and Section 504 coordinators, procedures for making reasonable structural modifications to individual units, and similar measures typically required at the project level under the ADA and Section 504.
- *Site Selection:* There are no site selection standards that assure that LIHTC and TEB properties are located on sites that are accessible, and that are outside high poverty areas and areas of racial segregation.

- *Project Selection:* There are no project selection standards that assist states and bond issuers in assuring that housing financed through Housing Credits and Bonds does not exclude non-elderly people with disabilities.

Many states address some of these issues in the Qualified Allocation Plans required by the Internal Revenue Code for the allocation of LIHTC. Many do not. Title VIII and the associated civil rights laws and executive orders impose a responsibility on all agencies of the Federal government to assume leadership by adopting minimum compliance standards. The IRS has failed in this regard.

Allocation of General Occupancy Federal Housing Resources Must Respond to the Housing Needs of People with Disabilities.

The obligation imposed on Federal agencies to further fair housing includes actively promoting conditions in which “individuals of similar income levels in the same housing market area have the same range of housing choices available to them regardless of their” disability.¹⁸ Not all low-income people with disabilities are people with significant disabilities who desire supportive services in connection with housing. Many desire access to HUD-assisted general occupancy developments.

The U.S. Housing Act was amended in 1992 to permit the exclusion of non-elderly people with disabilities from mixed-population public housing and multifamily assisted housing that previously served both elderly families and disabled families.¹⁹ CCD estimates that by 2001 these laws resulted in the exclusion of people with disabilities from as many as 300,000 units of previously available assisted housing.²⁰ Barely a fifth of the lost units were replaced with about 62,000 Section 8 Housing Choice Vouchers specially designated for use by people with disabilities.²¹

This institutionalized form of discrimination is compounded by a continuing disregard of the housing needs of people with disabilities in policy research conducted by HUD. HUD acknowledges that the worst case needs studies delivered each year to Congress significantly undercount the number of disabled families with worst case housing needs.²² More recently, HUD published a study examining the housing conditions affecting families living in assisted housing. The study explores assisted housing conditions for Black, White, Asian, Hispanic, and elderly households. The study makes not one mention of the housing needs or conditions faced by people with disabilities.²³

HUD research reports are the basis of decisions about the allocation of limited housing resources. The high rate of affordable housing need among people with disabilities, the loss of significant affordable housing units to people with disabilities without even minimally adequate replacement, and the continuing disregard of their housing needs substantially undermine the ability to further equal access to housing for disabled families.



Changes to the Structure of Fair Housing Enforcement Must Assure that Civil Rights Requirements Remain a Feature of Agency Programs.

Other witnesses before the Commission express deep concerns over documented failures in HUD Title VIII enforcement activities.²⁴ Some witnesses urge a transfer of Title VIII enforcement authority from HUD to a separate Federal agency with a single Fair Housing enforcement mission.

CCD shares concerns over the effectiveness of HUD's Title VIII enforcement activities. The Housing Task Force takes no position on whether Title VIII enforcement authority should be reassigned. However, there are equally pressing concerns about a transfer of Title VIII enforcement authority away from HUD. Any such change to the structure of fair housing enforcement, whether through creation of a new enforcement agency or by transferring enforcement responsibilities to a different agency, must be preceded by consideration of the appropriations issues that will certainly arise in Congress, especially in the current fiscal environment. Reassigning enforcement responsibilities without years of sustained public education may result in complainant confusion about procedures for filing administrative complaints. Reassignment of enforcement authority to other existing underfunded Federal agencies may only replicate current problems.

It also bears repeating that the objective of furthering civil rights goals through affordable housing programs is carried out through a number of mechanisms beyond the Fair Housing Act. At HUD, for example, compliance with Executive Order 11063 and Section 504 is a matter of contract enforcement between the agency and the public housing agencies, multifamily owners, shelter providers, and local jurisdictions to whom Federal funds are distributed.²⁵ Those legal authorities also impose specific record keeping, monitoring and compliance obligations on HUD grantees. Program regulations incorporate discrete civil rights-related program requirements that instruct agency recipients on the methods of making disability rights operational in such diverse matters as special payment standards and utility allowances when needed by people with disabilities in the Section 8 Housing Choice Voucher program, recipient practices with regard to service animals in assisted housing, and many other similar areas where program activities affect access and usability of housing and housing programs for people with disabilities.

Any action to reassign Title VIII enforcement obligations should be sensitive to sustaining and strengthening non-Fair Housing civil rights and civil rights-related program requirements in the programs administered by HUD and other agencies.

Implementation by the Justice Department and HUD of the 2004 Americans with Disabilities Act Accessibility Guidelines Should Secure the Highest Level of Architectural Access.

As the Commission is aware, the U.S. Access Board adopted significant updates to the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines ("the ADAAG") in 2004. For those guidelines to be effective under the ADA and Section 504, they must be adopted with implementation rules by DoJ for purposes of the ADA, and by HUD for purposes of Section 504. DoJ recently published proposed rules to implement the 2004 ADAAG. As yet, no proposed rules have been issued by HUD.

Within the context of housing, adoption of the 2004 ADAAG is significant because previous versions included no technical or scoping standards for residential housing. The 1988 Uniform Federal Accessibility Standards (“UFAS”) were the controlling criteria in the absence of ADA standards. As a consequence, the transition issues involved in the shift to the 2004 ADAAG are magnified for accessible housing. Some of the critical issues include:

- *Effective Date:* The new standards should be made effective at the earliest possible date. As a practical matter and at the least, projects in a design phase on the date the rules are adopted should be constructed consistent with the new standards.
- *Safe Harbors:* DoJ’s proposed rules create safe harbors for properties that are compliant with UFAS on the effective date of the 2004 ADAAG. Safe harbors must not relieve housing providers from the obligation to make structural modifications to individual units at the owner’s expense consistent with the 2004 ADAAG when needed by an individual with disabilities. Housing providers should develop plans with realistic timetables for updating residential facilities to the 2004 ADAAG. Unit-by-unit retrofitting to the new standards should be considered at unit turnover. Units should be held to the new standards when they are part of moderate or substantial rehabilitation.
- *Homeless Shelters, Transitional Housing, and Supportive Housing.* Housing programs for people with disabilities often involve settings that combine housing or shelter and supportive services. Such settings when financed by Federal funds are subject to both Section 504 and the public accommodation provisions of Title III of the ADA. They may also be subject to Title II of the ADA when financed by funds that are provided by HUD or other Federal agencies to state or local agencies. These types of residential settings should be subject to ADAAG’s standards for residential housing, and not the transient dwelling standards applicable to hotels and similar overnight facilities.
- *Support Animals.* DoJ’s longstanding policy is that public entities under Title II and public accommodations under Title III of the ADA must accommodate *service animals* that are trained to complete a specific task for a person with disabilities, such as assisting a person with sensory disabilities. DoJ’s policy says that no accommodations are needed for people with mental illnesses, developmental disabilities, head injuries, and other disabilities that require the companionship of dog, cat, or other pet to provide emotional engagement and support. HUD’s housing rules require accommodation of both service animals and support animals. HUD’s broader rule should be the consistent standard for residential units covered by Title II, Title III, and Section 504.

HUD Section 504 and Executive Order 11063 Rules Should be Modernized.

Executive Order 11063 was issued in 1962. HUD first issued implementing regulations in 1980, and amended the rules in 1985 to incorporate prohibitions on gender discrimination, as required by Executive Order 12259.²⁶ In 1994, Executive Order 12892 amended the 1962 presidential directive to extend coverage to people with disabilities. Because it covers insured



loans in addition to other forms of federal housing assistance, Executive Order 11063 is broader in coverage than the ADA, Section 504, and other laws that prohibit discrimination in public programs and programs receiving federal financial assistance. HUD has yet to update its rules for implementing Executive Order 11063 to assure that the rules protect people with disabilities. The rules should be updated. When amended, the rules should address the architectural access and program access requirements of the housing providers subject to Executive Order 11063 who are not covered by Section 504 or the ADA.

HUD's Section 504 rules were published in 1988, and have not been modernized. Significant areas needing attention include:

- *Transition Plans for Architectural Access:* When promulgated, the Section 504 rules required grantees to complete self-assessments of architectural accessibility and transition plans for removing physical barriers to access by January 11, 1989.²⁷ The rules makes no provision for properties to update transition plans and complete additional barrier removal after that date.
- *Self-Evaluations for Program Access:* Other rules require owners to complete self-evaluations in order to identify and modify policies and procedures that impede access to assisted housing.²⁸ Self-evaluations should have been completed by July 11, 1989. There are no provisions in the rules for properties to update self-evaluations.
- *Mixed-Income Housing:* Section 504 new construction rules say that 5% of a project's units must be designed for people with mobility impairments and 2% must be designed for people with sensory impairments. The 1988 rules were issued at a time when all units in most multifamily rental projects consisted of assisted units. As many Commissioners know, the current model for affordable housing development promotes mixed-income housing in which some units receive rental subsidies, some apartments are targeted to moderate income households at fixed rental amounts, and some dwellings are market-rate units. There is considerable lack of clarity at HUD about whether the new construction standards apply to all units in a multifamily project or just the units with rental subsidy. CCD favors architectural access to all types of units in a mixed-income project and the Section 504 rules should be modernized to reflect such a standard.
- *Homeownership Programs:* The Section 504 regulatory definition of "project" does not distinguish between rental projects and homeowner projects. Fairly read, the rules say that homeowner units developed with HUD assistance should comply with Section 504 architectural access standards. However, the specific content of current HUD Section 504 rules for homeownership programs applies only to programs that no longer exist. HUD's modern homeownership activities are numerous and varied. In some programs, existing public housing may be converted to homeownership. HOPE VI and other public housing development programs sometimes create whole new neighborhoods of homeowner dwellings. Section 8 Housing Choice Vouchers are available to assist with monthly mortgage payments. HOME funds may be used to provide down payment assistance or can be used to provide construction subsidies for new or rehabilitated homeowner units. Community Development Block Grants are



used for homeowner rehabilitation assistance. HUD sub-regulatory policies in these programs do not require architectural access for homeowner units, nor do they include provisions that assure that these programs are usable or accessible to people with disabilities. The problems resulting from the absence of standards are compounded by the fact that the 2004 ADAAG defer to HUD guidelines.

Congress Must Act to Reverse Judicial Decisions that Affect Access to Housing for People with Disabilities.

Fair Housing Definition of “Disability.” In a series of decisions construing the employment discrimination provisions of the ADA, the Supreme Court significantly narrowed the ADA definition of disability.²⁹ Among other results, the decisions exclude from ADA protections those individuals whose functional impairments are improved through the use of medication, medical equipment, and assistive technology. At the time of the decisions, the statutory definition of “disability” was identical in the ADA, Section 504, and the Fair Housing Act, and the courts typically gave the same meaning to the term in cases brought under all three laws.³⁰ Congress passed the ADA Amendments Act of 2008 to reverse the Supreme Court decisions, and it is expected that the legislation will soon be signed by the President. The Act clarifies that under both the ADA and Section 504, the term “disability” includes conditions that are improved by medical intervention, medical equipment, and assistive technology.³¹ It does not, however, amend the Fair Housing Act. Consequently, there is a high risk that courts will use the narrowed definition of “disability” in Title VIII cases, depriving large numbers of people with disabilities of protection against discrimination in housing. This oversight should be corrected.

Architectural Access Under the Fair Housing Act. The Fair Housing Act requires that buildings constructed for first occupancy after 1991 must comply with Fair Housing Act Accessibility Guidelines (“FHAAG”). A number of Federal district court decisions say that a violation of the FHAAG is a continuing wrong under Title VIII and so long as the non-compliant conditions are not reversed, an individual may bring a fair housing claim against the building owner. In *Garcia v. Brockway*, the Ninth Circuit Court of Appeals took the opposite approach, holding that design and construction claims under Title VIII must be brought within three years of construction completion, and there is no remedy for non-compliance after that time.³² The only other appellate decision to address this question takes the side of the majority of district courts.³³ Non-compliant buildings are inaccessible to people with disabilities until the non-compliance is remedied. Although the Ninth Circuit decision in *Garcia* was appealed to the Supreme Court, Congress should act to resolve this issue by allowing litigation to reverse continuing violations of the FHAAG.

Conclusion

The goal of this testimony is to identify specific concrete action steps to improve access to high quality, integrated housing, including accessible housing, for people with disabilities. CCD appreciates the Commission’s interest in its priorities, and thanks you for the opportunity to make these remarks.

ENDNOTES

- ¹ *Census 2000 Briefs, Disability Status: 2000* (U.S. Census Bureau, 2003).
- ² *Affordable Housing Needs: A Report to Congress on the Significant Need for Housing* (HUD, Office of Policy Development and Research, 2005).
- ³ *Priced Out in 2006: The Housing Crisis for People with Disabilities* (CCD Housing Task Force and Technical Assistance Collaborative, 2007).
- ⁴ 42 U.S.C. §3608(d).
- ⁵ *Otero v. NY City Housing Auth.*, 484 F.2d 1122, 1134 (2 Cir. 1973) and *NAACP, Boston Chapter v. U.S. Dept. of Housing and Urban Dev.*, 817 F.2d 149, 154 (1 Cir. 1987).
- ⁶ *See*, 27 Fed. Reg. 11527 (November 20, 1962) as amended by Section 6-604(b) of Executive Order 12892 (January 17, 1994), 59 Fed. Reg. 2939 (January 20, 1994).
- ⁷ 29 U.S.C. §794.
- ⁸ Pub. L. 100-430 (Sept. 13, 1988).
- ⁹ 42 U.S.C. §12115, *et seq* (Title II) and §12181, *et seq* (Title III).
- ¹⁰ 527 U.S. 581 (1999)
- ¹¹ Executive Order 13217 (June 18, 2001), 66 Fed. Reg. 33155 (June 21, 2001).
- ¹² H.R. 3221, §3004(g), adding 26 U.S.C. §42(g)(9).
- ¹³ Authority for the LIHTC program is codified at 26 U.S.C. §42. The authority of states and localities to issue TEB is limited by 26 U.S.C. §146.
- ¹⁴ 26 C.F.R. §1.42-9.
- ¹⁵ *See, e.g., Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition* (Internal Revenue Service, January 2007), Chapter 13.
- ¹⁶ *Independent Housing Services of San Francisco v. Fillmore Center Associates*, 840 F. Supp. 1328 (N.D. Cal., 1993).
- ¹⁷ *See, U.S. Dept. of Transportation v. Paralyzed Veterans of America*, 477 U.S. 597 (1986) (Federal aid subject to Section 504 may take non-monetary form).
- ¹⁸ 24 C.F.R. §200.610.
- ¹⁹ *See*, 42 U.S.C. §1437e (public housing); 42 U.S.C. §13611, *et seq* (procedures for limiting access to covered Section 8 housing); and 42 U.S.C. §13618 (exclusion from other assisted housing).
- ²⁰ *Opening Doors, What's Wrong With This Picture?* (CCD and Technical Assistance Collaborative, 2001)
- ²¹ See the information collected by the Technical Assistance Collaborative at:
http://www.tacinc.org/HH/Program_Policy/Section8VouchersPWD.htm
- ²² *Trends in Worst Case Needs for Housing, 1978-1999: A Report to Congress on Worst Case Housing Needs* (HUD, Office of Policy Development and Research, 2003).
- ²³ *Characteristics of HUD-Assisted Renters and Their Units in 2003* (HUD, Office of Policy Development and Research, May 2008).
- ²⁴ Among the reports documenting problems with fair housing enforcement are: GAO-04-463, *Fair Housing: Opportunities to Improve HUD's Oversight and Management of the Enforcement Process* (General Accounting Office, April 2004) and GAO-06-79, *Fair Housing: HUD Needs Better Assurance that Intake and Investigation Processes are Consistently Thorough* (Government Accountability Office, October 2005).
- ²⁵ 24 C.F.R. §8.50 (Section 504) and §107.25 (E.O. 11063).
- ²⁶ *See*, 45 Fed. Reg. 59510 (September 9, 1980) (initial rules) and 50 Fed. Reg. 31359 (August 2, 1985) (adopting gender discrimination provisions).
- ²⁷ 24 C.F.R. §8.24.
- ²⁸ 24 C.F.R. §8.51.
- ²⁹ *See, e.g., Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002).
- ³⁰ *Bragdon v. Abbott*, 524 U.S. 624 (1998).
- ³¹ *See*, S.3406, §4 (amending ADA) and §7 (amending Section 504).
- ³² *Garcia v. Brockway*, 526 F.3d 456 (9 Cir. 2008).
- ³³ *Fair Housing Council v. Village of Olde St. Andrews, Inc.*, 210 Fed. Appx. 469 (6 Cir. 2006).