

SECTION 8 HOUSING

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I. Overview of Federal Housing Subsidies

A. Historical basis

Historically, federal housing programs have been either supply-side or demand-side approaches to housing. There are two types of demand side developments, family projects and projects that are designated for occupancy for people with disabilities and elderly. The Section 8 Housing Assistance Payments Program created by the Housing and Community Development Act of 1974, allows certificate holders to pay thirty percent of their income for a privately owned apartment that rents at or below a locally established Fair Market Rent. The birth and growth of Section 8 has signified a shift in HUD's programmatic emphasis from supply-side to demand-side housing assistance.¹

B. Programs

i. Section 8.202 Public Housing Program

This program began in 1959, it allows Section 8 vouchers to be combined with subsidies for new construction or rehabilitation. Under this program, private nonprofit organizations and consumer cooperatives are eligible for interest-free capital advances to finance construction, rehabilitation or acquisition of housing.² This program increasingly serves an older population. The average resident is eighty years old and 90% of the residents are woman living alone.³

ii. Housing Choice Voucher Program (Section 8)

There are several types of vouchers, project based vouchers, tenant based vouchers, vouchers for people with disabilities. There is no specific funding for project based vouchers by HUD the Public Housing Authority may use up to 20% of the funds in its housing choice voucher program to provide these vouchers that are tied to a particular housing project.⁴

With the tenant based voucher program it is the responsibility of the family to find a unit that meets their needs, and housing quality standards. If the rent is reasonable, and the unit meets the other program requirements, the Public Housing Authority will execute a

¹ The Transition to Section 8 Housing: Will the Elderly be Left Behind?, Cretin, 18 Yale L & Pol' Rev. 405, page 3,

² 12 USC Section 1701 q(a) (Supp. 11995)

³ *The Transition to Section 8 Housing: Will the Elderly be Left Behind?*, Cremin 18 Yale L. & Pol' Rev. 405, page 4

⁴ The regulations that cover this program are found at 24 CFR Part 983

contract with the property owner that authorizes it to make rental subsidy payments on behalf of the family. The authority pays the owner of the housing the difference between 30 percent of adjusted family income and their determined payment standard or the gross rent for the unit, whichever is lower. The family can pick housing that as a higher rent then the standard and pay the housing owner the difference.⁵ There is specific funding to the housing authority through notices of funding availability (NOFAS) for these vouchers.⁶

Vouchers for people with disabilities are basically, tenant based vouchers that are funded through notices of funding availability (NOFAS) and are set aside for a family that includes a person with a disability. In some cases, non-profit organizations may also apply for these vouchers, sometimes called mainstream vouchers.

iii HOPE for Elderly Independence (HOPE IV)

This program was established in 1990, and is considered the only federally funded attempt to adapt the Section 8 program to the particular needs of the low-income elderly. The goal of this program was to help frail elderly Section 8 recipients remain in the least restrictive housing option. This program could be a core resource for financing supportive housing, however advocacy is needed to assure policy changes locally.⁷

iv Supportive Housing for the Elderly and Persons with Disabilities

The concept of Supportive Housing developed through efforts to link permanent housing options with supports and services. Common principals of Supportive Housing include: all the groups in need of this model, have a similar need for government funded housing assistance because of extreme poverty; control over the housing choice and environment belongs to the resident; the housing is permanent; the housing is separate from the support services (support must be available but is not required at a particular level to gain access to the housing); support services are flexible and individualized, rather than defined by a program.⁸

II. Section 8 Housing Subsidy: A Closer Look

A. Requirements

In October 1998, Congress passed housing reform legislation, which eliminated all differences between the Section 8 Voucher and Section 8 Certificate programs and combined them into one housing choice voucher program.⁹ The housing choice voucher program has become the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the

⁵ The regulations that cover this program are found at 24 CFR Part 982

⁶ The regulations that cover this program are found at 24 CFR Part 982

⁷ *Olmstead and Supportive A Vision Housing: for the Future*, O'Hara, Day, Technical Assistance Collaborative, Inc., Center for Health Care Strategies, Inc., Consumer Action Series, December, 2001, page 21

⁸ *Olmstead and Supportive A Vision Housing: for the Future*, O'Hara, Day, Technical Assistance Collaborative, Inc., Center for Health Care Strategies, Inc., Consumer Action Series, December, 2001, page 8

⁹ U. S. Dept of housing and Urban Dev., I handbook 7420.10(x, Voucher Program Guidebook, Housing Choice (April 200 1) at 1-4 [hereinafter HUD]

private market.¹⁰ Participants are able to find their own housing, including single-family homes, townhouses, and apartments.¹¹ They are free to choose any housing that meets the guidelines of the program and are not limited to units located in subsidized housing projects.¹² An important goal of the housing choice voucher program is to provide opportunities for very low-income families to obtain rental housing outside areas of poverty or minority concentration.¹³ A major objective is to encourage the movement of these families into a broader range of neighborhoods through the provision of affordable housing.¹⁴

The Department of Housing and Urban Development (HUD) provides housing assistance funds to local public housing agencies (PHAs) for distribution to low-income families in their jurisdiction.¹⁵ PHA's must adopt an administrative plan that establishes local policies for the administration of the program in accordance with HUD requirements.¹⁶ (See **Attachment #1**) PHA's must make this plan available to the public. The PHA is responsible for establishing an application and selection process that treats applicants fairly and consistently and provides an effective method for determining eligibility.¹⁷ The PHA administering the housing choice voucher program enters into a contractual relationship with three parties: HUD, the owner of the property, and the low-income family.¹⁸

A PHA may only admit an applicant to the program that is eligible. In order to be eligible, the applicant must be a "family."¹⁹ The definition of a family is a broad one, including either a single person or a group of persons.²⁰ The applicant must also be a United States citizen or a non-citizen with eligible immigration status.²¹ Finally, an applicant must fall into one of the three income limits used to determine eligibility for the housing choice voucher program. The very low-income limit is set at 50 percent of the area median income and is the income limit generally used to determine initial program eligibility. The low-income limit is set at 80 percent of the area median income and is used for families who fall above the very low-income limits, but who are considered eligible for other reasons.²² There is a third limit, set at 30 percent of the area median income, called the extremely low-income. At least 75 percent of PHA's admissions in each PHA fiscal year must be families whose incomes are at or below the extremely low-income level.²³ A PHA may allow a lower percentage of extremely low-income families if HUD approves it.²⁴

¹⁰ Housing choice voucher program fact sheet p. 11 Id.

¹¹ *Id.*

¹² *Id.*

¹³ HUD, *supra* note 1, at 2-1

¹⁴ *Id.*

¹⁵ 24 CFR §982.1

¹⁶ *Id.* at §982.54

¹⁷ HUD, *supra* note 1, at 4-1

¹⁸ *Id.* at 1-11

¹⁹ 24 CFR §982.201(a)

²⁰ HUD *supra* note 1, at 5-2

²¹ HUD *supra* note 1, at 5-8

²² *Id.*

²³ 25 CFR §982.201

²⁴ *Id.*

- Information needed on an Application:
 - Names of all persons living in unit sex, DOB and relationship to family head
 - Present address and phone number
 - Family characteristics/circumstances that might establish priority status (e.g., homeless)
 - Names and address of current and previous landlords for references
 - Estimate of anticipated income for next 12 months and sources of income
 - Names and address of employers, banks etc. to verify income and deductions

A representative from the public housing authority (PHA) may visit the person to interview and see how the individual manages the upkeep of his/her current residence

Once the person is deemed eligible, he/she will be placed on a waiting list; preferences will be given based on the local community needs and the PHA's policy manual

Eligibility

Eligibility is determined on the total annual gross income and family size. The income limit generally used to determine initial program eligibility is 50% of the median income for the county or metropolitan area where the family wishes to reside. This is referred to as the “very-low income limit”.

The “low income limit”, set at 80% of the area median income, is used for families whose incomes fall above the very-low income limits but who are considered to be eligible for assistance because they are:

- continuously assisted under public housing or Section 8 programs;
- non-purchasing households in the following homeownership programs: HOPE 1, HOPE 2, or other HUD-assisted multifamily home ownership programs covered under 24 CFR 284.133; or
- displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract

Annual income includes all amounts, whether monetary or not, that are received by or on behalf of the family within the 12 month period- Annual income includes all amounts not specifically excluded (see **Attachment #2** from the Housing Choice Voucher Program Guidebook (which you can download from www.hud.gov/pih), "Income Inclusions and Exclusions," as defined in the regulations). In specific to trusts and the elderly and persons with disabilities:

Included Income:

- interest, dividends and other net income from real or personal property are included in annual income, and any withdrawal of cash or assets from investment; where family has net family assets in excess of \$5000, annual income shall include the greater of actual income from assets or percentage of value of assets determined by HUD (see below to determine what assets are included);

- periodic payments from social security, annuities, insurance policies, retirement funds, pensions, disability/death benefits, and other types of periodic receipts
- Payment in lieu of earnings (e.g., worker's compensation)
- Welfare assistance

Excluded Income:

- Lump-sum additions to family assets, such as inheritances, insurance payments (including under health and accident insurance and worker's compensation), and settlement for personal or property losses
 - Amounts received by family specifically for, or reimbursement of, cost of medical expenses for any family member
 - Amounts received by a person with disabilities that are disregarded for limited time for purposes of SSI eligibility and benefits because that are set aside for use under a Plan to Attain Self-Sufficiency
 - Amounts received in other publicly assisted programs to reimburse out-of-pocket expenses incurred to allow participation in a specific program (e.g., special equipment, clothing, transportation)
 - Temporary, non-receiving, or sporadic income (including gifts)
 - Deferred periodic payments of SSI and SSDI that received in a lump-sum payment or in prospective monthly payments
 - Amounts paid by a state agency to a family with a developmentally disabled family member living at home to offset costs of keep that person at home
 - Earned income for persons with disabilities (as set in 24 CFR 5..617)
- Determining Income from assets -- *key whether or not to include asset or not is whether any family member has access to the asset.* In relation to trusts specifically, note assets included are cash value of trusts that may be withdrawn by the family, and assets disposed of for less than FMV during 2 years preceding certification or recertification. Note exclusions: assets not controlled by or accessible to the family and which provide no income for the family; vehicles equipped for the disabled. See **Attachment #3**. It should be noted that a recent article in the NAELA Trust SIG Newsletter, a California author related his experience that although certain lump-sum payments are not “income” in the month received, the transfer of these payments does constitute a disposition for less than fair market value, and as such, an imputation of income results. See **Attachment #4**.
- Adjusted Income: Annual income minus deductions:
- \$480 for each dependent
 - \$400 for any elderly (someone at least 62 years old) and disabled family
 - Child Care
 - Disability Expenses to cover expenses necessary to enable a family member ((including one who is disabled) to be employed (e.g., motorized wheelchair, payments to care attendant while mom works); allowance is equal to amount by which costs exceeds 3% of gross annual income, but cannot exceed income received by family member enabled to work
 - Medical expenses for households in which head or spouse is at least 62 or disabled (then can include all family expenses); includes services from health care professionals and facilities, insurance premiums, prescription/non-prescription medicine, transportation to treatment, dental, live-in medical

assistance, monthly payment on accumulated medical bills (only include amount expected to be paid in coming 12 months)

Once the individual is determined to be eligible, he/she will be placed on a waiting list. There may be local preferences established in issuing housing vouchers

Finding Housing

Any unit in which the housing voucher is used for must pass initial and annual inspections of units to determine compliance to the lease. To receive vouchers, the unit must follow thirteen performance requirements:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and security
- Thermal environment
- Illumination and electricity
- Structure and materials
- Interior air quality
- Water supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition, and
- Smoke detectors

Once an applicant is considered eligible they may be admitted to the program in one of two ways, as either a special admission or a waiting list admission.²⁵ At certain times award PHA program funding that is targeted for families living in specific units and that money can be used only for that targeted group.²⁶ A special admission doesn't rely on a waiting list or any specific order of applicants.²⁷ Examples of targeted special admissions are a family displaced because of demolition or disposition of a public housing project or a family residing in a project that HUD sells, forecloses, or demolishes.²⁸ After all designated families living in the identified housing have been assigned the funds may be used for the regular waiting list.²⁹

An important responsibility of the PHA is to ensure that an up-to-date waiting list is maintained.³⁰ Some PHAs keep the waiting list open at all times and others only keep it open for brief application periods.³¹ The decision to open a waiting list is based on local needs and circumstances.³² When the PHA opens a waiting list, they must give public notice that families may apply for tenant-based assistance.³³ The notice must state where

²⁵ *Id.* at §982.202

²⁶ *Id.* at §982.203

²⁷ *Id.*

²⁸ *Id.*

²⁹ HUD, *supra* note 1, at 1-8

³⁰ *Id.* at 4-1

³¹ *Id.*

³² *Id.*

³³ 24 CFR §982.206(a)(1)

and when to apply and it must be published in a local newspaper of general circulation, by minority media, and other suitable means.³⁴ Fair housing requirements demand that efforts are made to ensure that the information will reach those populations that are considered to be the "least likely to apply."³⁵ Except for special admissions, all participants must be selected from the PHA waiting list in accordance with the PHA administrative plan.³⁶ Once a PHA determines that the existing waiting list contains an adequate pool for use of available program funding, they may stop accepting new applications,³⁷ or they may choose to close only a part of the wait list and continue to accept applications for families qualifying for specific local preferences, such as homeless families.³⁸ Before closing the list the PHA must be sure that it contains a sufficient number of extremely low-income families to satisfy the 75 percent required for the program.³⁹

A PHA may adopt a list of local preferences for the selection of families for the program.⁴⁰ The preference system must be based on local housing need and priorities.⁴¹ Preferences affect only the order of applicants. They do not make anyone eligible who would not otherwise be.⁴² A PHA may only adopt a residency preference in accordance with non-discrimination and equal opportunity requirements.⁴³ A PHA may adopt a local preference for admission of a working family, families that include a disabled person, families that include victims of domestic violence, or for a single person who is elderly, displaced, homeless, or disabled.⁴⁴ Applicants with the same preference status may be selected based on date and time of application or by a random drawing.⁴⁵

Admission to the program may not be based on where the family lives before admission, although PHA may target assistance for families who live in public housing or adopt a residency preference.⁴⁶ While PHA is allowed to develop a list of local preferences, admission may not be based on discrimination because members of the family are unwed parents, recipients of public assistance, children born out of wedlock.⁴⁷ A PHA cannot *m discriminate based on age, race, color, religion, sex, or national origin.⁴⁸ They cannot discriminate because a family includes children, because someone has a disability, or whether a family decides to participate in a family self-sufficiency program.⁴⁹

As vouchers become available, eligible applicants are chosen from the waiting list in order to begin eligibility determination, voucher issuance, and leasing processes.⁵⁰ If there is

³⁴ *Id.* at §982.206(a)(2)

³⁵ HUD, *supra* note 1, at 4-2

³⁶ 24 CFR §982.204

³⁷ *Id.* at §982.206

³⁸ HUD, *supra* note 1, at 4-4

³⁹ *Id.* at 4-5

⁴⁰ 24 CFR §982.207

⁴¹ *Id.*

⁴² HUD, *supra* note 1, at 4-16

⁴³ *Id.*

⁴⁴ 24 CFR §982.207

⁴⁵ *Id.*

⁴⁶ 24 CFR §982.202

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ HUD, *supra* note 1, at 4-18

no local preference system then applicants are chosen in order according to date and time of their application or in order of the result of the random drawing.⁵¹

Once a family is chosen the PHA will give them an oral briefing, which includes a description of how the program works, family and owner responsibilities, and where the family may lease a unit.⁵² The PHA will also provide the family with a packet of information, which includes details such as the term of the voucher, how the PHA determines the amount of assistance, and information on housing laws and discrimination.⁵³ Once a family has obtained a voucher, they go in search of a place to live. The voucher holder is advised of the unit size for which it is eligible based on family size and composition.⁵⁴ The initial term of a voucher is at least 60 calendar days, but at its discretion a PHA may grant one or more extensions.⁵⁵ Once a family finds a housing unit and the owner is willing to lease the unit under the program, the family may put in a request for PHA approval.⁵⁶ The unit selected must meet an acceptable level of health and safety before the PHA can approve it. In order for the PHA to approve a unit they must decide that the unit is eligible, that it has been inspected and passes the housing quality standards, the lease includes the tenancy addendum, the rent to owner is reasonable, and the family share does not exceed 40 percent of the family's monthly adjusted income.⁵⁷ If the PHA accepts the housing unit, then they execute a housing assistance payments (HAP) contract with the owner.⁵⁸ The owner, not the PHA, is responsible for screening the potential tenants.⁵⁹ An owner can consider a family's background with respect to such factors as payment of rent and utility bills, caring for a unit and premises, respecting rights of other citizens, drug-related criminal activity, and compliance with other conditions of tenancy.⁶⁰

The term of the lease must be for one at least one year,⁶¹ but PHA may approve a shorter initial lease if they determine a shorter term will improve housing opportunities or that a shorter term is the prevailing market practice.⁶² During the initial term of the lease, the owner may not raise the rent⁶³ or terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, violation of Federal, state or local law that imposes obligations on the tenant in connection with occupancy or use of premises, or for "other good cause,"⁶⁴ "Other good cause" may include, but is not limited to, disturbing neighbors, destroying property, carrying out housekeeping habits that cause damage to the unit, or if the owner desires to use the unit for personal or family use.⁶⁵ During the initial lease term the owner may terminate for "other good cause" only because of something the

⁵¹ *Id.*

⁵² 24 CFR §982.301

⁵³ *Id.*

⁵⁴ fact sheet 2

⁵⁵ 24 CFR §982.303

⁵⁶ *Id.* at §982.302

⁵⁷ *Id.* at §982.305

⁵⁸ *Id.*

⁵⁹ *Id.* at §982.307

⁶⁰ *Id.*

⁶¹ *Id.* at §982.309

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at §982.310

⁶⁵ *Id.*

family did or failed to do.⁶⁶ Nonpayment by a PHA is not grounds for termination of the tenancy.⁶⁷ Any criminal activity by the tenant, any member of the household, or a guest or another person under the tenant's control that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity are grounds for termination, along with any drug-related criminal activity on or near the premises.⁶⁸ Any termination must be preceded by a written notice from the owner that specifies the grounds for termination.⁶⁹ A copy of that notice must be given to the PHA.⁷⁰ The owner may only evict the tenant from a unit by instituting a court action.⁷¹

In order to determine the family and PHA shares of the rent, HUD publishes fair market rents for each market area in the United States.⁷² The PHA establishes payment standard amounts for each unit size in the area and uses these amounts to calculate the monthly housing assistance payment for a family.⁷³ The PHA will pay a monthly housing assistance payment that is equal to the *lower* of the payment standard for the family minus the total tenant payment or the gross rent minus the total tenant payment.⁷⁴ The total tenant payment is the *greater* of 30 percent of monthly adjusted income, 10 percent of monthly gross income, welfare rent, or PHA minimum rent.⁷⁵ Family share may not exceed 40 percent of the family's monthly adjusted income when the family initially moves into the unit.⁷⁶ A family can choose any housing they want to as long as their share of the rent does not exceed the maximum initial rent burden.⁷⁷

Along with the contract rent that is paid to the owner, a PHA must also consider the anticipated cost of any utilities that the tenant family is required to pay.⁷⁸ The PHA maintains a utility allowance schedule for the tenant for all utilities they are required to pay, except for telephone.⁷⁹ The utility allowance schedule is determined based on the typical cost of utilities and services paid by households that occupy similar size and type housing in the same locality.⁸⁰ The PHA's utility allowance schedule must include utilities that are necessary in the locality to provide housing that complies with housing quality standards.⁸¹ They do not have to provide an allowance for non-essential utility costs, such as cable television.⁸²

A family is expected to comply with the lease and program requirements, pay its share of rent on time, maintain the unit in good condition and notify the PHA of any changes

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at §982.310

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at §982.503

⁷³ *Id.*

⁷⁴ *Id.* at §982.505

⁷⁵ HUD, *supra* note 1, at 6-1

⁷⁶ *Id.* at 6-2

⁷⁷ *Id.* at 6-6

⁷⁸ *Id.* at 18-1

⁷⁹ 24 CFR §982.517

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

in income or family composition.⁸³ Since a family's needs change over time, the housing choice voucher program allows families to move without losing housing assistance.⁸⁴ The PHA may at any time deny program assistance for an applicant or terminate program assistance for a participant for a number of reasons, including any violations of family obligations, any prior evictions from federally assisted housing, or if a family owes rent or other expenses to a PHA in connection with Section 8 or public housing assistance.⁸⁵

B. Impact of Special Needs Trusts

Recently, more folks with disabilities, who are beneficiaries of special needs trusts have secured assistance with housing from HUD, via the Section 8 program. Housing assistance from a charitable or governmental agency does not count as in-kind support for SSI or Medicaid, so this is a wonderful benefit for those who can get it. Recently on the NAELA list serve there was even a track on parents purchasing homes for their adult children with disabilities, and Section 8 paying them as the owner for a part of the rent.

It is clear from the HUD Manual and regulations, an irrevocable trust is not counted as an asset in determining eligibility for this program so long as the beneficiary lacks access and control. However, a new issue has started to show up, as to how disbursements from a Special Needs Trust impact the person's rental amount (it is determined based on income, See **Attachment #5** letter from the apartment complex). A letter to respond to this issue was drafted. (See **Attachment #6**). Please note the Guidebook quoted in this letter has been revised recently. Additionally, as a result of a hearing relative to a termination that distributions to third-parties from a special needs trust was countable income to the family, a sample letter outlining a seemingly favorable decision is attached as **Attachment #7**.

If the local PHA does issue a termination notice based on its determination that the family is no longer eligible due to income or resources, then due process rights afforded the family.

At minimum, a written statement to the Section 8 household of the termination decision including an explanation of the basis for the decision and notification of right to request an informal hearing on the decision and the deadline for requesting such a hearing.

The opportunity for the household to examine—before the PHA hearing any PHA documents directly relevant to the hearing.

The appointment of an official Hearing Officer to conduct the informal hearing—this person is designated by the PHA and may be any person other than the one who approved the decision under review or a subordinate of this person.

The appeals process for each PHA relative to terminations must be described in is Section 8 Administrative Plan.

⁸³ fact sheet 4

⁸⁴ *Id.* at 3

⁸⁵ 24 CFR §982.552

Practice Tip: It is particularly difficult to find the HUD regulations. The best web site I found was <http://www.hudclips.org/cgi/index.cgi>

III. Combining Housing Strategies With Private Resources

There is increasing demand upon the public long-term care system(s) to address the housing and support needs of our clients. The lack of a clear, consistent public policy at a time of increased demand and limited options will require creative approaches. NAELA members are uniquely suited to respond by crafting these solutions with their clients by combining public supports for housing, long-term care and the private resources of clients. Please refer to **Attachment # 8**, for an example of such a creative approach. NAELA should develop some type of information bank for members to share their solutions, so that we can learn from each other, and the leadership that is so desperately needed. Our clients will greatly appreciate responses that address their real life needs!

IV. Olmstead in Action

A. Reasonable Accommodation Requirement (See Attachment #9)

Most folks prefer to live at home with supports, and will do just about anything to stay out of a group home, institution, or nursing home. We, as advocates cannot allow options that most people do not want to be the responsive of public officials worried about pent up-demand for Medicaid long-term care services. We must use Olmstead and the ADA to advocate for services in the least restrictive setting.

Self-Determination and Olmstead Implementation need to become the priority for Michigan's public mental health system. President Bush's National Council on Disability published, *Olmstead: Reclaiming Institutional Lives on August 19, 2003*. This 461 page report outlines: the United States' Supreme Court Decision in Olmstead, Barriers to Community Integration in the United States, Case Law, Federal Responses to the Decision, An overview of State Responses, In-Depth Analysis of Ten States (including Michigan), Good Practices in Community Services; and makes several outstanding Conclusions and Recommendations. I suggest that this is important (and yes, lengthy-but not boring) reading for anyone interested in the future of our public mental health and long term care systems. To quoting this report, " We must continue to empower Olmstead stakeholders in their state 'system change activities', that is, in their efforts to redesign the state service systems to enhance choice, independence, self-determination, and community integration. Our nation will be much more prosperous when it makes real the right of people with disabilities to live in the most integrated setting. . . We thus conclude this report as it began, with an affirmation of self-determination as an exemplar of the 'most integrated setting'".

B. Negotiate to Achieve Least Restrictive Setting with private dollars

Use private resources from family members, or a special needs trust as a means to negotiate for services in the least restrictive setting. It can be used to demonstrate that the service request can be reasonably accommodated. Use new models such as Self-

Determination, that allows elders and people with disabilities to have control over their services. The Medicaid budget is forwarded to a Fiscal Intermediary, under contract with the Community Mental Health Board, or contract Agency. Allows for a creative use of the private dollars with the public dollars. For example, the Medicaid budget could be used to hire staff, and the private trust funds could be used to provide for extra training, and benefits. This could allow the person with a disability and their family to recruit, hire, train, and maintain quality staff people. (See Attachment #10).

IV. Other Obstacles For The Elderly and Persons With Disabilities

A. Discrimination

According to several sources, discrimination against rental subsidy holders seems to be as open and blatant today as was racial discrimination in the past. Many housing advocates believe that the acceptability and legality of Section 8 discrimination enables landlords to use it as a proxy for other legally prohibited kinds of discrimination, such as based on race, ethnicity, national origin, gender, family status or disability.⁸⁶ The authors encourage NAECLA members to assert that acceptance of a rental subsidy is a reasonable accommodation required under The American's with Disabilities Act, and report those who continue to discriminate against those who use rental subsidies, or have rental payments made by other sources.

⁸⁶ *Fighting Section 8 Discrimination: The Fair Housing Act's New Frontier*, Beck, 31 Harv. CR-CLL Rev. 155; *Short of Money or Shortchanged?: Reasonable Accommodations in Rental Rules and Policies for Disabled Individuals Receiving Financial Assistance*, Blackmore, 39 BRANDLJ 449