

N/A: Ohioans with Disabilities and the Consolidated Plan  
Comments for Ohio's Consolidated Plan  
for  
Fiscal Year 2009

Submitted by Ohio Legal Rights Service

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## **N/A: Ohioans with Disabilities and the Consolidated Plan**

Thank you for this opportunity to comment on the development of Ohio's Consolidated Plan for Fiscal Year (FY) 2009.

Ohio Legal Rights Service is a state agency with mandates under state and federal laws. Our mission is to provide legal-based advocacy to Ohioans with disabilities. Our work is guided by the agency's program priorities,<sup>1</sup> which are formulated annually based on public input statewide and the experience of our individual case work and policy initiatives.

Ohio Legal Rights Service assisted over 5,300 Ohioans with disabilities in individual cases during FY 2008.<sup>2</sup> Slightly fewer than half of those clients are people with mental health disabilities, and slightly more than half are people with intellectual, developmental, physical, and other disabilities.

### **Interdependent Legal Rights: Community Integration and Housing**

Ohio Legal Rights Service's program priorities include the legal right of people with disabilities to community integration. To defend and advance our clients' right to community integration, Ohio Legal Rights Service advocates freedom from unnecessary institutionalization and the right to services in the most integrated setting appropriate to the individual's needs; the right to access housing and the right to reasonable accommodations and modifications; the right to access waiver and other community-based support services; and the right to access public accommodations and government-funded programs without discrimination based on disability.

During FY 2008 over 300 individual cases fell within Ohio Legal Rights Service's community integration program priority. Presenting case problem areas included housing discrimination, illegal zoning and restrictive covenants, physical accessibility issues, denial of reasonable accommodations and modifications, discriminatory rental terms and landlord-tenant disputes related to disability, public and Section 8 subsidized housing issues, and other housing issues.

### **Unassessed: Consolidated Planning and Housing Needs**

The experience of our individual case work demonstrates that people with disabilities commonly encounter discrimination in and barriers to housing. Inadequate supply is one underlying cause. Based on public input during our annual priorities formulation, on the record of our individual case work, and on our review of annual and five-year Consolidated Plans, the five year Consolidated Plan Strategy, and annual Performance Reports, we are concerned that the housing needs of

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<sup>1</sup> The agency's program priorities are online at [http://olrs.ohio.gov/ASP/about\\_Priorities.asp](http://olrs.ohio.gov/ASP/about_Priorities.asp).

<sup>2</sup> Most of the agency's programs follow the federal fiscal year, October 1 through September 31.

Ohioans with disabilities are not being assessed and planned for as they ought to be through the Consolidated Planning process.

There is an inadequate supply of safe, affordable and accessible housing for individuals with disabilities. Due to the lack of housing, many individuals with disabilities are placed in nursing facilities or intermediate care facilities even though they do not meet the level of care provided in those facilities simply because they cannot afford to live independently. Other individuals live with their aging parents. Others may reside in homes with unsafe living conditions and/or architectural barriers that force social isolation. Their housing needs are concealed because these individuals are living somewhere, but not in a home of their own. Merely because an individual is living in one of these environments does not mean that their housing needs are met.

### **Priced out: Ohioans with Disabilities and Unaffordable Housing**

Frequently, individuals with disabilities have limited incomes. With soaring rents, often monthly rents are higher than the monthly income of these individuals. This is particularly a problem if the only source of an individual's income is Supplemental Security Income (SSI). Monthly income for an individual receiving SSI in 2008 is \$637.<sup>3</sup> Affordable housing is defined as paying no more than 30% of income for housing costs. In 2006, individuals in Ohio had to pay 74.2% of their SSI to rent a studio apartment and 85.4% of their SSI to rent a one bedroom apartment.<sup>4</sup> For an individual whose sole income source is SSI in 2008, affordable monthly rent is about \$212. Without vouchers, public housing units or other affordable housing options, these individuals simply cannot afford to rent housing. Unfortunately there has been a loss of public housing in Ohio and the waiting lists are extremely long, if they are open at all, for Section 8 and Mainstream vouchers.

SSI recipients are one of the lowest-income groups eligible for federal housing assistance. At this time, there is a lack of federal housing opportunities for this group. Further, those who rely on SSI are priced out of units that are created through the Low Income Housing Tax Credit (LIHTC) program. The LIHTC program is geared toward creating units affordable for households at 50-60% of the median income.<sup>5</sup> Clearly, individuals relying solely on SSI cannot access this program.

### **Blocked-out: Ohioans with Disabilities and Inaccessible Housing**

Regardless of income, many Ohioans with physical and other disabilities face barriers to both the private and subsidized housing markets or limitations within their current, inaccessible housing, because housing that is accessible to them is chronically in short supply. As noted above, the LIHTC program is a potential solution to develop more accessible housing stock for people with moderately-low

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<sup>3</sup> <http://www.ssa.gov/redbook/eng/whatsnew.htm>.

<sup>4</sup> *Opening Doors*, July 2007 online at <http://www.tacinc.org/Docs/HH/OpeningDoors/ODIssue30.pdf>.

<sup>5</sup> *Id.*

incomes. The Ohio Housing Finance Agency (OHFA) has incorporated the principles of Universal Design and Visitability into the Qualified Allocation Plan (QAP). OHFA has stated its support for these standards in the draft 2009 QAP: “‘Visitability’ guidelines shall be incorporated into all newly constructed properties.”<sup>6</sup> However, the provision for waiver of Visitability standards “due to topography or other site/design limitations”<sup>7</sup> should be prudently applied. This waiver provision threatens to swallow the Visitability rule which OHFA has incorporated. Visitability and Universal Design principles should be persistently enforced in the approval and implementation of LIHTC projects.

Universal Design and Visitability certainly benefit residents as well as visitors who require accessible features. Universal Design and Visitability can also yield cost benefits and capital return to developers through enhanced marketability of their projects. Demand for accessible housing is growing as the general population ages and owners strive to remain in their homes longer and later into their lives. Retrofitting, adding ramps and other modifications to inaccessible homes are much more costly than incorporating Universal Design and Visitability principles into the building process. The state of Ohio currently spends over five million dollars yearly on home modifications. The cost to add a ramp or modify the entrance to a single home after it has been built (rehabilitation) can cost as much as \$3,000.<sup>8</sup> Over time rehabilitation will become ever more costly to the state as the elderly population continues to grow.

### **Institutionalization: No Alternative to Community Integration**

Many individuals are forced into nursing homes or other institutions because they cannot afford housing. A person should not be admitted to a nursing home unless there is a medical necessity for institutionalized nursing services such as needing assistance with activities of daily living and / or cognitive impairments.<sup>9</sup> Many are admitted solely because they do not have affordable housing. In 2007, Centers for Medicare and Medicaid Services (CMS) released a study of the characteristics of individuals living in nursing homes.<sup>10</sup> In Ohio, CMS reports that nearly 28.6% of nursing home residents had no impairment of activities of daily living.<sup>11</sup> About 8.2% had only one activity of daily living impairment.<sup>12</sup> Overall, almost 44% of Ohio nursing home residents had two or fewer activities of daily living impairments.<sup>13</sup>

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<sup>6</sup> 2009 Housing Credit Program QAP Draft at page 8.

<sup>7</sup> *Id.*, page 25.

<sup>8</sup> [http://concretechange.org/construction\\_costsnochange.aspx](http://concretechange.org/construction_costsnochange.aspx).

<sup>9</sup> See e.g. O.A.C. Chapters 5123:2-14 (MR/DD) and 5122-21 (SMI).

<sup>10</sup> CMS Nursing Home Data Compendium, 2007 online at [http://www.cms.hhs.gov/CertificationandCompliance/Downloads/2007NursingHomeDataCompendium\\_508.pdf](http://www.cms.hhs.gov/CertificationandCompliance/Downloads/2007NursingHomeDataCompendium_508.pdf).

<sup>11</sup> *Id.* at page 57.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

Additionally, CMS reported that 27.5% of Ohio nursing home residents had no cognitive impairment, 13.3% had only a very mild impairment and 13.7% had a mild impairment.<sup>14</sup> In total, nearly 55% of Ohio nursing home residents had either no or a mild or less cognitive impairment.<sup>15</sup> Alternatively, only 10% have a severe or very severe cognitive impairment.<sup>16</sup> These individuals with two or fewer activities of daily living impairments and a mild or less cognitive impairment could be served in the community. Yet, Ohio still has a large population of individuals who are residing in nursing homes and who do not meet the medical necessity requirements. Housing is the primary barrier that prevents many people from leaving nursing facilities and other institutions.

When comparing costs of serving an individual in an intermediate care facility or nursing facility versus serving that same individual in the community, it is clearly more cost effective to serve an individual in the community. In 2004 the average cost of care for an individual residing in an intermediate care facility ranged between \$64,463 to \$85,432 depending on the size of the institution.<sup>17</sup> The average cost for an individual residing in a nursing facility in 2004 was \$59,604.<sup>18</sup> For an individual to reside in the community with either a home/community waiver or support living the average cost ranged from \$29,763 to \$38,765.<sup>19</sup> Serving an individual in the community saves between \$20,000 to \$55,000.

Programs such as Money Follows the Person<sup>20</sup> were created based on the fact that providing supports in the community is more cost effective than facility-based models of care. The intention of this program is to help individuals move from institutional settings or their family home to housing of their choice in the community. Funding is provided for the services to be provided in the community but these individuals are not able to utilize these programs due to the lack of affordable or accessible housing. Therefore, often they are forced to remain in institutions.

### **Rights Violated: Ohio's Legal Obligations to Ohioans with Disabilities**

The states have the legal obligation to implement their federally-funded programs free of discrimination based on disability.<sup>21</sup> <sup>22</sup> The states have the further legal

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<sup>14</sup> Id. at page 63.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> <http://www.ohioolmstead.org/facts/Fast%20Facts%20%20Money%20Follows%20the%20Person.pdf>.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> See ODJFS' *Money Follows the Person: Rebalancing Demonstration Grant*, online at <http://jfs.ohio.gov/OHP/infodata/MFPGGrant/info.stm>.

<sup>21</sup> Rehabilitation Act, Section 504: 29 U.S.C. § 794: No otherwise qualified individual with a disability in the United States ... shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

<sup>22</sup> Americans with Disabilities Act, Title II: 42 U.S.C. § 12132; and Title III: 42 U.S.C. § 12182.

obligation to assure the availability of housing in the community as an alternative to institutionalization.<sup>23</sup> Ohio's Olmstead plan<sup>24</sup> and the current Consolidated Plan incorporate this community integration mandate as state policy:

The state will support localities' efforts to help people who are institutionalized to have the opportunity to live close to their families and friends, to live more independently, to engage in productive employment, and to participate in community life. ... The state will support strategies and policies that foster independence and participation in the community for all individuals with disabilities that are served by programs and activities assisted with funding distributed through the Ohio Consolidated Plan.<sup>25</sup>

HUD regulations governing the Consolidated Planning process require recipient states to quantify people with disabilities and adequately assess their housing needs:

(b) Categories of persons affected.

(1) The plan shall estimate the number and type of families in need of housing assistance for extremely low-income, low-income, moderate-income, and middle-income families, for renters and owners, for elderly persons, for single persons, for large families, for public housing residents, for families on the public housing and section 8 tenant-based waiting list, for persons with HIV/AIDS and their families, and for persons with disabilities.<sup>26</sup>

(d) Other special needs.

(1) The jurisdiction shall estimate, to the extent practicable, the number of persons who are not homeless but require supportive housing, including the elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, public housing residents, and any other categories the jurisdiction may specify, and describe their supportive housing needs.<sup>27</sup>

Our clients are certainly among the intended beneficiaries of the HUD programs and planning process. For example, the current five-year Consolidated Plan Strategy recognizes that while "only a minority" of Ohioans with disabilities are unemployed, a "substantial number of disabled persons has an income below the poverty level[.]"<sup>28</sup>

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<sup>23</sup> *Olmstead v. L.C.*, 527 U.S. 581 (1999). And ADA Title II.

<sup>24</sup> *Ohio Access*, December 2006, online at <http://www.ohioaccess.ohio.gov/pdf/ohioaccessrpt2006.pdf>.

<sup>25</sup> Consolidated Plan 2008, page 147.

<sup>26</sup> 24 CFR 91.205(b)(1).

<sup>27</sup> 24 CFR 91.205(d)(1).

<sup>28</sup> *State of Ohio FY 2005-2009 Consolidated Plan Strategy*, page 11.

People with disabilities are among the people whose access to housing and related supports should be realized through the HUD-funded programs.

And yet, year after year, that substantial number of people with disabilities living below the poverty level, and their housing needs, are not accounted for in Consolidated Plans, five-year strategies and annual performance evaluations. Ohioans with disabilities have not benefited as their numbers or needs would justify, across years of Consolidated Plans. Their numbers and housing needs are consistently understated or labeled with asterisks and "N/A" in text and statistical tables<sup>29</sup> as the result of incomplete or unreported data or subsumed within other special needs categories, such as elderly and homeless categories.

The effectiveness of the annual Consolidated Plans for housing programs is not measurable, in terms of the success of housing and other programs for people with disabilities who are among the intended beneficiaries. This conclusion has been reported in each of the last six years of performance evaluation reports, as the following excerpts demonstrate.

The FY 2005, 2006 and 2007 Annual Performance Reports all state:

One other issue is that there is very little housing needs data on non-homeless persons with special needs. HUD did publish a CHAS [Comprehensive Housing Affordability Strategy] table that had data on persons with mobility and self care limitations. However that table only reports households that have a "housing problem", which, as noted above is an amalgam of several needs indicators, including affordability, overcrowding and lack of complete plumbing or kitchen facilities. But this figure does not account for important needs for this population, such as housing accessibility, nor for needs of other special populations. To further complicate the issue, until recently, HUD had discontinued its requirement of reporting beneficiaries with special needs persons, although some data will be gathered for these populations in the upcoming years.<sup>30</sup>

FY 2002, 2003 and 2004 Annual Performance Reports all state:

The transition to IDIS [HUD's newly implemented Integrated Disbursement and Information System] also has resulted in a lack of data being reported for homeless and special needs populations, so

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<sup>29</sup> See *HUD Table 1B: Special Needs (Non-Homeless) Populations* in 2005 to 2009 Consolidated Plan Strategy, page 116; and *Beneficiary Tables 42 and 43* in FY 2007 Ohio Consolidated Plan Annual Performance Report (September 2008), pages 75 and 76. These three tables are reproduced on the last three pages 8 and 9 of this testimony this submission.

<sup>30</sup> The identical text appears three years in Ohio Consolidated Plan Annual Performance Reports for FY 2007, page 79; FY 2006, page 78; and FY 2005, page 84.

no analysis could be done for these population categories in this year's Annual Performance Report.<sup>31</sup>

### **Conclusion: A Matter of Equal Program Access**

Current assessment of and planning for the housing needs of Ohioans with disabilities is not meeting the requirements of federal laws and state policy. Consolidated Plans and related documents demonstrate the lack of assessment data and planning by reporting the housing needs of people with disabilities with blanks, asterisks and "N/A." Subsequent performance evaluation is not possible in the absence of assessment data.

This failure to assess and plan for the needs of Ohioans with disabilities continues to impede and sometimes reverse their community integration. National and state housing statistics and Ohio Legal Rights Service's individual case work show that Ohioans with disabilities are underserved in the housing market and by publicly-funded housing programs. They are struggling to find, afford, and stay in housing that is accessible to them, within their communities, typically with incomes at poverty level. In worst, though not rare, cases Ohioans with disabilities are segregated to institutions as a housing solution, apart from community life and at great social and economic cost.

Federal funds for housing are bypassing Ohioans with disabilities, because their housing needs are not being identified in the same way or as effectively as the housing needs of other groups within the Consolidated Planning process. Denial of equal access to publicly funded programs because of disability violates the law.

Only if their housing needs are properly assessed and planned for can Ohioans with disabilities be assured equal access to the federal housing dollars that the Consolidated Planning process is designed to disseminate, for the benefit for all citizens.

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<sup>31</sup> The identical text appears three years in Ohio Consolidated Plan Annual Performance Reports for FY 2004, page 75; FY 2003, page 80; and FY 2002, page 74.

HUD Table 1B: Special Needs (Non-Homeless) Populations

SPECIAL NEEDS SUBPOPULATIONS	Priority Need Level High, Medium, Low, No Such Need	Unmet Need*	Dollars to Address Unmet Housing Need*	Goals**
Elderly	H	N/A	N/A	40
Frail Elderly	H	N/A	N/A	20
Severe Mental Illness	H	N/A	N/A	50
Developmentally Disabled	H	N/A	N/A	75
Physically Disabled	H	N/A	N/A	50
Persons w/ Alcohol/Other Drug Addictions	H	N/A	N/A	81
Persons w/HIV/AIDS	H	N/A	N/A	30
Other				
<b>TOTAL</b>				346

\*There is insufficient data on the extent of unmet housing needs for special populations or the exact cost of what would be required to resolve those needs.

\*\*Note that housing counseling was not included in these figures as that would be dependent on the specific situation and type of need involved and is likely a service used in conjunction with other forms of assistance.

Beneficiary Table 42 - Households Assisted with CDBG/HOME Housing Assistance

Income Category	Renters						Owners					
	Type of Households						Existing Homeowners		Rehabilitation	Home-buyer Assist.	New Construction	Total Owner
	Single/Non Elderly	Elderly	Related/Single Parent	Related/Two Parent	Other	Total Renter						
0 - 30% Of Median Income	92	55	47	16	2	212	68	185	14	6	273	
31 - 50% Of Median Income	47	33	33	9	7	129	105	234	47	27	413	
51 - 80% Of Median Income	17	5	14	10	3	49	114	135	100	43	392	
Total	156	93	94	35	12	390	287	554	161	76	1,078	

Note: The activity of homebuyer assistance includes acquisition only and acquisition/rehabilitation.

Income Category	Homeless (1)		No. of Special Needs Households (1)	Total LMI Assisted	Total Sec. 215 (2)
	Type of Household	Family			
	Individual	Family	(1)	(2)	
0 - 30% Of Median Income	*	*	*	485	485
31 - 50% Of Median Income	*	*	*	542	542
51 - 80% Of Median Income	*	*	*	441	441
Total	*	*	*	1,468	1,468

Note: Not all of the reports received from the grantees contained complete data for each beneficiary household

(1) The Special Needs and Homeless persons and families are reported in the renter and owner categories

(2) Section 215 refers to the number of units that are considered affordable housing.

\* Information not available for these categories

Race/Ethnic Composition of Head of Household	No. of Households	Pct. of Total
White	1,284	87.3%
Black	156	10.6%
American Indian / Alaskan Native	1	0.1%
Asian	2	0.1%
Asian/White	2	0.1%
Native Haw./Other Pacific Islander	2	0.1%
American Indian / Alsa. Nat. & White	1	0.1%
Blk. African Amer. & White	3	0.2%
Am. Ind./Alsa. Nat. & Blk Afr. Amer.	0	0.0%
Other Multi-Racial	19	1.3%
Total =	1,470	100.0%

Beneficiary Table 43 - Persons Assisted with CDBG/HOME Housing Assistance

Income Category	Persons In Renter Households						Persons in Owner Households			
	Type of Households						Existing Homeowners		New Construction	
	Single/ Non Elderly	Elderly	Related/ Single Parent	Related/ Two Parent	Other	Total Renter	Rehabilitation	Repair Assist.	Homebuyer Assist.	Total Owner
0 - 30% Of Median Income	188	63	154	57	4	466	142	363	39	560
31 - 50% Of Median Income	112	41	97	43	16	309	273	584	114	1,070
51 - 80% Of Median Income	25	7	37	38	6	113	347	418	272	1,157
Total	325	111	288	138	26	888	762	1,365	425	2,787

Note: The activity of homebuyer assistance includes acquisition only and acquisition/rehabilitation.

Income Category	Homeless (1)			No. of Special Needs Persons (1)	Total Persons in LMI Hshlds. (2)	Total Persons in Sec. 215 (2)	Race/Ethnic Composition of Head of Household	No. of Persons	Pct. of Total
	Type of Hsehold		Family						
	Individual								
0 - 30% Of Median Income	*	*	*	1,026	1,026	3	White	3,217	87.3%
31 - 50% Of Median Income	*	*	*	1,379	1,379	4	Black	378	10.3%
51 - 80% Of Median Income	*	*	*	1,270	1,270	5	American Indian / Alaskan Native		0.1%
Total	*	*	*	3,675	3,675	12	Asian		0.1%
						6	Asian/White		0.1%
						2	Native Haw./Other Pacific Islander		0.2%
						8	American Indian / Alsa. Nat. & White		0.1%
						0	Blk. African Amer. & White		0.2%
						62	Am. Ind./Alsa. Nat. & Blk Afr. Amer. Other Multi-Racial		0.0%
						3,685	Total =		100.0%

Note: Not all of the reports received from the grantees indicated the percent of the area median income of each renter or owner.

(1) The Special Needs and Homeless persons and families are reported in the renter and owner categories. \* Information not available for these categories

(2) Section 215 refers to units that are considered affordable housing.