September 14, 2017

Rachel L. Brand

Associate Attorney General

Chair, Regulatory Reform Task Force

U.S. Department of Justice

950 Pennsylvania Avenue NW.

Washington, DC 20530

Re: Disability Rights Issues Considered by the Department of Justice Task Force on Regulatory Reform

Dear Ms. Brand:

Justice in Aging submits this brief comment in response the Department’s solicitation for public comments for subjects meriting the Task Force’s attention. We noticed that several of the comments submitted to the Task Force urged that the Justice Department eliminate its guidance documents concerning the Americans with Disabilities Act’s (ADA’s) integration mandate and the Supreme Court’s decision in *Olmstead v. L.C*. Most of these comments appear to misconstrue the *Olmstead* decision and subsequent case law, as well as the meaning of these guidance documents. The DOJ issued two Statements relative to the enforcement of the *Olmstead* Integration Mandate: a general statement in 2011 and one specifically focused on employment opportunities in 2016. Neither statement eliminates individual choice or mandates the closure of institutional settings.

While many of the comments address the impact of the Statements on services for people with intellectual and developmental disabilities (IDD), older adults in need of long term care services are also protected by the ADA. Justice in Aging is concerned that comments made in response to this request inaccurately represent the effect on and importance of *Olmstead* guidance to many populations covered under the ADA, including older adults. In-home and community-based services have allowed older people to choose to stay at home, enjoy the familiarity of their environment and maintain their lifelong relationships. The guidelines suggested for consideration are essential for older adults who might otherwise be forced into unnecessary nursing home placement in order to get needed care.

Some of the comments highlight concerns about quality of State oversight and State failure to fully commit funding to community-based care. Full implementation of the ADA requires that States eliminate the long standing bias in their systems and build a strong community-based system of care that allows people to be part of their towns, schools, churches, shopping centers, and all manner of community life. In passing the Americans with Disabilities Act, Congress expressly found that “historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.” 42 U.S. C §12101(a)(2).

When the Supreme Court decided the *Olmstead* case, it found that “institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life.” *Olmstead v. L.C.*, 527 U.S. 581,600 (1999). These words ring particularly true for older adults, who are often placed in nursing facilities when they could have remained at home with services and support. The guidance of the Department of Justice on *Olmstead* implementation is critical to ensuring the end of discriminatory institutionalization of all people with disabilities.

Sincerely,

Regan Bailey

Director of Litigation

Justice in Aging