

Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, D.C. 20410-0500
RE: Docket No. FR-6257-A-01

To Whom It May Concern:

The National Fair Housing Alliance (NFHA)¹ and the undersigned fair housing organizations from around the country appreciate the opportunity to comment on the Updates to HUD's Section 504 Regulations Advanced Notice of Proposed Rulemaking (ANPRM). We support HUD's decision to adopt revised regulations implementing Section 504 and urges HUD to propose and adopt updated Section 504 regulations that clearly address key issues in Section 504's coverage and enforcement, recognize the intersectionality inherent in protecting the rights of individuals with disabilities, acknowledge the growing need for accessible housing throughout the country, and provide robust enforcement mechanisms to allow individuals and organizations to ensure that recipients of federal funding do not discriminate against individuals with disabilities.

I. Introduction

The continuing story of Section 504 of the Rehabilitation Act traces more than six decades of disability advocates consistently pressing to have their rights recognized, codified, and enforced. President Nixon twice vetoed the Rehabilitation Act before it was finally signed into law in 1973.² Then, once passed, disability rights advocates were forced to obtain a court order to compel executive agencies to issue regulations implementing the protections of Section 504.³ Even still, the Executive Branch continued to resist both the will of Congress and judicial mandate. It was only after a twenty-six day sit-in at the San Francisco headquarters of the Department of Health, Education,

¹ The National Fair Housing Alliance (NFHA) is a consortium of more than two hundred private nonprofit fair housing organizations and state and local civil rights agencies throughout the United States. NFHA leads the fair housing movement. NFHA works to eliminate housing discrimination and ensure equitable housing opportunities for all people and communities through its education and outreach, member services, public policy, advocacy, housing and community development, tech equity, enforcement, and consulting and compliance programs. NFHA is the only national civil rights organization solely dedicated to eliminating all forms of housing and lending discrimination and creating equitable opportunities for all people.

² Julia Carmel, *Before the A.D.A., There was Section 504*, N.Y. Times (July 22, 2020), <https://www.nytimes.com/2020/07/22/us/504-sit-in-disability-rights.html>.

³ See *Cherry v. Matthews*, 419 F. Supp. 922 (D.D.C. 1976).

and Welfare (HEW)—“the longest non-violent occupation of a U.S. federal building”⁴—that HEW Secretary Joseph Califano signed the first set of regulations implementing Section 504.⁵

HUD’s history with Section 504 leaves much to be desired. HUD was the very last executive agency to implement Section 504 regulations;⁶ it was not until 1988—15 years after the passage of the Rehabilitation Act—that HUD finally issued regulations implementing Section 504. As the ANPRM acknowledges, HUD’s regulations have not been meaningfully updated in the last 35 years. NFHA and the undersigned fair housing organizations applaud HUD for recognizing the need to modernize its Section 504 regulations and encourages HUD to take advantage of this opportunity to move from the back of the pack to the vanguard of protecting and enforcing the rights of individuals with disabilities.

Data from the 2021 American Community Survey (ACS) highlights the importance of HUD adopting and enforcing robust nondiscrimination regulations. The ACS estimates that, in 2021, 13% of the civilian noninstitutionalized population—42,485,034 individuals—had at least one disability. Of these, approximately 48%, or 20,435,576 individuals, had ambulatory difficulty; 38.9%, or 16,529,501 individuals, had cognitive difficulty; 27.4%, or 11,642,464 individuals, had hearing difficulty; and 19%, or 8,054,084 individuals, had vision difficulty.⁷ Almost half of persons over the age of seventy-five live with a disability.⁸ Other estimates are even higher. For example, the Centers for Disease Control and Prevention (CDC) estimates that up to 27% of adults in

⁴ Britta Shoot, *The 1977 Disability Rights Protest that Broke Records and Changed Laws*, Atlas Obscura (Nov. 9, 2017), <https://www.atlasobscura.com/articles/504-sit-in-san-francisco-1977-disability-rights-advocacy>.

⁵ Kitty Cone, *Short History of the 504 Sit-in*, DREDF, <https://dredf.org/504-sit-in-20th-anniversary/short-history-of-the-504-sit-in/> (last visited July 10, 2023). The sit-in highlights the intersectionality of the disability rights movement. The Black Panther Party prepared and delivered hot meals to the sit-in participants throughout the protest. *See id.*; *see also* Shoot, *supra* n. 4.

⁶ National Council on Disability, *Reconstructing Fair Housing*, 30 (Nov. 6, 2001), https://www.novoco.com/sites/default/files/atoms/files/ncd_fairhousing.pdf.

⁷ ACS 2021 Table S1810, available at <https://data.census.gov/table?q=disability&tid=ACSST1Y2021.S1810> (last visited July 19, 2023).

⁸ *Id.*

the United States live with some type of disability,⁹ and that one in six children have one or more developmental disabilities or delays.¹⁰

NFHA and the undersigned local fair housing centers urge HUD to draft regulations that, at a minimum:

1. Recognize that Section 504 was and is intended to be broadly inclusive, which requires HUD to adopt regulations that allow individuals with disabilities to live within the community in the most integrated setting possible for each individual;
2. Respond to the increasing number of individuals living with disabilities across the country, by increasing and diversifying the stock of accessible housing;
3. Modernize and harmonize HUD's Section 504 regulations to accord with current law and well-established principles;
4. Eliminate unnecessary barriers preventing people with disabilities from obtaining accessible housing; and
5. Adopt robust and efficient mechanisms that allow people with disabilities, people associated with people with disabilities, and advocacy organizations to enforce compliance with HUD's Section 504 regulations.

II. Strengthening and Clarifying the Regulations

HUD has the opportunity in revising its Section 504 regulations to provide clearer direction to recipients' beneficiaries and incorporate principles that are now well established in other HUD regulations. As a fundamental principle, NFHA and the undersigned fair housing organizations encourage HUD to consider taking steps to more clearly harmonize provisions in its Section 504 regulations with established law, including the Civil Rights Restoration Act, and make its provisions more consistent with Fair Housing Act's language and principles when appropriate. When housing is concerned, in particular, taking steps to assure that Section 504 requirements are consistent with existing fair housing law will reduce regulatory burden and provide clear direction to grantees and others.

NFHA and the undersigned fair housing organizations recommend that HUD make the following overarching changes to its Section 504 regulations:

1. Revise 24 CFR 8.2 and make changes throughout the regulation to make it clear and consistent with the Civil Rights Restoration Act, that Section 504 applies to all of the operations of a recipient, not just the program or activity that receives

⁹ Centers for Disease Control and Prevention, *Disability Impacts All of Us*, <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html>, (last visited July 14, 2023).

¹⁰ Centers for Disease Control and Prevention, *Developmental Disabilities*, <https://www.cdc.gov/ncbddd/developmentaldisabilities/index.html>, (last visited July 14, 2023).

the funding. This is an issue repeatedly misinterpreted by HUD itself and misunderstood by grantees. Specifically, the term “program or activity” should be defined to include all of the operations of any of the following entities, any part of which is extended Federal financial assistance: a department, agency, state, special purpose district, or other instrumentality of a State or of a local government; the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government; and the entire corporation, partnership, or other private organization. It would be helpful if HUD could provide examples of the broad scope of Section 504 applicability.

2. Add a failure or refusal to provide, or a delay in providing, a “reasonable accommodation” as a prohibited practice under 24 CFR 8.4; include the “undue financial and administrative hardship” and “fundamental alteration in the nature of a program” standards consistent with case law to clarify that these are the standards for denial of an accommodation. Revise Section 8.33 accordingly. Clarify that a delay in making a reasonable accommodation amounts to a denial. Clarify that if a reasonable accommodation is an undue hardship or fundamental alteration, a recipient must engage in an interactive process. Provide examples of the most common reasonable accommodations, including live-in aides, assistance animals, and accessible parking, and, where appropriate, identify where exceptions to program requirements may be required as a reasonable accommodation. NFHA members have repeatedly experienced situations where recipients have ignored or misapplied basic reasonable accommodation principles. Because courts have consistently interpreted provisions of Section 504 and the Fair Housing Act in harmony, HUD should do the same.¹¹
3. As part of HUD’s program accessibility requirements, HUD should require all recipients to have a reasonable accommodation policy and provide templates through guidance for practices that includes common reasonable accommodation examples.
4. HUD should clarify explicitly the ways in which Section 504’s definition of reasonable accommodations applies to structural modifications and requires a recipient to make such structural changes promptly and at its own expense. NFHA members have experienced frequent confusion about how structural accommodations are covered under Section 504 by HUD and by recipients.
5. Confirm that Section 504, including its reasonable accommodation provisions, applies to recipient municipalities’ policies and practices, including zoning and land use actions. HUD should provide separate guidance to municipalities that addresses removal of zoning barriers for people with disabilities, similar to guidance provided for municipalities under the Americans with Disabilities Act, Title II. HUD should include a review of typical zoning code provisions with

¹¹ See, e.g., Dep’t of Just. & Dep’t of Housing and Urban Dev., *Reasonable Accommodations Under the Fair Housing Act*, 2 n.4 (May 17, 2004), <https://www.hud.gov/sites/documents/huddojstatement.pdf>.

respect to exclusion discrimination against housing that serves individuals with disabilities as one of the subjects covered in a compliance review of a municipality and make its review criteria public. Zoning rules are a repeated barrier to housing that serves persons with disabilities, including group homes, housing that serves children with disabilities, sober living residences, and other forms of congregate housing that serve people with disabilities. HUD should consider providing written interpretative guidance and sample zoning code provisions that detail a process for requesting a reasonable accommodation with respect to zoning codes, in addition to regulations to assist communities to provide opportunities for housing for persons with disabilities throughout the community.

Response for Question 1. General Comments on updating HUD's Section 504 regulations.

NFHA and the undersigned fair housing organizations support updates to HUD's Section 504 regulations to make the regulations conform to existing case law developments, provisions in HUD program rules, and developments in similar issues under the Fair Housing Act. We agree that the regulations should refer to individuals with disabilities and replace "handicap" with "disability." We also recommend that the definition of disability be expanded as described below.

Initially, we support expanding the definition of individuals with disabilities to be consistent with HUD's proposed revisions and recommends the provision of examples; HUD should provide that "substantially limits" should be construed broadly and provide examples.

NFHA members have identified areas where HUD's definitions in 24 CFR 8.3 should be expanded. For example,

1. HUD should separately define the term "direct threat" as used in the current definition of "individuals with handicaps" and define it consistently with the "direct threat" provision in the Fair Housing Act to cover situations where the tenancy of an individuals with a disability "would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." 42 U.S.C. § 3604(f)(9). There is a significant body of case law interpreting this provision which could be useful in interpreting this provision under Section 504.
2. HUD should define an "individual with disabilities" consistent with the Fair Housing Act to include a person who is associated with a person with a disability, 42 USC 3604(f)(1) and (2), and it should authorize such persons to file complaints under the regulation.
3. HUD should expand the definition of "individual with disabilities" to include (or create a new defined term that includes) organizations who represent or protect the rights of individuals with disabilities, including fair housing and disability rights organizations, which are injured as a result of unlawful discrimination against individuals based on disability and authorize such organizations and individuals to

file complaints under the Act. We envision that such revisions will be consistent with judicial interpretations of organizational standing.

4. HUD should expand its definition of disability to clarify that Section 504 applies to individuals with temporary disabilities consistent with interpretations of the Americans with Disabilities Act (ADA) which excludes minor temporary disabilities but does include short term illnesses and conditions consistent with interpretations provided under the ADA.
5. HUD should identify terms such as “qualified interpreter services,” “qualified reader, video remote interpreting services,” “ASL,” “website accessibility,” and other related terms for use in expanding requirements to improve communication accessibility for persons with disabilities.
6. HUD should define “most integrated setting” to be consistent with the discussion of this concept in the 1999 decision in *Olmstead v. L.C. & E.W* and provide examples for recipients. Where possible, HUD should incorporate concepts and language from its *Olmstead* guidance¹² into the regulations. In particular, the regulations would benefit from a clearer discussion of when disability-specific housing is permitted, where there is a Congressionally authorized preference for a specific disability type, and where it is not, when a recipient decides to set aside housing for one disability type, which results in exclusion of persons based on disability because the individuals have a disability other than the identified disability.

Response for Question 2: Need for housing; types of discrimination that occur to people with different types of disabilities.

NFHA members have identified many types of discrimination encountered by people with disabilities in seeking affordable housing that is located in the most integrated setting for their type of disability.

People with a variety of disabilities experience significant barriers to when seeking housing. In general, a major barrier is the lack of available accessible housing in HUD subsidized properties in general, and in particular for families and young persons with disabilities. Many HUD programs, and HUD’s own Section 504 regulations, have effectively capped accessible units at 5% of the units that were constructed and provided them only in settings where they offer only studio or one-bedroom apartments, which are not effective housing for families with several members when one family member is disabled. In some public housing properties, the only available accessible units are one-bedroom apartments, which do not meet the needs of individuals who need live-in aides

¹² U.S. Dep’t of Housing and Urban Dev., *Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead* (June 4, 2013), <https://www.hud.gov/sites/documents/OLMSTEADGUIDNC060413.PDF#:~:text=The%20Department%20of%20Housing%20and%20Urban%20Development%20%28HUD%29,homes%2C%20adult%20care%20facilities%2C%20and%20other%20restrictive%2C%20segregatedsettings.>

for assistance have substantial amounts of equipment needed to support their independence or whose household configuration otherwise requires more than one bedroom.

HUD housers also have demonstrated less than adequate flexibility in using their resources to provide housing that serves people with disability types. Recent litigation against a large public housing authority was necessary to require them to provide project-based vouchers that could be used in single-family housing settings to house three or four residents with developmental disabilities.¹³ Recent policy changes at HUD that permit changes in tenant-based vouchers to project-based vouchers could be used to provide permanent housing options in integrated settings, including residential single family housing, and privately funded multifamily housing.

Barriers in access to housing for persons with disabilities observed by NFHA members include:

1. Lack of affordable accessible housing for families with a member who has a disability (that is to say, insufficient affordable accessible units with three or more bedrooms);
2. Overly broad consideration of previous involvement with the justice system and arrest and conviction records as a disqualifying factor; continued application of policies that exclude individuals and families on the basis of an arrest, including “one-strike” policies that are still in effect at many housing authorities. For persons with disabilities, these barriers cannot be surmounted without changes in policies and practices; moreover, some of those experiencing these barriers had disability-related reasons for their past involvement in the justice system;
3. Policies of private landlords to charge higher rates for ground floor units, which persons with disabilities need because of their disabilities. This puts the cost of those units beyond FMR rates, so those units are unavailable to persons with disabilities who have Housing Choice Vouchers;
4. Burdensome and lengthy qualification requirements for assistance animals and live-in aides; requirements for such typical accommodations must be established annually;
5. Violation of HUD program regulations that are designed to protect people with disabilities. For example, considering the income of live-in aides in eligibility for housing for people with disabilities, which results in higher housing costs;
6. Application of HUD’s definition of live-in aides to refuse proposed aides who do not meet the HUD program standard but are still needed as a reasonable accommodation. For example, HUD’s program definition of a live-in aide requires that the aide be “essential” for the care and well-being

¹³ Relman Colfax, *Community for Permanent Supportive Housing v. Housing Authority of Dallas, Texas*, <https://www.relmanlaw.com/cases-dallas-housing-authority>.

of a person with a disability. See HUD Handbook 4350.3. chg. 3, p. 3-9. This standard is more stringent than the standard that is incorporated into reasonable accommodation principles: that a proposed accommodation may be “necessary”;

7. HUD program rules and guidance lack clarity about whether family members may be live-in aides. HUD could address this explicitly in revised regulations.
8. Denying telemed-based verifications of need for ESAs.
9. Using forms that are inaccessible format or unusable by people with disabilities and do not provide an opportunity to provide disability income; that is, only using forms that call for employment income.
10. Lack of access for persons who are Deaf or hard of hearing in the application process and for annual recertifications and evictions; lack of notice for available accommodations for persons who are Deaf or hearing impaired, such as ASL interpreters, telephone relay services, or video captioning.
11. Lack of access for persons who are blind or have limited vision, including lack of accessible websites that comply with ADA standards; failure to provide accessible documents online that are used by tenants for normal business purposes and which are suitable for use by persons with low or no vision.
12. General lack of familiarity with technological advances that could be used to improve access to documents for tenant business.
13. Denial of basic and familiar requests for accommodations, such as grab bars, accessible features in common areas, and accessible parking.
14. Misapplication of the direct threat concept by overly broad interpretations to bar persons whose tenancy does not present a direct threat to the health and safety of others or risk of substantial damage to the property of others; applying generalized stereotypes rather than an individualized assessment when considering the direct threat exception; failure to attempt accommodation when there is a direct threat claim; failure to provide interactive processes in such cases.
15. Rescreening, move-in fees, and new deposits charged when unit transfer is needed as a reasonable accommodation. Charging additional fees, sometimes as much as \$500, for a transfer to a ground floor unit places a clear financial burden on a low- or moderate-income tenants and serves as an unlawful condition on a requested reasonable accommodation. Rescreening often results in an actual or threatened eviction based on long-ago arrests or convictions, identified for the first time in screening, and threatening a tenant with loss of housing solely because she has requested a reasonable accommodation due to her disability.
16. Failure or refusal to provide the reasonable accommodation of a late date for rent payment, based on mid-month receipt of disability and retirement

related income. HUD should consider using delayed payment of rent in this circumstance as an example of a common reasonable accommodation.¹⁴

17. Landlords who don't understand disability-related needs perceive tenants with disabilities as "problem tenants" or "complainers," suggesting the need for HUD to consider more training and technical guidance on meeting the needs of persons with disabilities.
18. Landlords require excessive verification for common reasonable accommodations and for people with obvious disabilities.
19. Inability to move to more accessible units because of inability to port vouchers across geographic or service area lines; HUD should authorize and make clear how to request an accommodation to port a voucher or move across programs operated by the same or different entities as a reasonable accommodation.
20. Lack of (1) qualified interpreters, (2) accessible documents and documents in plain language, and (3) website accessibility are significant barriers to housing searches.
21. Lack of assistance in mobility counseling and help in the housing search for voucher holders with disabilities in particular but also for all persons with disabilities needing safe, affordable housing in higher opportunity areas and housing that provides the most integrated setting. In particular, HUD should support organizations that provide housing counseling for persons with disabilities, such the Community for Permanent Supported Housing.¹⁵
22. The continued requirement for annual re-establishment of eligibility for an accommodation that is needed permanently is a significant hardship on persons with disabilities and should be prohibited.
23. Some persons with disabilities are ready for homeownership in HUD supported housing, but HUD's Section 504 regulation does not provide for accessibility in homeownership units that are covered by the regulation. The regulation should require at least 10% of subsidized homeownership units to be built to be accessible.

Response to Question 3: What types of auxiliary aids and services do individuals with disabilities need in housing and community development programs and activities? What information should the Department consider with respect to the accessibility of recipients' websites and devices, mobile applications?

There is a significant lack of availability of accessible communications that can provide information to people with disabilities in HUD assisted housing. There is a wide range of communication services that are needed, and which can be used by people with disabilities:

¹⁴ See, e.g. *Fair Hous. Rights Ctr. in Se. Pa. v. Morgan Props. Mgmt. Co.*, <https://www.relmanlaw.com/cases-Morgan-Properties>.

¹⁵ See <https://www.txcps.org/ppclandingpage>.

Various website and communication access approaches for people with disabilities related to hearing include:

- Telecommunication Device for the Deaf (TDD) for external communication. Entities should include a telephone number for the TDD. The TDD and instructions on how to operate it should be located in the facility and shared among the tenants.
- Relay services for external telephone with TTY (teletypewriter) users;
- note-takers;
- computer-aided transcription services;
- telephone handset amplifiers;
- written copies of oral announcements;
- assistive listening devices;
- assistive listening systems;
- telephones compatible with hearing aids;
- closed caption decoders; open and closed captioning;
- videotext displays;
- or other effective methods that help make aurally delivered materials available to individuals who are deaf or hard of hearing.

Various website and communication access for people with disabilities related to vision include:

- qualified readers;
- reformatting into large print;
- taping or recording of print materials not available in alternate format;
- staff available to assist persons who are blind or who have low vision in filling out forms and in otherwise providing information in a written format;
- or other effective methods that help make visually delivered materials available to individuals who are blind or who have low vision;

Various website and communication access for people with disabilities related to speaking include:

- writing materials;
- typewriters;
- TDDs;
- computers;
- flashcards;
- alphabet boards;
- communication boards;
- and other communication aids.

Various website and communication access for people with manual disabilities include:

- staff assisting those who have difficulty in manipulating print materials by holding the materials and turning pages as needed, or by providing one or more of the following:
 - note-takers;
 - computer-aided transcription services;
 - speaker phones;
 - or other effective methods that help to ensure effective communication by individuals with manual impairments.¹⁶

Generally, HUD should support its recipients in discussing these alternatives and their utility to address communication barriers with persons with disabilities.

- HUD should explicitly require recipients to provide qualified interpreters and qualified readers for all lease-related transactions with reasonable notice; required materials including but not limited to vital documents; marketing and application materials; certification and recertification notices and documents; rules, regulations, and leases; and notices of infractions to be made available in accessible formats and plain language.
- HUD should require recipients to maintain records on communication needs of applicants and residents without requiring repeated requests for proof of disability and need for accommodation in order to continue a reasonable accommodation or provide a related accommodation. HUD should explicitly prohibit the use of family members under the age of 18 to translate information or documents.
- HUD should adopt and enforce clear standards for accessible websites. Given the increased use of the internet and requirements by grantees that housing applications can only be made via the internet, there is a need for accessible websites and accessible documentation for use by persons with vision impairments and other disabilities.
- HUD should fund and support HUD-assisted housing to provide effective communication software and computer and internet access and continue to support broadband expansion for tenants with disabilities, partnering, where appropriate, with service providers.

Response to Question 4: What factors or sources of data should HUD and its recipients use to determine the level of need for accessible housing? Is there information that HUD should consider to clarify, strengthen, and encourage compliance by recipients with program accessibility obligations?

¹⁶ What kinds of auxiliary aids and services are required by the ADA to ensure effective communication with individuals with hearing or vision impairments?, ADA National Network, <https://adata.org/faq/what-kinds-auxiliary-aids-and-services-are-required-ada-ensure-effective-communication> (last visited July 19, 2023).

Current ACS data show high percentages of persons with mobility, vision and hearing disabilities, but changes in census data collection make it harder to calculate data that is relevant to occupancy for federally subsidized housing. Such housing, by definition has higher percentages of persons with disabilities because much of the housing was and is limited to seniors and persons with disabilities. Additionally, many seniors have one or more disabilities, sometimes unrecognized or unacknowledged by others. Finally, the population of persons served by HUD subsidized housing by definition are poor, and often people of color; both of those groups disproportionately have disabilities. According to a 2020 study by the National Disability Institute, across all racial and ethnic groups, 26 percent of individuals with a disability are living below the poverty line compared with 11 percent of individuals without a disability.¹⁷ Regardless of race and ethnicity, individuals with disabilities are significantly more likely to be living in poverty than those without disabilities.¹⁸

In addition, veterans have a higher level of disability than the general population. For example, a study of U.S. military veterans with service-related injuries found that 56 percent had hearing loss and 66 percent had tinnitus, a ringing in the ears. Moreover, sometimes veterans will have trouble understanding speech despite scoring normally on a hearing test. This is another condition associated with blast exposure called auditory processing disorder.¹⁹

HUD waiting list data of persons seeking a Housing Choice Voucher or public housing is likely a more reliable source for potential demand for accessible housing at the local level; HUD could provide systems that collect and analyze waiting list data by disability and require HUD-supported housing to report and update such data more effectively.

Lack of accessible units has a significant impact; it restricts the freedom of people with disabilities to be as independent as they can be and to live in most integrated settings. The lack of affordable and accessible housing in areas of opportunity also has a huge emotional impact on people with disabilities when their choices are limited.²⁰

As a recent article in ShelterForce pointed out, “A major goal of disabled activists has been to realize ... a ‘civil right to live in the community,’ meaning not to be unnecessarily kept in an institution like a nursing home. The Supreme Court has ruled that such a right

¹⁷ National Disability Institute, *Race, Ethnicity and Disability: The Financial Impact of Systemic Inequality and Intersectionality* (Aug. 2020), <https://www.nationaldisabilityinstitute.org/wp-content/uploads/2020/08/race-ethnicity-and-disability-financial-impact.pdf>.

¹⁸ *Id.*

¹⁹ *Hearing loss in the U.S. - Statistics & Facts*, Statista Research Department (Aug. 19, 2021), <https://www.statista.com/topics/3491/hearing-loss-in-the-us/#topicOverview>.

²⁰ See generally, Shelby R. King, *How the Housing Shortage is Forcing People with Disabilities into Institutions*, Shelterforce (July 5, 2023), <https://shelterforce.org/2023/07/05/how-the-housing-shortage-is-forcing-people-with-disabilities-into-institutions/>.

exists. But it can't be realized without housing in the community for people to move into."²¹

Lack of accessible units in areas of opportunity for persons with disabilities may include some geographies that are different from most families. Access to accessible public transportation, commercial and retail stores such as grocery and drug stores, and to affordable health care should be considered as higher priorities for siting or expanding siting of housing that will serve people with disabilities. This need suggests the need to expand supportive housing options and neighborhood-based housing with smaller numbers of units, at least some of which are accessible, and greater use by Housing Choice Voucher holders and public housing agencies to contract with existing housing providers so a great range of housing can be made available.

Lack of affordable accessible units with three or more bedrooms results in family separation and creates a barrier to live-in aids and equipment storage in family and individual settings.

HUD-supported housing, much of it built thirty or more years ago, often has 5%, or occasionally 10%, of units that were designed to be accessible. These numbers are not nearly enough to serve the higher numbers of people with disabilities that will need accessible housing currently and increasingly in the coming years. While housing with supportive services is, of course, critically important, HUD should explore more options to develop independent living options for younger and older individuals with disabilities in more integrated settings throughout communities.

People with disabilities in HUD-funded housing, including multifamily housing, encounter terrible and uninhabitable conditions: mold, roaches, and nonfunctioning appliances as well as delays and denials of routine reasonable accommodations. HUD must improve the quality of the housing that is already available so tenants have safe and sanitary places to live and do not become further disabled by housing conditions funded by HUD.

In addition, NFHA members strongly support HUD's use of multiple strategies to increase the stock of affordable housing that is accessible to persons with disabilities and which offers them a choice of housing in the most integrated setting appropriate.

HUD should:

- Require each recipient to develop, or update, the transition plan required by 8.24 as of the effective date of revised regulation to reflect needed structural changes to housing units, plans to make non-housing facilities accessible and plans to provide program accessibility and communications improvements that need to be undertaken to provide program accessibility.

²¹ Miriam Axel-Lute, Disability Equity and Justice in Housing, Shelterforce (June 12, 2023), <https://shelterforce.org/2023/06/12/disability-justice-and-equity-in-housing/>.

- Expand the requirement for construction of fully accessible units from 5% to 20% of the total number of units in HUD-supported new construction, consistent with most integrated setting concepts and including a range of housing sizes and styles. This recommendation will expand the availability of more new accessible housing across communities, and the higher percentage is needed to meet the housing needs of many persons with mobility impairments for affordable housing.
- HUD programs, including the Office of Community Planning and Development, should undertake a comprehensive program to notify grantees that housing constructed with CDBG, CDBG-DR and HOME and related funding must meet new construction standards as well as the Fair Housing Act. CDP should work with FHEO to assess compliance of recently constructed housing and ensure that corrective action is taken if non-compliance is identified. Recent evidence in Los Angeles and Chicago demonstrate that lack of accessibility in CDBG-funded housing is a severe problem that HUD has not yet successfully addressed.
- Accessible units should be available in all unit sizes, not just one- or two-bedroom units, and accessible units should be available across unit sizes and types.
- HUD should provide an additional 5% of units that are accessible for persons with sensory impairments, and it should increase the representation of accessible units in units with two or more bedrooms.
- Require housing authorities and Housing Choice Voucher programs to identify and make available a listing of their existing stock of accessible units to increase their availability to persons who need the accessible features, following the lead of a few states that have developed such lists.
- Require lease provisions to include increased accommodations in units that are currently not fully accessible (such as adding grab bars) and HUD should develop and provide software that can keep track of the inventory of units that have been modified in any way to be more accessible.
- Include in the situations where a reasonable accommodation may be offered the opportunity to advance on the waiting list for someone who needs an accessible unit when one becomes available.
- HUD could provide HUD-subsidized housing with funding that is specifically for renovating entire units or elements of units to increase accessibility; HUD needs to make the renovation standards in the current Section 504 regulation clearer and incentivize HUD-subsidized landlords, including those at project-based and public housing, to renovate solely for accessibility.
- Offer modifications of existing units and transfers to ground floor units that can be modified to expand the stock of available accessible units.

Response to Question 5: Making housing available to persons with disabilities who have a Housing Choice Voucher.

NFHA members believe that voucher holders who have disabilities are not always adequately served by the Housing Choice Voucher program (“HCV”, also known as “Section 8”). There are not enough landlords who provide affordable accessible housing units outside are areas that are impoverished, and in many cases, segregated by race or national origin. HCV programs should be significantly incentivized to increase the stock of accessible housing units and to make information available about accessible housing that is available, such as units in tax credit properties. There is an on-going and significant problem with the availability of units that are accessible through the Housing Choice program. HUD should also continue to incentivize, and where necessary, require, HCV programs to create and use project-based vouchers for units in larger non-subsidized apartment complexes and in single family housing in neighborhoods to create more integrated settings in better conditions and with broader ranges of locations. While the mobility available in HCV programs is important, finding accessible housing in more integrated settings is also important. The insufficient meaningful supply of accessibility units in many markets thwarts the choice at the core of the program.

NFHA members have found some recipients that refuse provide reasonable accommodations to individuals because, they claim, they are providing program accessibility. That is to say, if an individual requests a reasonable accommodation in order to participate in a program or activity, the recipient refuses the requested accommodation because it is offered elsewhere. While such requests are subject to the same reasonableness standard that applies to all such requests, the fact that there is program accessibility does not obviate the obligation to grant individual requests unless that are either an undue financial and administrative hardship or a fundamental alteration of a program.

- HUD should specifically include in regulations the basic principle that even when a funded entity is providing general program accessibility, it still must respond to and provide individual reasonable accommodations that go beyond basic program accessibility.
- HUD should authorize and incentivize Housing Choice Voucher programs to contract with existing apartment complexes for units that will be set aside for Housing Choice voucher holders. To the extent that these complexes were built for occupancy after March 13, 1991, they should at least comply with the Fair Housing Act, and, in many states, will have IBC Type A accessible units. They can be a valuable source of integrated, accessible housing.
- In many communities, exception rents are needed to provide most integrated setting opportunities. HUD’s procedures for exception rents for people with disabilities who have vouchers are burdensome and unwieldy. Exception rents should be routinely granted locally and not require HUD Headquarters approval. The regulation, and program regulations, should provide for this to occur and HUD should issue a notice to all HCV programs to this effect.

- HUD should develop a process that provides increased rent amounts for persons with disabilities seeking housing, including homeownership. Housing authorities should use rent reasonableness studies to establish higher exception rents based on the size and configuration of units and the availability of accessible units for rent and for purchase.
- There is an on-going and significant problem with the availability of units that are accessible through the HCV program. The regulation should require HCV programs to increase their inventory of accessible units and provide lists of properties with accessible units to voucher holders for use in the housing search process.
- HUD should support financially HCV programs to establish modification funds that would support structural changes for increased accessibility by private landlords who participate in the program.
- Landlords require excessive verification for common reasonable accommodations and for people with and without obvious disabilities; HUD should prepare training and educational materials meant for HCV landlords about serving individuals with disabilities, so they understand their obligations under Section 504 and other related laws.
- Many individuals with disabilities report that they have an inability to move to more accessible units because they are unable to port vouchers across geographic lines; HUD could permit and make clear how to request an accommodation to port a voucher as a reasonable accommodation to ensure that local programs provide portability as a reasonable accommodation.
- NFHA members report that many Project-Based Section 8 properties discriminate against voucher holders and refuse to rent to persons with vouchers; HUD regulations should prohibit all HUD-funded properties from discrimination based on source of income, just as HOME funds are restricted. HUD should also issue guidance in the form of Notices to program staff and recipients on this subject.

Comment for Question 6: Provide feedback on ideal accessible designs or ideas to make the construction of new units accessible and ways to harmonize to the extent possible, the various access requirements without reducing accessibility overall.

NFHA and the undersigned fair housing organizations defer to the expertise of others on this point but supports a general move to a single national standard, which relies on emerging developments in the American National Standards Institute (ANSI) standards found in Chapter 11. Specifically, HUD should work with other agencies to adopt a single accessibility code for HUD subsidized housing with scoping in the Section 504 regulation. Such a code could include IBC Type A units, which should be fully accessible, and Type B units which are units that comply with the design and construction requirements of the Fair Housing Act. Rather than adopting an ADA standard, HUD should consider incorporating the technical standards found in ANSI Chapter 11 into a single national standard that includes provision for units covered by the ADA Title II,

Section 504, and/or the Fair Housing Act. HUD should work with the IBC officials to require that IBC incorporates the new ANSI standards appropriately.

Response to Question 8: What disability-related roadblocks appear in shared areas?

Recent research has identified disability-related roadblocks in shared spaces and some potential solutions:

- using guide strips to support wayfinding throughout the building,
- reducing background noise in common areas,
- allocating space for more usable and wider corridors as well as more spacious units and building in furniture to avoid barriers in accessible routes and save floor space, and
- providing plain-language leasing and other documents.²²

With respect to this area, NFHA and the undersigned fair housing organizations support HUD funded research on cross-disability inclusion principles and identification of potential roadblocks. Increased education on inclusive design principles will be useful in assessing future requirements. Just as usability principles have expanded access at the state and local levels, more inclusive strategies can become best practices to improve access and usability for all.

Response to Question 9: Are there any new design approaches or materials to which HUD should be privy, especially for use in disaster recovery?

One significant issue with disaster relief relates to loss of housing and reconstruction of housing owned or occupied by people with disabilities in disasters.

There are important strategies needed to support people with disabilities who encounter disasters.

HUD should not fund construction or rehabilitation of multifamily housing located in 100-year flood plains; such housing should be replaced with housing that is outside flood plains. This is partly because of risks to tenants' health and safety and the protection of their property. In addition, flood mitigation issues often pose significant challenges to accessibility because flood plain elevation requirements require access by elevators or lift which may not function during and after disasters. Construction of housing in areas prone to flooding should be required to be elevated and incorporate strategies to make the housing both accessible and safe.

²² See generally Fatimah Aure & Caroline Bas, Cross-Disability Design Makes Housing Better for Everyone, Shelterforce (June 13, 2023), <https://shelterforce.org/2023/06/13/cross-disability-design-makes-housing-better-for-everyone/>.

- HUD should encourage the use of elevated covered walkways and alternative accessible routes to expand access in the built environment, and especially for multifamily housing built on elevated sites, as recommended by a United Nations Study.²³
- Rapido Housing in Texas provides important guidance about restoring housing efficiently and appropriately after disasters.²⁴
- HUD should support the development of standards that provide guidance on accessibility in development of housing flood plains that includes provisions for accessible routes to entries in elevated sites.
- HUD's standards for manufactured housing should include provisions for design and development for manufactured housing that is accessible to and usable by people with disabilities. Especially with an aging population, which disproportionately includes persons with disabilities, manufactured housing provides a valuable and affordable housing choice for individuals with disabilities in rural and other areas.

Response to Question 10: What types of reasonable accommodations are being requested?

Overall, the requests for reasonable accommodations are very much the same in 2023 as they were in 1987 in our experience, and they are noted in our response to question 2. To the extent that new types of reasonable accommodation requests exist, they most commonly address the need for and the types of new technological advances that provide more efficient and effective types of access than previous methods.

- Current issues for reasonable accommodation include:
 - using medical marijuana as a reasonable accommodation exception to a “no drugs” or “no smoking” rules in states where medical marijuana is legal;
 - finding the balance between smoking and nonsmoking persons in reasonable accommodations and the use of non-smoke substance alternatives; and
 - addressing the identification and remediation of mold which poses serious health risks to children and adults with disabilities in HUD funded property on behalf of persons with disabilities.

Response to Question 11: How could the investigation and enforcement means under Section 504 be more efficient?

²³ Marja Edelman & Ana Carolina Moreira Pudenzi, *Accessibility of Housing: A Handbook of Inclusive Affordable Housing Solutions for Persons with Disabilities and Older Persons*, UN Habitat (2014), <https://unhabitat.org/sites/default/files/download-manager-files/Accessibility%20of%20Housing%20%20web.pdf>.

²⁴ See <http://www.rapidorecovery.org/technical-guides>. z

We believe that Section 504's investigation and enforcement processes could be modernized in several respects. It supports the continued availability of a complaint investigation and compliance review process and urges HUD to ensure that staffing, training, guidance, and standardization processes be put into place for a continued routine compliance review process in every region.

In addition, NFHA and the undersigned fair housing organizations recommend:

- HUD should expand the period for filing a Section 504 complaint to one year in revised regulations. This period would be consistent with the statute of limitations for administrative complaints under the Fair Housing Act and would eliminate much confusion and inconsistency of processing that results from two different time frames under two laws that are often simultaneously enforced.
- As noted above, HUD's regulations and process should create, authorize, and implement support for organizational complaints and requests for compliance reviews in Section 504 matters.
- HUD's regulation should explicitly authorize the award of actual damages, attorneys' fees, and affirmative and injunctive relief for individuals and organizations injured by discriminatory practices that violate Section 504.
- HUD's regulation should authorize relief for individuals with disabilities who are identified during the course of HUD's investigation.
- HUD's intake and investigatory process creates grave concerns about Section 504 enforcement. Some, but not all, regions accept complaints with both Section 504 claims and Fair Housing Act claims and refer the Fair Housing Act claim to a state or local agency that provides rights and remedies that are substantially equivalent to those provided in the Fair Housing Act (FHAP) agencies. Sometimes HUD refers matters to FHAP agencies where Section 504 provides greater rights and remedies than state or local law, most commonly in the area of structural modifications, where Section 504 requires recipients to provide and pay for structural changes while the Fair Housing Act puts those obligations on the resident. Such cases should not be referred to FHAP agencies. In addition, FHAP agency settlements often do not address underlying systemic concerns about the lack of an effective reasonable accommodation policy or practices nor do they remedy systemic violations or provide relief for non-complainant victims. Most Section 504 cases should not be referred to FHAP agencies for processing, and HUD should provide adequate resources to support Section 504 compliance with designated staff available in each of the ten regions and at headquarters to support both enforcement and compliance reviews.
- Many HUD investigations are neither timely nor comprehensive, and they may misapply the standards for relief under Section 504. We recommend the

- development of a complaint and compliance review handbook and substantive training devoted to both complaint investigations and compliance reviews.
- Where important systemic concerns are identified during the course of a complaint investigation, HUD should routinely open at least a limited compliance review as well as the complaint investigation and examine the practices of funded entities to ensure that recipient has an effective operational reasonable accommodation policy and program that complies with Section 504 and the Fair Housing Act.
 - We support the continued use of preliminary findings of noncompliance and final determinations under Section 504 because they provide an important opportunity to provide written notice of concerns and a regulatory-required opportunity to address disagreements and resolve concerns. However, once a final determination is issued, HUD should take prompt action to suspend a recipients' funding until the violation has been remediated and a voluntary compliance agreement has been entered into. HUD's failure to take decisive actions when its own office with delegated authority from the Secretary makes a final determination of civil rights violations is outrageous and inconsistent with the government's long-standing obligation to ensure the protection of its citizens' civil rights.
 - Upon a final determination of noncompliance with Section 504, HUD should challenge the certification of any HUD-funded entity and cease its funding until the outstanding violation has been fully resolved. Where the matter has not been resolved, the regulations should require referral to the United States Department of Justice for enforcement within 60 days of the issuance of a final determination. The provision for notification of the governor of a state should be removed as unnecessary.

Question for Comment 13: How does one's intersectional identity affect their access to accessible housing?

There is substantial intersectionality between disability discrimination and issues relating to race and national origin. Among the areas of overlap are included avoiding the perpetuation of segregation based on race and national origin as well as disability and providing fair housing choice for housing located in higher opportunity areas and areas which provide effective accessible public transportation. There is also intersectionality between people with disabilities and families with children, especially addressing the need for accessible units available for larger families and the availability of accessible housing in sites that are not limited to older persons and people with disabilities, which do not serve families with children or younger persons with disabilities well.

Many of the recommendations in these comments that will benefit households with one or more members who has a disability will also benefit persons of color, female-headed households, and older residents.

Sincerely,

National Fair Housing Alliance

Fair Housing Advocates of Northern California
Fair Housing Center of Central Indiana
Fair Housing Center of Northern Alabama
Fair Housing Center of the Greater Palm Beaches
Fair Housing Center of West Michigan
Fair Housing Council of Orange County
Fair Housing Justice Center
Fair Housing Partnership of Greater Pittsburgh
Fair Housing Rights Center in Southeastern Pennsylvania
Housing Opportunities Made Equal of Virginia
Long Island Housing Services, Inc.
Metro Fair Housing Services, Inc.
North Texas Fair Housing Center
Project Sentinel
Savannah-Chatham County Fair Housing Council, Inc.
Southwest Fair Housing Council
The Fair Housing Center of Toledo