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Via [regulations.gov](https://www.regulations.gov)

Re: FR-6257-A-01

Nondiscrimination on the Basis of Disability: Updates to HUD's Section 504 Regulations

The National Low Income Housing Coalition (NLIHC) is dedicated solely to achieving racially and socially equitable public policy that ensures people with the lowest incomes have quality homes that are accessible and affordable in communities of their choice. Our members include state and local housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, public housing agencies, private developers and property owners, local and state government agencies, faith-based organizations, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we focus on policy and funding improvements for extremely low-income people who receive and those who need federal housing assistance.

NLIHC appreciates HUD's request for input through an Advanced Notice of Proposed Rulemaking in recognition that the current Section 504 regulations were published in 1988 and that updating of those regulations is warranted in light of continued widespread discrimination on the basis of disability, experienced gained by all parties over the decades, as well as advancing technologies that may provide enhanced tools to better serve people with disabilities.

NLIHC has reviewed the more detailed set of recommendations provided by the Consortium for Constituents with Disabilities and has signed on to the comment letter submitted by the Housing Justice Network. NLIHC highlights in this letter our responses to five questions posed in the ANPRM.

Response to Question 3 regarding appropriate steps to ensure effective communications with applicants, beneficiaries, and the public who have disabilities, and the requirement to provide auxiliary aids and services.

The regulation at 24 CFR part 8.6 “Communications” should add a general provision regarding auxiliary aids recognizing that technological innovations will transpire faster than regulations will be amended and therefore obligates recipients to follow auxiliary aid directions provided in sub-regulatory guidance that will be modified periodically as technology provides improved and/or additional tools.

To provide effective communications, the regulations must be amended to ensure that recipients do not rely primarily or solely on electronic or digital means. Recipients must be required to provide individuals with multiple ways of accessing the same information in order to serve people with disabilities who have various communications needs.

The regulations should explicitly require recipients to use plain language when devising notices pertaining to all aspects of a program (e.g., opening of waiting lists, public comment opportunities, impending inspections, etc.) applications, explanations of leases and house rules, etc. To facilitate compliance, HUD should develop and provide plain language templates.

Recipients must be required to ask applicants and participants whether they have communication disabilities and record their needed auxiliary aid or service in their application or tenant file so that they can consistently receive effective communication. The rule should also specify that if an individual requests that all written communications be provided in alternative formats or in other languages, then all future communications must be provided in the requested format or language. In addition, the rule should require recipients to have and follow a policy for determining when sign language interpreters are needed at meetings.

The regulation at §8.6(c) states that a recipient is not required to take action that it can demonstrate would result in undue financial and administrative burden. The rule should be modified to provide several communications tools that are generally considered to be financially or administratively burdensome as well as those that are *not* generally considered to be financially or administratively burdensome. In addition, the rule should direct recipients to consult sub-regulatory guidance (to be developed and updated by HUD as appropriate) that offers examples of financially and administratively reasonable communications tools as well as those that are deemed unreasonable.

Response to Question 4 regarding challenges households face finding available, affordable, and accessible housing.

As NLIHC's annual [GAP report](#) shows, there is a perennial shortage of 7.3 million rental homes available and affordable to extremely low-income households, 18% of whom are those with a disability. In addition, the current rule is inadequate in only requiring newly constructed multifamily properties to have a minimum 5% of units accessible for people with mobility impairments and an additional 2% for people with hearing or vision impairments.

To help disabled households identify available, accessible, and affordable homes, the regulation should be amended to require recipients to reach out to disability organizations when assisted units are available and take other actions, such as posting the availability of accessible HUD-assisted units as part of their affirmative marketing plans. While waiting list "first-come, first-served" policies seem fair, as listed in the comments submitted by the Consortium for Constituents with Disabilities, people with disabilities are disadvantaged by tenant selection plans based on a first-come, first-served basis; the regulation should be amended to direct recipients to sub-regulatory guidance that offers "best practices" of tenant selection practices that avoid or minimize disadvantaging people with disabilities.

The regulations should be amended to emphasize to recipients, especially states and other Low Income Housing Tax Credit (LIHTC) entities that Section 504 requirements apply when federal funds are layered into a property's financing. For such properties that are newly constructed or substantially rehabilitated, they must: include the required percentage of accessible units; make and pay for reasonable accommodations and modifications for tenants with disabilities; and accept vouchers.

HUD's Public Housing Repositioning policies are augmenting the challenges people who have a disability face in finding available, affordable, and accessible housing. Section 18 demolition and disposition as well as Section 22 voluntary conversion to vouchers unrealistically assume a disabled person with a Tenant Protection Voucher be able to successfully lease an accessible and affordable home. In many areas of the nation, it is well known that households have great difficulty successfully using an available voucher; this is especially true for properties with needed accessibility features.

The Section 504 regulations should require any activities relying on vouchering out to conduct a thorough, rigorous, up-front fair housing impact analysis prior to approving a Section 18 or Section 22 application. A rigorous up-front fair housing review is essential to ensure that adequate accessible and affordable units are available in a project's neighborhood and/or in another neighborhood that offers greater opportunities for people with disabilities. The Section 504 regulations should require Rental Assistance Demonstration (RAD) temporary relocations to ensure that any transfer and relocation plan prioritizes counseling, search assistance, and placement in appropriate replacement housing for households with a disabled person. HUD should amend the RAD Notice to call for post-conversion Section 504 training for owners/managers.

Response to Question 5 regarding challenges using a Housing Choice Voucher

The regulations at §8.28(a)(4) should be amended encourage PHAs to establish HCV search terms of 120 days for households that have someone with a disability, and the rule should require such households be informed that they can request extensions of search terms beyond 120 days.

HOTMA provides PHAs the option of establishing a HCV payment standard up to 120% of the FMR as a reasonable accommodation for a person with a disability – without seeking HUD approval. The rule at §8.28(a)(5) should be amended to require PHAs to expeditiously grant a payment standard up to 120% of the FMR as a reasonable accommodation, or to use a payment standard based on 110% of Small Area FMRs as a reasonable accommodation if the latter is more advantageous to a household. The amended rule should also encourage PHAs to seek HUD approval for an exception payment standard greater than 120% of the FMR as a reasonable accommodation when local market conditions warrant.

Response to Question 10 regarding reasonable accommodations

Part 8 should add a specific section concerning reasonable accommodations pertaining to housing; currently, reasonable accommodations at part 8 are only at Subpart B pertaining to employment. Part 8 should establish minimum requirements for the reasonable accommodation process. This should include a clear statement that individuals cannot be required to complete a form to request a reasonable accommodation, and that there is no required manner in which an individual must request a reasonable accommodation. The rule should require recipients to have a reasonable accommodation policy that is made known to all program participants when applying, during income recertifications, posted in common areas, distributed to tenant organizations, posted on recipient websites, in ACOPs and Administrative Plans, and otherwise widely available. The rule should include basic examples of types of reasonable accommodations, such as permitting larger units needed for equipment or live-in aides (including family-member caregivers), and the rule should also direct recipients to sub-regulatory guidance containing numerous additional examples.

Although not specifically related to improving part 8, NLIHC urges HUD to fully implement the recommendations from HUD's Office of the Inspector General audit, [*HUD's Office of Public and Voucher Programs: Requests for Reasonable Accommodation in Public Housing*](#) (Audit Report Number 2022-BO-0001, February 7, 2022):

- (1) Update compliance monitoring guidance to include a requirement for Field Office staff to review a PHA's reasonable accommodations policies and procedures.
- (2) Update and consolidate reasonable accommodation policies and procedures to ensure there is centralized guidance available for Field Offices and PHAs.
- (3) Conduct additional outreach efforts to educate tenants and PHAs on their reasonable accommodation rights and responsibilities.

(4) Require PHAs to track reasonable accommodation requests and make them available to PIH; tracking should include request date, type, outcome, and date of any action taken.

(5) Review the joint agreement between PIH and FHEO and related Section 504 checklist, and modify, update, or recommit to it to ensure that the roles and responsibilities of PIH for conducting civil rights front-end reviews is clearly defined.

(6) Ensure that Field Office staff receive training on how to conduct civil rights front-end reviews, including a review of a PHA's reasonable accommodation policies and procedures.

In addition to the above, HUD should create the position of Senior Advisor to the Secretary who is someone that has personal disability experience and is provided with leadership responsibilities related to disability policy. Either this Senior Advisor or another senior staff person at FHEO Headquarters should be tasked with reviewing reasonable accommodation policies and procedures as well as responding to appeals from residents and their advocates.

Response to Question 12 regarding Native American Tribes and tribal entities

The regulations should explicitly recognize that tribal governments are distinct sovereign entities that should have increased flexibility with respect to using their funding and implementing their programs, while also ensuring that they follow necessary guidelines for accessibility and inclusion. To achieve this there needs to be extensive consultation with tribes to ensure that cultural differences are taken into account. The rule should also acknowledge that what constitutes a disability can vary across cultures, and given that every tribe across the U.S. has its own cultural traditions and beliefs, it is important to recognize this and seek to incorporate varying perspectives in the definition of "person with a disability."

NLIHC urges HUD to give serious consideration to the recommendations in this letter as well as the more detailed recommendations provided by the letters submitted by the Consortium for Constituents with Disabilities and by the Housing Justice Network.

If there are any questions about these comments, please contact Ed Gramlich at ed@nlihc.org or 202.662.1530 x 314.

Sincerely,



Diane Yentel
President and CEO