

July 24, 2023

Submitted via www.regulations.gov

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276,
Washington, DC 20410-0500

Re: Docket No. FR-6257-A-01, "Nondiscrimination on the Basis of Disability: Updates to HUD Section 504 Regulations" (RIN 2529-AB03)

The National Housing Law Project (NHLP), members of the Housing Justice Network, and the undersigned organizations engaged in housing justice advocacy submit this comment letter in response to the Department of Housing and Urban Development's Nondiscrimination on the Basis of Disability: Updates to HUD Section 504 Regulations advance notice of proposed rulemaking.

The National Housing Law Project's mission is to advance housing justice for people living in poverty and their communities. NHLP achieves this by strengthening and enforcing the rights of tenants and increasing housing opportunities for underserved communities. Our organization also provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. NHLP hosts the national Housing Justice Network (HJN), a vast field network of over 2,000 community-level housing advocates and resident leaders. HJN member organizations are committed to protecting affordable housing and residents' rights for low-income families across the country.

We support HUD's recognition that the Section 504 implementing regulations need to be updated to address the various circumstances under which individuals with disabilities continue to experience discrimination in accessing and participating in programs and activities receiving federal financial assistance. Specifically, it is imperative that HUD's updates to the Section 504 regulations address the following:

- Provide additional guidance and clarification for providing reasonable accommodations for program applicants and current program participants as well as additional guidance with regard to providing reasonable modifications. This should include transitioning among programs where that may be necessary as an accommodation. There should also be provisions for interruptions and reinstatement of assistance as needed as an accommodation.
- Ensure that people with disabilities using a Housing Choice Voucher (HCV) are not disadvantaged in the housing market by streamlining the process for requesting exception payment standards, increasing search times, providing mobility services and assisting with moving costs housing search, and ensuring that units are available for voucher families that experience a range of disabilities.

- Define the interactive process, including what constitutes meaningful participation in the interactive process, and mandate its use to maintain housing for people with disabilities and increase housing opportunities and accessibility of housing and programs.
- Address the dearth of affordable, accessible housing by increasing the minimum percentages for accessible units for people with mobility impairments and vision impairments in new construction.
- Make the Section 504 enforcement process easier to use for members of the public generally, including increasing the accessibility of the complaint process and specifying that organizations can file complaints, and clarify the Section 504 enforcement process, including under what circumstances HUD maintains multi-jurisdictional complaints.
- Require regular updating and review of 504 plans, the identification of a dedicated 504 staff person, and ongoing training requirements for serving people with disabilities.
- Establish best practices for plain language and multimodal approaches to communication to ensure program accessibility for people with various types of disabilities.
- Encourage housing providers to coordinate with disability service providers in the community to provide accessible housing and needed services, providing transportation services to medical appointments and pharmacies. Overall, there's currently a lack of coordination with disability service providers, which contributes to the lack of accessible housing and provision of reasonable accommodations and modifications that are needed by people with disabilities to fully experience housing free from discrimination.
- Describe and clarify the extensive range of programs covered by Section 504 by explicitly stating what programs and activities are covered.

We have provided more detailed comments that address these recommendations by responding to selected questions for comment below based on our experiences as housing advocates as well as the experiences of the clients we represent.

Response to Question for Comment 1

- HUD must ensure that the definition of disability clearly covers people with temporary disabilities. Some courts interpret the ADA Amendments Act of 2008 as excluding temporary, nonchronic impairments of short duration.¹ However, federal regulations state that temporary impairments are covered.² To dispel any ambiguity, the regulations should clearly protect the rights of those with temporary disabilities to equal access to housing programs.
- HUD should use person-first language and remove outdated language. For example within 8.3 Definitions, under “Individuals with handicaps,” HUD should replace

¹ 42 U.S.C. §12102(3)(B), see *McCottry v. Runyon*, 949 F. Supp. 527 (N.D. Ohio 1996) (holding that employee's broken leg was not a disability under the Rehabilitation Act), *Macfarlan v. Ivy Hill SNF, LLC*, 675 F.3d 266, 95 Empl. Prac. Dec. (CCH) P 44458, 162 Lab. Cas. (CCH) P 36008 (3d Cir. 2012), *R.N. ex rel. Nevill v. Cape Girardeau 63 School Dist.*, 858 F. Supp. 2d 1025, 284 Ed. Law Rep. 291 (E.D. Mo. 2012).

² 29 C.F.R. §1630.2(j)(1)(g)(ix), see *Feldman v. Law Enforcement Associates Corporation*, 779 F.Supp.2d 472 (E.D.N.C. 2011).

“handicaps” with “disabilities.” HUD should swap out terms like “alcoholic and drug user” with “an individual with alcoholism or an individual with substance use disorder.” HUD should consult the Diagnostic and Statistical Manual of Mental Disorders 5-TR that was updated in 2022 for current terms and disability-related definitions.

Response to Question for Comment 2

- Providers fail to recognize those who are in recovery from alcohol abuse or substance use disorder as being people who are living with disability and then unlawfully deprive them of the ability to seek reasonable accommodations to their housing policies or unlawfully subject them to eviction from their homes.
- The regulations need to establish the obligation of PHAs and other housing providers to provide continued participation where a participant or tenant experiences an extended absence from their housing, for example, due to institutionalization or participation in a detox program. When Tenants face eviction due to their extended stay in a hospital setting, even if it is only slightly longer than the established limit, that eviction clearly prevents the tenant from returning home and often leaves the person stuck in the hospital setting for longer than medically required.
- The regulations should consider the intersectionality of people with disabilities who are exiting incarceration or institutional settings and ensure that these persons are treated humanely in trying to access housing programs designed for persons living with a disability and are assisted in maintaining it. Compared to 15% of the United States population, approximately 40% of persons housed in state prisons are living with disabilities.³ PHAs and owners are far too quick to evict tenants, deny applications, or terminate vouchers for tenants living in housing prioritized for persons experiencing chronic homelessness living with co-occurring disabilities, which includes tenants living with disabilities, including those living with mental health disabilities, or living with/recovering from substance-use disabilities.
- Applications, notices and other critical documentation must be written in plain language. In addition, individuals with intellectual, cognitive, or developmental disabilities should be assisted with the paperwork required for admissions and continued occupancy in public and subsidized housing. The applications and recertifications are burdensome and frequently result in near or completed terminations/denials for failure to complete the paperwork.
- HUD should address the prioritization of transfers or physical modifications for tenants whose physical abilities decrease during their tenancy and for whom their apartment is no longer accessible. For example, a tenant requested a ramp to access her unit after experiencing a change in her physical abilities during the course of her tenancy such that she began using a wheelchair. That Tenant was not in an accessible unit, and was essentially and dangerously stuck in her home. The landlord moved to evict on false allegations of non-payment instead of providing her the ramp she requested.

³ Prison Policy Initiative: Disability, <https://www.prisonpolicy.org/research/disability/> (last accessed on July 3, 2023).

Response to Question for Comment 3

- HUD should provide recommendations for and examples of effective communication for people with a range of disabilities, including mental health disabilities. The current regulations lack any guidance on the types of tools or auxiliary aids that should be provided to people with disabilities. As other commenters have noted, there have been numerous technological advances with regard to effective communications since Section 504 was promulgated. As such, guidance is needed to ensure that recipients are meeting their obligations.
- HUD must ensure that recipients do not rely on electronic or digital services as their only or primary means of providing effective communication. People have varying levels of access to and knowledge of how to use computer technology. Recipients must provide multiple ways of accessing the same information and content to serve the wide array of needs of people with disabilities. Advocates report that many programs heavily rely on electronic or digital services that are not tailored to the needs of the people trying to access the programs which results in the exclusion of people with disabilities rather than providing accessibility. For example, housing providers rely on video remote interpreting (VRI), which has created problems rather than solved them. In addition, scanning documents to be digitally accessible often converts the text into a photo thereby becoming inaccessible to screen readers and without text cannot be searched or enlarged in one's word processing programs. Further, applications and recertifications are getting more difficult for people with disabilities to access when recipients require forms or other actions to be done by computer.
- HUD must also ensure that any accessibility tools or aids are vetted for accessibility by testers to ensure they are accessible to people with a range of disabilities. In particular, websites and applications are often inaccessible but touted as an effective communication tool.
- HUD should ensure that sign language interpreters are provided for all meetings, in particular public meetings. Many recipients solely provide closed captioning however, captioning often does not work and or the automated program makes a lot of mistakes.
- HUD must provide guidance to ensure written documents are accessible and written in plain language. People with disabilities should be able to access written materials in larger font sizes and/or in high contrast or in a manner that allows the person to access the information in a platform or manner that they prefer. Visually impaired people are generally not receiving documents in Braille or they are not available. Many people with disabilities are forced to create their own "workaround" in regards to paperwork or communication, which denies people with disabilities equal access to programs and services.
- People with disabilities are often denied effective communication when they simply cannot speak to someone in person or on the phone. For example, when there is a lack of management present at the premises on a regular basis, tenants are unable to timely access information they need to avoid issues such as disputes over whether rent was paid late, lost rent checks, etc. Ensuring people with disabilities are able to meet with a person or at least have access to a live person if issues arise should not be overlooked as a tool for effective communication.

- The current regulations state that a recipient is not required to take action that would result in undue financial burdens. HUD should provide guidance on the cost of effective communication tools or aids that are considered reasonable and those that would cause undue financial burdens. It is imperative HUD clarify that providing effective communication will involve some costs on the part of the recipient in order to ensure persons with disabilities are not excluded or denied the benefits of the program. Regarding effective communication obligations of PHAs, the size of a PHA's budget should be a factor in determining what is a reasonable cost.
- HUD's regulations on effective communication should recognize that some people with disabilities, such as those with cognitive or memory issues, rely on third parties to receive communications. HUD has already provided guidance pursuant to 42 U.S.C § 13604, requiring owners and PHAs to use Form HUD-92006 as part of the application for assistance, which provides applicants the option of providing information on an individual or organization that may be contacted to assist in providing any delivery of services or special care to applicants who become tenants and to assist with resolving any tenancy issues arising during tenancy.⁴ However, advocates report that their clients are often not provided with information on their ability to assign a 3rd party to receive their communications, and at best are only provided with this option as a reasonable accommodation. One advocate reported that the PHA in her jurisdiction only uses Form HUD-92006 as an "emergency contact" form and represents the form as such to tenants which dissuaded some people who can benefit from this process from filing out the form. Advocates also note that Form HUD-92006 is printed in very small font and is not readable or provided in an accessible format. HUD should enforce the guidance already established and create a clear and simple method to allow tenants with disabilities, outside of the application process, to request a third party to receive communication on their behalf.
- The HUD regulations must consider the intersection between people living with disabilities who are monolingual in a language other than English when creating a rule around effective communication. Notwithstanding the requirements of Title VI and language accessibility, advocates continually encounter cases where the applicant/participant was unable to understand the information provided to them or what was required of them.
- There is a great need in rural areas to provide effective and timely access to effective communication aids. Many rural communities lack credentialed, fully competent staff or options to assist people with disabilities. HUD must ensure that people with disabilities are not denied equal access to programs when living in rural areas.

Response to Question for Comment 4

- Assisted housing is disproportionately home for people with disabilities. For example, approximately 20 percent of HUD-assisted households have disabled members.⁵ More

⁴ See HUD Notice H-2009-13 and PIH-2009-36 (HA)

⁵ [A Picture of Disability and Designated Housing](#) (2015)

than half (55 %) of families in public housing are elderly and/or disabled.⁶ Nearly a quarter (24%) of HCV families have a non-elderly disabled head of household.⁷ Disabled households rely on a fixed income such as Supplemental Security Income or Social Security and will need housing assistance for most of the rest of their lives. Yet, there continues to be mass demolition/disposition and conversion of affordable units without accessible replacement housing being built. In addition, everyone is unrealistically expected to “voucher out” with a Tenant Protection Voucher in locations already known to be hard to use HCVs. This is an especially impossible feat for individuals with disabilities in need of affordable housing with accessibility features and speaks to the need for replacement housing in such situations. There should be required, in all instances of mass vouchering out, an up-front fair housing analysis on the impact of such mass disposition on protected classes, including persons with disabilities, and of the actual availability of appropriate replacement housing in the neighborhood sufficient to absorb all those who are forcibly vouchered out.

- Where temporary relocation becomes necessary (for RAD, demolition/disposition, rehabilitation, emergency repairs, etc.) for HUD-assisted housing that disproportionately houses people with disabilities, HUD must ensure that any transfer and relocation plan prioritizes counseling and search assistance and placement in appropriate replacement housing for households with sufficient advance planning since there can be no demolition without all residents being safely relocated.
- As part of public housing redevelopment and repositioning, tenants are delinked from their PHAs housing supply and cannot easily transfer from one accessible unit to another. Instead, they have to rely on choice mobility options, which results in losing access to the potential supply. For persons exercising Choice Mobility after a RAD conversion, management should clearly explain (as in the HUD Choice Mobility Guidebook) that they are not required to and should not undertake any steps to terminate the existing tenancy as such is the last step to be taken only after securing an alternative housing with the mobility choice HCV.
- People with disabilities should have access to additional resources, such as mobility services, to allow them the ability to find housing. HUD should create systems to allow for coordination with housing search programs, and an ability to access other PHA resources (such as public housing or PBV units) that may be appropriate, in order to avoid “timing out” on the voucher search period and losing their voucher. Many people with disabilities will benefit from the ability to transfer to PBV and public housing units that are accessible and where there is no risk of loss of security of tenure through no-fault non-renewals, rent increases, or the like.
- Housing providers adopt eligibility requirements that exclude people with disabilities from participating in the homeownership programs.
- PHAs must have accessible housing on their lists of available private units. If not, PHAs must have a plan to identify accessible housing for tenants with a range of disabilities. This is not only consistent with the PHAs obligations where the Uniform Relocation Act is

⁶ HUD FY 2024 Congressional Justifications, <https://www.hud.gov/sites/dfiles/CFO/documents/2024-HUD-Congressional-Justifications.pdf>.

⁷ *Id.*

triggered, but such advance planning is critical where displacement occurs due to an emergency situation.⁸

- More units larger than a studio or one-bedroom should have accessible features to accommodate families.
- Parking continues to be an ongoing area that prevents or limits housing accessibility. Additional guidance is needed with regard to accessible parking spots, parking assignment policies, and reserved spots for service providers.
- Current regulatory minimum requirements for mobility and sensory units are insufficient to solve the shortage of accessible units. There are few if any fully wheelchair accessible and communications accessible housing units available either in rental or homeownership programs. Also, local jurisdictions aren't necessarily inspecting the housing for compliance with these or other accessibility requirements as evidenced by the disability discrimination complaints and lawsuits that continue to be filed with HUD.
- Require a centralized accessible registry of available apartments with an inventory of accessibility features for all subsidized homes and whether people with disabilities who need those features reside in those housing units.⁹ The regulations should also mandate posting of such units as part of an affirmative fair marketing plan. Otherwise, there is no mechanism for identifying accessible units and the types of accessibility features available in each unit when conducting a housing search (even when you are able to search on the computer). For example, units with lever door handles are labeled as accessible although there may be other barriers to accessibility, like stairs, depending on an individual's specific needs.
- The practice of tenant selection plans based on first-come, first-served basis disadvantages people with disabilities, especially those in need of accessibility features within a unit. While the regulations at 24 C.F.R. § 8.27 require multifamily owners to offer vacant, accessible units to disabled households needing the accessibility features first, as noted above such prioritization cannot occur when the accessibility features are not cataloged.
- Many units that are affordable under the HCV/HUD FMR guidelines are not accessible or require modification at the tenant's expense (which can be cost prohibitive) to make

⁸ See Independent Living Center of Southern California et al. v. the City of Los Angeles, et al., United States District Court, Central District of California, Case No. 2:12-cv-000551-FMO-PJW (*not a single project* in the City's enormous portfolio met all of the requisite accessibility standards under 504, the ADA, the FHA and California Building Codes. The City had no idea if accessible units existed and if they did, which units they were. The agreement, among other things, requires the City to ensure that at least 4,000 of its affordable housing units meet the highly accessible standards required by federal law, and to enforce policies to ensure that those units are rented to people who need their specific accessibility features);

HUD entered into a Voluntary Compliance Agreement with the City,
<https://www.hud.gov/sites/dfiles/Main/documents/HUD-City-of-Los-Angeles-VCA.pdf>

⁹ E.g., MassAccess Housing Registry, <https://www.massaccesshousingregistry.org/>; Housing Navigator MA, <https://housingnavigatorma.org/>; Los Angeles, CA accessible housing registry to be established pursuant to settlement in Independent Living Center of Southern California et al. v. the City of Los Angeles, et al., United States District Court, Central District of California, Case No. 2:12-cv-000551-FMO-PJW, https://www.disabilityrightsca.org/system/files/file-attachments/ILC_v_LA_DKT_608-1_Corrected_Settlement_attached_to_Corrected_Judgment.pdf.

them somewhat accessible because they are older housing stock that pre-dated any requirements to be adaptable under the FHAA. Newer units are generally (but not always) more accessible, but also more expensive.

- There must be a consideration of the types of appliances being provided in subsidized apartments. Many standard appliances and features, such as counters, are inaccessible to wheelchair users. For example, the most common refrigerators are freezer on top, where a wheelchair user can not reach the freezer controls. Also the more appliances that are digital or LED touch buttons, etc., they are completely inaccessible to the blind and the smaller the text also inaccessible to those with vision disabilities.
- Applicants receiving SSI or medicaid face challenges with being able to afford or pay security deposits due to asset limits for those programs. This results in tenants with disabilities living in substandard housing in order to be able to afford using a HCV.
- HUD should ensure that in RAD/mixed finance developments, that housing providers are prioritizing outstanding accessibility issues, such as the need for elevators, and maximizing the need for accessible units of different types.
- More practically oriented training is needed for staff at all levels re: 504 obligations and implementation (existing anti-discrimination training is often too perfunctory - and not about providing actual accommodation). For example for RAD, need training of owners post-conversion, as post-RAD private management often not familiar with or have direct experience with Sec. 504 obligations

Response to Question for Comment 5

- Unaffordable rents pose a huge barrier to housing voucher families who experience disabilities.
 - Fair housing laws allow a person with a disability to request higher payment standards as a reasonable accommodation if there is a disability-related need for a particular unit (for example, it has accessibility features or is located in close proximity to services/supports which will be lost if the client has to relocate). As provided in Section 102(d)(1) of HOTMA, a PHA can grant a request of up to 120% of FMR as a reasonable accommodation without seeking HUD approval.¹⁰ HOTMA also provides that in the case of an exception payment standard, families should continue to pay 30% of their income in rent. However, many PHAs require voucher tenants to pay 40% of their income in rent when an EPS is approved. HUD must therefore make it clear in the 504 regulations (and related voucher regulations) that tenants who request a reasonable accommodation for an increase in the payment standard continue to pay 30% of their income in rent. This will ensure that rents are affordable for voucher families who receive an accommodation and that PHAs comply with fair housing laws.
- FMRs are often not an accurate reflection of rents, HUD should consider using different methods to set FMRs thus allowing a person with a disability more flexibility in finding a unit. For example, HUD should apply the methodology it recently proposed that uses private market data to calculate FMRs. Voucher search times present a significant

¹⁰ Section 102(d)(1) of HOTMA amends 42 U.S.C. § 1437f(o)(1)(D) as follows:

barrier to people with disabilities. HUD should clarify how and when extensions should be provided, this guidance should consider both the initial lease up and end of lease term moves. Some PHA's require a written request for extension on a voucher at least 10 days before expiration. If this deadline is missed the vouchers are terminated and there is no formal process to grieve the termination. Many people that lose their vouchers under these circumstances are told by the PHA that there are no 504 obligations because the person is no longer a PHA client. HUD should establish a formal process when tenant's lose their vouchers when they are unable to secure a unit within the search time. Also, HUD should be collecting data on vouchers expiring due to a failure to lease-up because of disability-related issues. The current process for requesting an extension often places tenants at risk of facing eviction where they have provided their landlord with the required notice of non-renewal of the lease, but then are unable to vacate because they can't lease-up quickly due to lack of affordable, accessible units. For example, a PHA in New Mexico has a general policy to only grant one 30 day extension on relocation vouchers, with certain exceptions, which previously included an extension if necessary as an RA for disabilities. The PHA has removed that exception from its list of bases for an extension. While they are clearly still obligated to consider any RA request, their position is that because RA for disabilities has been removed from the list of reasons to extend a voucher, they can deny extensions on the basis it is "not a RA for disabilities." These types of rigid rules created by PHA's harm tenants as they are at risk of homelessness and evictions, these risks are only magnified for people with disabilities who have a harder time finding accessible housing.

- People with disabilities should have access to additional resources, such as mobility services, to allow them the ability to find housing. HUD should create systems to allow for coordination with housing search programs, and an ability to access other PHA resources (such as public housing or PBV units) that may be appropriate, in order to avoid "timing out" on the voucher search period and losing their voucher. Many people with disabilities will benefit from the ability to transfer to PBV and public housing units that are accessible and where there is no risk of loss of security of tenure through no-fault non-renewals, rent increases, or the like. In fact, in many communities, HUD housing is often the only housing that is accessible to people with a range of disabilities.
- HUD should require that when people with disabilities are porting to other jurisdictions, that any approved RA is automatically recognized by the new PHA. There currently is no streamlined process for RAs to be recognized by the new PHA, which creates unnecessary burdens for people with disabilities and restricts their mobility for fear of losing their RA.
- Moving costs pose a barrier to people being able to actually use their HCV. These moving costs include application fees, security deposits and/or first/last month requirements, all of which added together can prevent a person with a disability from moving or timely finding a unit. This problem is exacerbated for people with disabilities because many are low-income and rely on other public benefits which have asset limits, preventing them from saving enough money to cover moving costs.

- HUD should require PHAs to provide housing search assistance as an accommodation for tenants with disabilities as the process itself could be a barrier to securing housing for someone with cognitive disabilities or mental health conditions.
- HUD should include guidance in the regulations for PHAs specifically on using Administrative fees to assist families with disabilities to access housing. For example, PHAs have flexibility to use Administrative fees for security deposits to assist voucher tenants.

Response to Question for Comment 8

- The HUD regulations must take into consideration the specific needs of people with a range of disabilities without segregating them into special needs housing complexes. Many people with disabilities are pigeonholed into efficiency and one-bedroom apartments without taking into account their need for space to have an accessible unit, for example they may need space to accommodate mobility needs, service animals or live-in aides. In addition, these types of complexes may not be located in a community of one's choice or are located far from necessary services.
- HUD must consider the unique needs of people with disabilities when establishing guidelines for accessible properties, such as for community rooms and facilities. For example, people with disabilities need their own access to laundry machines in their own housing units or be allowed to install their own washer and dryers if necessary. People with disabilities are often more susceptible to risks from using shared laundry, such as exposure to communicable diseases, which can be mitigated by having separate access to laundry. Many of these laundry facilities are also inaccessible to people with disabilities or can simply be unaffordable.
- The unique parking needs of people with disabilities also need to be addressed. There should be a sufficient number of parking spaces set aside for rental offices, community spaces and individual buildings, and not just a certain number of spaces for the entire property to ensure the entire property is accessible. Moreover, persons with disabilities may require services of people who come in, like visiting nurses, who require parking that is often not factored into the accessibility of a property but can have a huge impact on a person with disability receiving necessary services.

Response to Question for Comment 10

- The regulations should establish minimum requirements for the reasonable accommodation (RA) process. They should also make clear that participants cannot be required to complete a form to request a RA. Under no circumstance should a housing provider require a form that requires a medical professional's signature under penalty of perjury. This deters doctors and others from signing RA forms and creates barriers to an accommodation in housing. In addition, the regulations need to make clear that where housing providers develop forms to request RAs, they cannot require people to provide broad, general releases of medical information that are not necessary or relevant to the RA request. The regulations should also provide minimum timing requirements because too often RA requests are ignored and therefore effectively denied.

- HUD should provide a definitive statement that there is no required way that an applicant, participant, or tenant must ask for a reasonable accommodation. In multiple instances, tenants needing to move to a more accessible unit were delayed or lost the opportunity altogether due to mandatory policies and procedures requiring the use of PHA or housing provider's forms to request the accommodation. Also, in some cases if the tenant refuses to use the form, the PHA or owner will unlawfully deny the reasonable accommodation.
- HUD should require recipients to have an RA policy and make that policy readily available. Lack of information from housing providers about the RA process deters people from requesting an RA. For PHAs, HUD should mandate they have an RA policy and to make that policy available via the PHA's web site (if they have one) and to be included in the Section 8 Administrative Plan and Admissions and Continued Occupancy Policy.
- The regulations need to address who can provide supporting letters or documentation for RA. Specifically, the regulations should explain that someone who is in a position to know about the person's disability, and not just their treating doctor, can provide a letter verifying the disability¹¹ as well as the disability-related need for the accommodation.¹² For example, California's fair housing regulations allow a person with a disability to self-certify or permit that the following third-parties to provide information confirming the person's disability, or disability-related need for the accommodation:
 - (1) A medical professional;
 - (2) A health care provider, including the office of a medical practice or a nursing registry;
 - (3) A peer support group. Peer support groups are mutual support groups developed as alternatives to traditional medical or psychological treatments. They provide services such as education, peer mentoring, peer coaching, and peer recovery resource connections for groups of people with disabilities or people suffering from a wide range of trauma or illness;
 - (4) A non-medical service agency or person, including In-Home Supportive Services or Supported Living Services providers; or
 - (5) Any other reliable third party who is in a position to know about the individual's disability or disability-related need for the accommodation or modification. This could include a relative caring for a child with a disability, a relative caring for an elderly family member with dementia, or others in a caregiving relationship with a person with a disability.¹³

¹¹ "Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual herself (e.g., proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits or a credible statement by the individual). A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability." Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Modifications, at 4-5 (March 5, 2008), https://www.hud.gov/sites/documents/reasonable_modifications_mar08.pdf.

¹² 2 CCR § 12178(f)-(h).

¹³ 2 CCR § 12178(g).

- The regulations need to clarify that the need for the accommodation can arise at any time during a tenancy, not just at initial tenancy or voucher issuance. There may also be a need for subsequent accommodations after providing the initial accommodation. In some instances, the tenant does not become aware of the need to request an accommodation until after receiving a notice of violation from their housing provider. For example, where an applicant does not request to add an emotional support animal or service animal at time of application or before bringing them into the home, there is no prohibition of requesting the RA after the fact.
- The regulations need to clarify that accommodation requests do not expire or need to be renewed except in limited circumstances. In some cases, housing providers are claiming that RA requests expire, and do not transfer with a tenant when they move to a new unit, including when the tenant transfers units within the same complex or to a different complex with the same company. While one cannot just assume that the need for an RA is forever, requiring annual submission of an RA request can be unduly burdensome, particularly where the RA is of a nature that one would expect it to continue. Instead, the housing provider could inquire into the continuing need of the existing RA at the time of recertification and verify that the information related to the request is still current. For example, the tenant may have asked as an accommodation that a third-party be contacted if issues arise due to memory or cognitive issues, and it may be that the tenant would prefer a different contact, or contact info has changed.
- The regulations should make it clear that the right to request an accommodation persists, generally until the tenant is out of the unit (i.e., it is not terminated by an eviction notice or even a judgment). For example, California regulations include examples of providing RA while an eviction is pending as well after an eviction judgment has been entered. 2 CCR § 12176(f)(8). Importantly, in some cases, the right to request an RA exists beyond loss of housing, such as where the PHA could provide continued assistance through the HCV.
- The regulations should provide more guidance regarding what constitutes the nexus between disability and the need for accommodation. Tenants are getting a lot of denials for "insufficient nexus" between the request and the disability, even if the nexus is very clear. HUD needs to work on defining nexus and providing PHAs w/ more information on denials based on nexus. For example, housing providers denying RAs where the provider letter doesn't say the accommodation is necessary versus that it may be necessary, or as the magic word "disability" not being in the treating provider's letter.
- The regulations need to include more examples of RAs, including for people with mental health disabilities and substance use disabilities.¹⁴ We would suggest adding the following examples:
 - Permitting family members as live in aids, especially since this is a common source of live in aids for low income people. For example, in rural areas where home health aide services may be very limited or not available, tenants get assistance from family members, which leads to issues involving alleged "unauthorized persons" staying in the unit.

¹⁴ *E.g.*, 2 CCR § 12176(f)(7).

- Permitting larger units as a RA and the need for higher payment standards where larger unit is required.
- Providing an RA so a person with a disability can access services at home, such as assigning an additional parking spot to a tenant so that their visiting nurse can park at the property.
- Permitting extended absences from the assisted unit when the absence is due to disability and allowing people to return to the unit with the services that they need or maintain the assistance. For example, HUD's "absence" regulation for HCVs requires termination of assistance if the person is absent from the unit for a particular period, and this may occur due to hospitalization or institutionalization, but there should be clear mechanisms to arrange for continued assistance after an interruption.
- Copying a third-party, such as an advocate or family member, on PHA correspondence as a RA to avoid missing deadlines, meetings, etc.
- Reinstating participants to the program or housing as an alternative to applicant denial or evictions.
- When residents have a disability that impacts their mobility, landlords should accommodate the transfer of information to them via telephone or electronic means whenever possible.
- Allowances for overnight guests in the lease should also allow a reasonable accommodation for the guest to bring their service animal or emotional support animal onto the premises and/or overnight.
- Allowing disabled residents to share their key fob with a family member, friend, or care giver in order to get the proper and reasonable daily assistance they need (i.e. groceries, medicines, etc.)
- Not evicting or terminating the subsidy of a third party's criminal conduct in the unit if the tenant was unable to detect and address the criminal conduct as a result of their disability. Such an RA could be especially strong if the person was the tenant's personal care attendant or someone present to provide services related to the tenant's disabilities.
- Stopping eviction or termination processes for non-payment of rent when a tenant/participant falls behind due to their disability. For example, where a tenant's deep spiral into depression prevented them from getting out of bed in the morning, or resulted in hospitalization, and prevented them from paying rent on time. An accommodation would be to stop the proceedings and allow them to catch up with the payments through rental assistance, a payment plan, etc., while the tenant establishes treatment for their depression or establishes an automatic payment mechanism (i.e. through their bank) that would allow them to comply even if they fell into a deep depression again.
- Examples of providing an accommodation in the housing admissions process. For example, if a tenant's criminal activity was related to a disability then the criminal activity shouldn't bar them from housing.
- Provide guidance on meaningful participation in the interactive process. For example, the California fair housing regulations provide that: "Whenever a person who receives a

request for a reasonable accommodation or modification cannot immediately grant the requested accommodation or modification, the Act requires the person considering the request to engage in an interactive process with the individual with a disability or the individual's representative. The purpose of the interactive process is to exchange information to identify, evaluate, and implement a reasonable accommodation or modification that allows the individual with a disability equal opportunity to use and enjoy a dwelling or housing opportunity. The Act does not predetermine the outcome of any interactive process. However, the Act requires that the interactive process be timely (pursuant to subsection (d)) and that it be conducted in good faith. Good faith means the person considering the request must make a fair and honest effort to engage in the interactive process and to consider the request.” 2 CCR § 12177(a).

- There should be more required and ongoing training for PHAs on RA issues. Many do not understand RA at all.
- The regulations should explain the difference between pets, emotional support animals and service animals.
- The regulations should prohibit housing providers from charging tenants fees who are moving units due to RA or from charging higher rent to be in an accessible unit (i.e. charging more for first floor units or for units located closer to the elevator).
- The regulations should further define and provide examples of what constitutes an undue financial burden. Need clarification that this should be a case by case analysis that takes housing providers’ resources into account. There persists a misconception among housing providers that any amount of cost associated with an RA is an undue financial burden.
- PHAs should be allowed and encouraged to use administrative fees to pay for modifications or other services.

Response to Question for Comment 11

- The HUD regulations should provide additional clarification and guidance as to which programs and activities are covered by Section 504. Given that programs may be funded by multiple sources, including federal, state and local funding, it is nearly impossible to determine whether Section 504 applies, especially given that such information is rarely publicly available. Because the IRS has opined that tax credits are not covered under Section 504, Low Income Housing Tax Credit (LIHTC) housing providers take the position that Section 504 does not apply. However, the analysis as to whether specific housing programs and activities are covered is not so narrow. As other commenters have noted, where a local or state housing department receives HUD funding, all of their housing activities, and those of their subgrantees and contractors, are covered under Section 504 regardless of whether a particular project or development received federal funds.¹⁵
- The regulations should not only be explicit that PHAs and housing providers should engage in an interactive process, but also incorporate this requirement into its compliance monitoring and enforcement activities. In addition, the regulations should

¹⁵ 29 U.S.C. § 794(b); Civil Rights Restoration Act of 1987, Public Law No. 100-259 (March 22, 1988).

advise that where an accommodation has been requested, entities are prohibited from taking any adverse action against program participants, and in the event that the accommodation is requested after an adverse action has been taken (such as a termination hearing, eviction, etc.), entities must discontinue the adverse action pending use of the interactive process.

- The complaint process needs to be more accessible for individuals with a range of mobility and communication disabilities. Currently, it is very difficult for an individual with a disability to navigate the complaint process on their own without an advocate or attorney representing them. HUD's website directs Section 504 complaints to be filed with FHEO and provides three avenues for filing complaints: online, by email or regular mail, or by phone. The web site further explains that "HUD provides a toll-free teletypewriter (TTY) line: 1-800-877-8339. You can also ask for disability-related assistance when you contact FHEO, including reasonable accommodations and auxiliary aids and services."¹⁶ However, as explained above, simply providing information on a web site does not make the complaint process accessible. For example, while HUD provides the complaint form in several languages, HUD doesn't offer its complaint form in an alternative, accessible format (such as large print) on its web site.
- The definition of who can file a complaint should be expanded to include organizations and associations.¹⁷ As currently written, organizations and associations whose members include people with disabilities are not authorized to file complaints on behalf of their members. This would also contribute to a more accessible complaint process.
- The regulations should provide guidance advising under what circumstances Section 504 complaints should be kept by HUD and not referred to state or other equivalent agencies.
- HUD should increase the time for filing administrative complaints from 180 days to 1 year to be in line with the Fair Housing Act complaint timelines. This would alleviate confusion for those filing complaints alleging disability discrimination since multiple civil rights laws may be implicated.
- PHAs should have a designated Section 504 coordinator and the coordinator needs to be properly trained. For example, pursuant to a Voluntary Compliance Agreement, Seattle Housing Authority was required to hire an ADA/504 coordinator to expedite processing and facilitate fulfillment of RA requests.¹⁸
- HUD needs to enforce VCAs or conciliation agreements that it enters into. HUD's failure to enforce allows for retaliation against people who raise discrimination complaints and discourages people who experience discrimination from coming forward in the first place. Advocates also report issues getting housing providers to comply with their Section 504 obligations when there is no real enforcement or oversight by HUD on accommodation or modification issues.

¹⁶ HUD Report Housing Discrimination web site, https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint.

¹⁷ 24 C.F.R. § 8.56(c)(1).

¹⁸ Voluntary Compliance Agreement between HUD and the Seattle Housing Authority, https://www.hud.gov/sites/documents/DOC_7758.PDF.

Response to Question for Comment 13

- People with disabilities experience intimate partner violence at higher rates over their lifetime.¹⁹ “People of all genders with intellectual disabilities are seven times more likely to experience sexual violence than people without disabilities, and women with disabilities are twelve times more likely to experience sexual violence.”²⁰ Survivors of domestic violence and sexual assault are at a higher risk of developing depression, post-traumatic stress disorder (PTSD), and other mental health disabilities for which ESAs are recognized as ameliorating the effects of. Unclear policies with regard to a survivor’s ability to bring their service animal or emotional support animal with them can serve as barriers to leaving unsafe housing situations.
- The regulations should consider the intersectional discrimination caused by crime free housing programs and nuisance ordinances. These programs not only endanger the housing of people of color, survivors of domestic violence and people with disabilities, but are used, often intentionally, to exclude them from housing opportunities.²¹
- The layering of subsidies of covered housing providers creates confusion for residents, especially those with cognitive disabilities or limited English proficiency. For example, in the public housing repositioning context, the shift from public housing management to private owner where the PHA has a role concerning subsidy administration but separate LIHTC compliance with ownership makes it difficult for residents to know what disability rights laws even apply, let alone who has responsibility for complying with them.
- Tenant screening criteria (minimum income requirements, credit history, criminal history, etc.) can easily be used as a pretext to avoid renting to people with disabilities, especially those with HCV where the jurisdiction does not have source of income protections that prohibit such discrimination.
- Housing providers also rely on abusive or intimidating house rules and policies, such as threats of towing vehicles and prohibiting overnight guests, which discriminate against families with children and the disabled who disproportionately need personal care attendants, caregivers, overnight aides, and other health care and social service providers who make house calls.
- Because of redlining and other discriminatory land use policies, people of color are more likely to live in communities with higher unsafe and hazardous conditions, including increased proximity to environmental toxins and heavy industry. People with sensory or

¹⁹ Breiding, M.J., Armour, B.S. (2015). The association between disability and intimate partner violence in the United States. *Annals of Epidemiology*, 25(6), 455-457, <https://doi.org/10.1016/j.annepidem.2015.03.017>.

²⁰ “People with Disabilities and Domestic Violence” Fact Sheet, National Coalition Against Domestic Violence, https://assets.speakcdn.com/assets/2497/people_with_disabilities.pdf.

²¹ See, e.g., NYCLU & ACLU, *More Than A Nuisance: The Outsized Consequences of New York’s Nuisance Ordinances* 13 (2018), https://www.nyclu.org/sites/default/files/field_documents/nyclu_nuisancereport_20180809.pdf; Joseph Mead et al., *Who is a Nuisance? Criminal Activity Nuisance Ordinances in Ohio*, *Urb. Publ’n* (Nov. 8, 2017), https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=2513&context=urban_facpub; Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 28 *Am. Socio. Rev.* 117 (2012), https://scholar.harvard.edu/files/mdesmond/files/desmond.valdez.unpolicing.asr_0.pdf.

other environmental disabilities are exacerbated by toxic exposures at substandard housing units or complexes. There is little to no enforcement to build or create healthy homes in safe environmental areas where people can heal and thrive without being further harmed by substandard housing.

* * *

Thank you for your consideration of these comments. Any questions regarding this comment can be directed to Natalie Maxwell (nmaxwell@nhlp.org) or Lila Gitesatani (lgitesatani@nhlp.org).

Sincerely,

National Housing Law Project