



July 24, 2023

Regulations Division
Office of General Counsel
451 7th Street, S.W.
Washington, DC 20410

Re: **[Docket No. FR-6257-A-01] RIN 2529-AB03 Nondiscrimination on the Basis of Disability: Updates to HUD's Section 504 Regulations**

To Whom It May Concern:

Thank you for the opportunity to comment on **FR-6257-A-01, Nondiscrimination on the Basis of Disability: Updates to HUD's Section 504 Regulations**. Please accept this letter as the comments of the undersigned Co-Chairs of the Consortium for Constituents with Disabilities ("CCD") Housing Task Force and the CCD Rights Task Force. CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of children and adults with disabilities in all aspects of a society free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ discrimination and religious intolerance.

Please note that this letter was developed through extensive consultation with CCD members, including an open invitation listening session that included both professional staff who are disabled and people with disabilities who are not paid staff.

I. ANPRM Comments Response

Question for Comment 1: The Department anticipates revising the definition of "individual with disabilities" consistent with the ADA Amendments Act of 2008 and DOJ's Title II ADA regulations. The ADA Amendments Act of 2008 revised the definition of "individual with disabilities" for purposes of the ADA and made conforming amendments to Section 504. In view of the ADA Amendments Act of 2008's change to the definition of disability, the Department is also considering whether the other definitions, currently provided at 24 CFR 8.3 should be revised to clarify how the term "disability" is used in connection with certain HUD programs, which have statutory authorizations to serve specific populations. The Department seeks general comments on updating its definitions contained at 24 CFR 8.3.

We support revising the definition of "individuals with disabilities" to align with the ADA Amendments Act of 2008 and DOJ's Title II ADA regulations. This revision will also ensure consistency between how the Fair Housing Act ("FHA") and Section 504 treat people with substance use disorder engaging in current alcohol use, and ensure these individuals can still be considered people with disabilities under Section 504.

“Qualified individual with a disability”: HUD should clarify that disabled persons may be able to meet “essential eligibility requirements” with the help of reasonable accommodations, and recipients should not exclude these individuals if they do need such supports. The current definition notes that a qualified person with a disability must meet essential eligibility requirements, such as being “capable of complying with all obligations of occupancy with or without supportive services provided by persons other than the recipient.” This description then explains that a “chronically mentally ill person” who may pose a threat to health and safety absent supportive services may not be qualified for a project lacking such services. Overall, this section is confusing and suggests that a person with a disability may only be qualified for programs if they can meet all requirements without any reasonable accommodations. Further, we recommend removing the example involving mental illness because it reinforces stigma against people with mental health conditions, as well as misperceptions that they are more violent or dangerous.

It is also critical that HUD takes into account the increase in disability prevalence since the beginning of the COVID-19 pandemic. COVID-19 was and continues to be a mass disabling event; at the end of 2021, estimates showed that approximately 1.2 million more people became disabled as a result of COVID. Further estimates suggest that 750,000 to 1.3 million or more Americans with “Long Covid” are unable to return to work.¹ On July 26, 2021, President Biden announced his Administration’s intent to extend protections under the ADA to individuals experiencing Long COVID, and the Department of Health and Human Services and the Department of Justice issued joint guidance to that effect.² As HUD revises the definition of disability under Section 504, we ask that HUD uphold this joint guidance.

Question for Comment 2: HUD's Section 504 regulations at 24 CFR 8.4 contain general prohibitions on discrimination and include examples of discriminatory application processes, admissions policies, and service provision, as well as physical inaccessibility, eligibility, and site selection, that would either directly or indirectly result in discrimination against otherwise qualified individuals with disabilities. 24 CFR 8.4(a) and (b).

- (a) **To what extent are individuals with disabilities at serious risk of entering institutional settings or being unable to transition from institutional or group home settings, including skilled nursing facilities, correctional institutions and inpatient rehabilitation for substance misuse, settings because they are unable to find affordable, accessible, and integrated housing opportunities in community-based settings?**

Please describe any challenges faced and solutions identified with locating affordable, integrated, and accessible housing, including issues such as ensuring housing is available when an individual is ready to transition from an institutional setting, coordinating housing and services, identifying available housing programs that individuals may be eligible for, the referral and/or application process, the use of preferences, the operation of waitlists, insufficient accessible and integrated housing opportunities, etc.

The lack of affordable, accessible, and integrated housing plays a significant role in people entering institutional settings and/or being unable to leave institutional or group home settings. For generations,

¹ [COVID-19 Likely Resulted in 1.2 Million More Disabled People by the End of 2021—Workplaces and Policy Will Need to Adapt](#), Center for American Progress

²U.S. Dept. of Health & Human Services & U.S. Dept. of Justice, *Guidance on “Long COVID” as a Disability Under the ADA, Section 504, and Section 1557*, <https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/guidance-long-covid-disability/index.html> (July 26, 2021).

disabled people have been left out of mainstream housing infrastructure in part because people with disabilities were relegated to institutional and congregate settings. Even though people with disabilities have had the legal right to community living for 24 years, as established under the U.S. Supreme Court's *Olmstead* decision,³ disabled people are still unable to move into the communities and housing of their choice because affordable, accessible, and integrated housing supply does not exist.

From CCD's decades-long work to advance housing accessibility, affordability, and integration, the following are examples of challenges and solutions. These examples include identified challenges in implementing the Non-Elderly Disabled (NED) and Mainstream vouchers, which were initially conceived⁴ to address this very issue of helping people with disabilities exit institutions.

- **Plain language:** We note that, while the ANPRM believes that 24 CFR § 8.4 includes “examples of discriminatory application processes, admissions policies, and service provision, as well as physical inaccessibility, eligibility, and site selection,” for most of the “end users” of this regulation (e.g. property managers, public housing executive directors, emergency shelter managers, advocates, and disabled applicants/tenants) 24 CFR § 8.4 does not provide usable, plain-language examples to guide decision-makers. More plain-language examples – in addition to readily available supplemental guidance, online and in-person training, and technical assistance – are needed. We encourage HUD to supplement existing web resources such as the HUD.gov FHEO web pages on S. 504, the FHA, and reasonable accommodations with links to the HUD Exchange.
- **Identifying accessible units:** Some disabled people exiting institutions require accessible units. Research related to the NED vouchers⁵ and the Money Follows the Person⁶ programs found that identification of accessible units was a barrier preventing exit from institutions. Further, several fair housing complaints/lawsuits have named this issue as a problem. Access Living, for example “uncovered evidence that the City [of Chicago] failed to implement and enforce policies necessary to make the Affordable Rental Housing Programs as a whole meaningfully accessible to people with disabilities, including policies to connect units with accessible features to individuals who need them.”⁷

Many states are trying to address the challenge of “matching” households with targeted units, such as accessible units targeted to persons with physical or sensory disabilities, permanent supportive housing targeted to a specific population, or units targeted to a specific income group. For example, 27 states, Washington, D.C., and a number of local communities contract with www.myhousingsearch.com (formerly www.socialserve.org), free rental housing search databases on which available rental properties are listed and accessible units are identified. There are also state-level models like Housing Navigator Massachusetts (<https://housingnavigatorma.org>), which provides housing search tools to help renters find affordable and accessible rental units throughout the state.

To improve the matching of accessible units with households who need them, HUD's S.504

³ See *Olmstead v. L.C.*, 527 U.S. 581 (1999).

⁴ See for example: <https://www.hud.gov/sites/dfiles/PIH/documents/FY2017MainstreamVoucherNOFA.pdf>
<https://files.hudexchange.info/resources/documents/Mainstream-Vouchers-Serving-Persons-Transitioning-Out-of-Institutional-Settings.pdf>.

⁵ [Non-Elderly Disabled Category 2 Housing Choice Voucher Program: An Implementation and Impact Analysis](#)

⁶ <file:///C:/Users/Is/Documents/Documents/CCD%20Housing%20Task%20Force/MFPfieldreport19.pdf>

⁷ [Access Living sues the City of Chicago for three decades of discrimination against people with disabilities in Affordable Rental Housing Program](#)

regulations should direct all covered properties to reach out to disability organizations at the state and local level when units are available, especially when they become available for first occupancy and when there is an insufficient waiting list for accessible units. The regulations should also provide a comprehensive list of covered programs. Further, we urge HUD to amend the regulation to remind states and other tax-credit allocating agencies that S. 504 requirements apply where federal funds are included in a property. This means, for example, that (a) new construction and substantially rehabilitated housing developments must include the required percentage of accessible units; (2) properties must make and pay for reasonable accommodations and modifications for tenants with disabilities; and (3) properties must accept vouchers.

- **LIHTC and units in suburban areas:** As described below, the Low-Income Housing Tax Credit (“LIHTC”) program is the source of most new affordable, accessible housing across the country. We note that as a result of the “Texas case,”⁸ in recent years many state housing finance agencies are funding an increased percentage of LIHTC units in suburban areas. These projects may not have access to the types of public transportation and supports available in more metropolitan and urban areas, and they often have larger size units to accommodate families. While increasing opportunity for some groups, this reallocation of funds may mean fewer units usable to disabled households seeking affordable, accessible housing.
- **Strengthening referral and waiting list practices:** Many PHAs and HUD-assisted housing providers are not able to identify persons on their waiting lists that meet eligibility requirements (such as “disability”) or preferences (such as “exiting institutions”), because their housing applications do not request this information. We note that HUD guidance (e.g., PIH Notice 2023-13) makes it relatively easy for PHAs to accept referrals of people experiencing homelessness **directly** from homeless service providers or from a Continuum of Care’s Coordinated Entry System (CES). In contrast, HUD makes it relatively difficult for PHAs to establish parallel processes for people living in congregate or institutional settings. HUD should identify ways to streamline and improve referral processes for people with disabilities who are institutionalized.

The S.504 regulation or subregulatory guidance should also allow housing providers to have a “move-up” preference for people exiting congregate residential facilities or institutions that is similar to the move-up preference for people leaving permanent supportive housing provided under PIH Notice 2023-13 and the EHV Notice 2021-15.

Generally, as HUD moves forward, we urge HUD to treat people with disabilities exiting public and private institutions or at risk of institutionalization in the same manner as people experiencing or at risk of homelessness, which will provide more equitable access to the public housing and Housing Choice Voucher programs.

- **Increasing partnerships with service providers:** Research, as well as program implementation experience, indicates that housing and service partnerships lead to increased success for many people with significant disabilities who choose to live in the community. NED program research⁹, for example, shows that partnerships between PHAs and service entities

⁸ [What the ‘Texas Case’ Means for the LIHTC Program Part 1](#)

⁹ Non-Elderly Disabled Category 2 Housing Choice Voucher Program: An Implementation and Impact. Debra Lipson Denise Hoffman Matthew Kehn. Mathematica Policy Research. January 2014. Prepared for Office of Disability, Aging and Long-Term Care Policy Office of the Assistant Secretary for Planning and Evaluation U.S. Department of Health and Human Services Contract #HHSP23320095642WC

are critical to the success of special voucher implementation. From 2016 to 2019, CMS worked with 19 state Medicaid agencies and their state housing partners to develop public and private partnerships between the Medicaid and housing systems, and to support states in the creation of detailed action plans that foster additional community living opportunities for Medicaid beneficiaries.¹⁰ The S.811 Project Rental Assistance (“PRA”) program also incentivizes the development of state-level housing and services partnerships.¹¹ All of these programs provide real-life experience in synchronizing affordable, accessible housing with supportive services. HUD can build on and utilize these partnerships to ensure housing for people with disabilities facing the greatest barriers to housing and community living.

We recommend that HUD issue subregulatory joint guidance with ACL, CMS, HRSA and SAMHSA regarding how housing providers should coordinate with community organizations serving people with disabilities.

- **Challenges securing required income documentation:** For individuals who are seeking to move from an institutional setting, securing required documentation (such as income verification) can take a particularly long time and lead to delays in obtaining housing. Oftentimes these individuals require assistance with documentation that is not readily available. It is important to note that in many cases, household income will be changing as the individual moves into the community, making the initial income verification effort moot. We recommend that HUD work with SSA to develop a system that allows PHAs to more easily access Social Security and SSI data. We also urge HUD to update verification requirements to allow for more self-certification and longer windows to provide documentation for verifying eligibility, similar to verification requirements for the Emergency Housing Voucher (“EHV”) program.
- **Challenges securing required documentation of disability:** Whether required to verify program eligibility, eligibility for a rent calculation deduction, or for a reasonable accommodation, recipients often request documentation of disability. We want to highlight two concerns related to securing such documentation. The first concern is that the law/regulations allow providers to verify that the household meets the specific definition of disability, which varies across HUD programs. Recipients are generally prohibited from asking about a household’s specific disability unless legally allowed/required. For example, an applicant must be able to provide verification that they are a person with HIV or AIDS to be eligible for a HOPWA-funded program. However, many recipients do not narrowly tailor their requests for disability verification, and as a result, they often receive inappropriate details regarding the household. The second concern is the length of time it can take for a household to secure verification. Sometimes the recipient requires a hard-to-reach medical professional to provide the verification, and sometimes it is simply difficult to reach social workers and other health providers. We feel this is another area where presumptive eligibility is appropriate in many cases and can better ensure timely approval of applications to programs, services and activities, accommodations, etc. For example, HUD allows PHAs to verify disability status on the basis of people receiving SSI or SSDI for purposes of preferences and eligibility for most programs (whose eligibility is not disability-specific); we recommend that HUD clarify the availability of this

¹⁰ <https://www.medicaid.gov/resources-for-states/innovation-accelerator-program/program-areas/promoting-community-integration-through-long-term-services-and-supports/medicaid-housing-related-services-and-partnerships/index.html>

¹¹ <https://www.hudexchange.info/programs/811-pra/>

option and encourage PHAs to use it to ease administrative burdens.

- **Voluntary community services over institutionalization:** In the last year, people with mental health disabilities who are experiencing homelessness have been targeted for institutionalization. For example, in New York City, the Mayor has directed law enforcement and service providers to transport people to psychiatric hospitals involuntarily when it appears they cannot “meet their basic needs.” In California, the state government has created a new CARE Court system through which a judge may order people with mental health disabilities into involuntary treatment, medication, and, if they fail to comply, to a conservatorship. In these jurisdictions and elsewhere, Black and brown people with disabilities are overrepresented in the population of individuals experiencing homelessness, and so are at increased risk of involuntary institutionalization. We strongly encourage HUD to work with federal partners to ensure all HUD-funded programs are serving people with disabilities in the most integrated setting, including scattered-site supported housing provided with fidelity to the Housing First model.
- **Reentry planning, reasonable accommodations, and supported housing break cycles of criminalization and homelessness:** Compared to 15% of the United States general population, 40% of people in state prisons have a disability.¹² People with disabilities are at serious and ongoing risk of entering or being unable to transition from jails and prisons because they are unable to find affordable, accessible, integrated housing. Further, securing housing is one of the most immediate challenges facing people transitioning back into the community from jail or prison. According to HomeBase, people who have been incarcerated are, in turn, almost 10 times more likely to be homeless. Without intervention, people with disabilities will remain caught in a revolving door between the streets, shelters, and jails. Solutions identified to address these challenges include reentry planning, which can begin as early as one year prior to release; the provision of reasonable accommodations by PHAs and landlords for disability-related criminal history; and access to permanent supportive housing programs.

(b) Are there specific examples of discrimination that individuals with mental health or substance use disabilities have experienced, or other challenges faced by such individuals, in securing affordable housing, such as rental policies eligibility or exclusion criteria, that meets disability-related needs that HUD should consider addressing in its Section 504 regulations?

- **EHV program and alternative requirements:** In an October 2022 press release,¹³ HUD indicated that “the Emergency Housing Voucher (EHV) is leasing at a rate faster than any previous housing voucher program within HUD.” The EHV program included many innovations that likely contributed to this success, but a combination of alternative requirements is certainly among these factors. These alternative requirements remove many eligibility and access barriers that vulnerable populations, including people with disabilities, experience when trying to access the HCV program. For example, PHAs may not deny an EHV applicant admission to the EHV program if any member of the household has been evicted from federally-assisted housing, which is helpful for many disabled people who have been evicted for disability-related behaviors. EHV programs also may not deny admission to a family who would otherwise be prohibited admission under alcohol abuse standards established by the PHA in accordance with § 982.553(a)(3), or because of a determination that any household member is currently engaged in or has engaged in drug-related criminal activity. It is clear that these alternative policies can eliminate disability-related barriers for people with various disabilities, including

¹² <https://www.prisonpolicy.org/research/disability/>

¹³ https://www.hud.gov/press/press_releases_media_advisories/hud_no_22_213

mental health disabilities and substance use disorders. We recommend that the S.504 regulations specifically require PHAs and other housing providers to offer reasonable accommodations that address issues similar to those raised by the EHV alternative requirements. CCD notes that the policy changes in the EHV program are clearly reasonable and do not constitute a fundamental alteration because HUD adopted them on a large scale for EHV, and PHAs were readily able to implement them.

- **Inappropriate inquiries:** Mental health disabilities may not be readily apparent, and thus people with mental health disabilities often face heightened scrutiny when requesting reasonable accommodations, including inappropriate inquiries. Under the Fair Housing Act, it is unlawful to make a disability-related inquiry outside what is needed to determine whether an individual meets eligibility requirements or requires a reasonable accommodation. We recommend that HUD address inappropriate disability-related inquiries in its revised Section 504 regulations.
- **Failure to provide reasonable accommodations in shelters:** HUD-funded emergency shelters often have policies that discriminate against people with disabilities. For example, many people with disabilities, including people with mental health conditions, are unable to access shelters because some shelters refuse to grant reasonable accommodations allowing emotional support or service animals. People with disabilities who require attendant care are also excluded when shelters refuse to allow attendants in shelters but are unable to provide the necessary support for these individuals. We recommend HUD’s S.504 regulations clarify shelters’ obligations with respect to reasonable accommodations.
- **Misapplication of direct threat analysis:** Landlords regularly exclude tenants based on their allegedly being a “direct threat” without engaging in an individualized assessment of the circumstances or whether there are any reasonable accommodations that would mitigate or eliminate any risks. We recommend HUD clarify what constitutes a “direct threat” in the updated Section 504 regulations and provide guidance on conducting a direct threat analysis.

(c) Are there specific examples of discrimination that individuals with intellectual, cognitive, or developmental disabilities have experienced, or other challenges faced by such individuals, in securing affordable housing that meets the disability-related needs that HUD should consider addressing in its Section 504 regulations?

Plain language materials – including applications, explanations of leases and other agreements or contracts, as well as staff who can proactively facilitate access to programs, services and activities – can prevent negative outcomes (such as evictions) brought about by lack of effective communication. Covered entities should be expected to develop procedures to ensure essential information is effectively communicated to people with disabilities that can interfere with typical ways of reading and understanding content. We also note that someone with cognitive disabilities or someone with limited manual dexterity, or both, may have difficulty using digital portals. While such portals may be efficient for the recipient, they discriminate against a broad swath of the disability community, including many older adults with disabilities.

We note that people with intellectual, cognitive, or developmental disabilities are likely to be among those whom recipients may believe are unable to live “independently” in the community. This may lead to well-intentioned but inappropriate and misplaced concerns about the safety of the individual and result in the individual having fewer opportunities to choose where they live and the services they receive. Section 504 regulations should make clear that all people with disabilities who are eligible for a program, service, or activity should have the opportunity to apply and participate, and it is inappropriate

for recipients to make a determination as to who can live in the community and how. Particular attention should be paid to ensure that neither the available housing nor its location within the community have the effect of isolating disabled people from the greater community; advocates have increasingly raised concerns about models of housing directed at intellectually and developmentally disabled individuals that segregate people in remote or cul-de-sac communities.

We also point out that while some disabled people require only physical or sensory accessibility, many people, including seniors with disabilities, live with a variety of disabilities and therefore have multiple accessibility needs. Many people with developmental disabilities, for example, have both sensory disabilities and physical disabilities.

(d) Are there specific examples of discrimination that individuals with physical disabilities have experienced, or other challenges faced by such individuals, in securing affordable housing that meets the disability-related needs that HUD should consider addressing in its Section 504 regulations?

CCD offers the following comments in addition to the recommendations in response to Question 2(a).

- If someone is blind or has low vision, online applications and web pages are not generally accessible. Section 504 regulations should require the recipient to ensure these are accessible and to also provide alternative formats such as paper formats, large print, etc. to proactively ensure effective communication. Many people with disabilities, particularly if they have low incomes and/or are older, do not have ready access to the internet or digital devices.
- Housing providers, including PHAs, are not always amenable to providing an extra bedroom for a caregiver. This applies to people with physical and other disabilities that require in-home support.
- Because of the limited availability of accessible units, persons needing accessible features in their units must sometimes move away from informal, and even formal supports in order to secure housing. While this helps the individual move into the community, it creates other problems, for example, when an individual needs but is unable to identify services or caregivers in their new community or neighborhood.

It is important to draw out the unique ways that particular groups of people with disabilities are discriminated against, as well as solutions. Overlaps exist across all of these communities, and there are people with disabilities who live with multiple disabilities and have other marginalized experiences that impact their housing.

Question for Comment 3: Recipients must take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public who have disabilities and are required to provide appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity receiving Federal financial assistance. Because of technological advances, methods of enabling effective communication have significantly changed since HUD issued its Section 504 regulations in 1988 and recipients and individuals with disabilities communicate in different ways. What types of auxiliary aids and services do individuals with disabilities need in housing and community development programs and activities?

We recommend HUD review how HHS seeks to achieve effective communication for people with disabilities, as outlined in NPRM Part 92, Nondiscrimination in Health Programs and Activities. As indicated in CCD's comments on this NPRM, we support the definitions and notice requirements in the NPRM and also recommend the following:

- Covered entities must ask applicants/tenants 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 from the covered entity.
- HUD should clarify that if an individual requests that all written communications be rendered in alternative formats or in other languages, then all future communications should be provided in the requested format or language.
- HUD should work on developing template notices in plain-language formats that will make information accessible to people with intellectual and developmental disabilities.

We also recommend the following types of auxiliary aids and services:

- Captioning and audio descriptions: Captioning and description data should be preserved for re-exhibited programming; and audio description of open subtitles should be used to the extent practicable.
- Video conferencing: Recipients should consider providing added support for visual image descriptive services; screen-reader and refreshable braille display support for presentations, videos, and interactive documents; simplified call initiating; meeting interfaces and plain-and-simple-language and iconography in instruction materials for people with cognitive disabilities; and hands-free technology and voice control technology (such as speech-to-text software) for people without finger function.
- Video playback apparatus: Devices used for video playback, such as remote controls and other interfaces used for activating captioning, etc. should also be accessible.
- Relay services: Recipients should consider providing added support for Deaf interpreters; support for video conferencing interconnection; and one-number support for unified messaging and calling for relay users.
- Emerging technology: Recipients should use emerging technology for people with speech disabilities (including users of augmentative and alternative communications (AAC)), people with cognitive disabilities, DeafBlind people, and people with multiple disabilities. Emerging technology also includes spatial computing and wireless technologies.

There have also been technical advancements in communication access for Deaf and hard-of-hearing communities that must be available and used across federal housing programs. This includes video remote interpreting (VRI), as well as greater availability of CART captioning. VRI and CART, however, cannot act as a replacement for an onsite interpreter.

What information should the Department consider with respect to the accessibility of recipients' websites and devices, mobile applications, etc.?

The accessibility of website and smartphone applications (for applications, rent payments, work order requests, and so on) continues to be a barrier for persons with disabilities when accessing electronic materials. When such technology is designed poorly, individuals cannot independently use the technology. As a result, potential tenants cannot apply for housing online or research options online. As discussed earlier, the process for applying for housing is now almost exclusively conducted online, leading to serious problems for people with disabilities.

HUD should remind recipients that website and application accessibility compliance is mandatory under Section 508 of the Rehabilitation Act and Titles II and III of the ADA. HUD should also consider the Web Content Accessibility Guidelines (“WCAG”) as an instructive tool to make websites and applications accessible for users with disabilities. Although the WCAG standards have not been adopted by law, it has strong support, has served as a useful guideline to make websites accessible,

and has been cited in numerous judicial decisions.

We also note that HUD should improve the accessibility of its own websites. A study by the Department of Justice and the General Services Administration found that many federal agencies, including HUD, failed to make their websites fully accessible.

Further, there have also been significant innovations in housing design, such as smart thermostats. However, as these are incorporated, they must be fully accessible to people with all disabilities – physical, sensory, cognitive, etc.

Finally, as described elsewhere in these comments, we recommend that HUD require recipients to ensure materials, especially those that are critical to program participation such as applications, eviction notices, etc. are in plain language (whether they are provided in hard copies or online). This requirement is important not only for people with cognitive or intellectual disabilities, but also because according to a Gallup analysis of data from the U.S. Department of Education, 54% of Americans between the ages of 16 and 74 read below the equivalent of a sixth-grade level.¹⁴ Materials should be easy to understand and include visual aids. HUD should have people with disabilities pilot and test materials.

Question for Comment 4: Section 504 requires that newly constructed housing and non-housing facilities be designed and constructed to be readily accessible to and usable by persons with disabilities. HUD's existing Section 504 regulations require that in new construction multifamily housing projects, currently a minimum of five (5) percent of the total dwelling units in each multifamily housing project (or at least one unit, whichever is greater) must be made accessible for persons with mobility impairments. An additional two (2) percent of the total units (or at least one unit, whichever is greater) must be made accessible for persons with hearing or vision impairments. In circumstances where greater need is demonstrated, HUD may prescribe higher percentages or numbers. 24 CFR 8.20 through 8.22. Physical accessibility requirements also apply to any alterations of housing and non-housing facilities. 24 CFR 8.21.

Additionally, recipients must operate each housing and non-housing-related program and activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. 24 CFR 8.20, 8.21, and 8.24. This may require alterations to comply with program accessibility obligations in older facilities that were built before HUD's Section 504 regulations became effective. This may also require alterations in addition to and separate from meeting the affirmative physical accessibility requirements described above.

(a) To what extent does the lack of accessible units and other facilities in assisted housing discourage applications from eligible persons with a disability? To what extent is the lack of accessibility a barrier to the participation in various HUD-assisted housing programs by persons with a disability? What challenges do households face in finding available affordable and accessible housing in their respective communities? What factors or sources of data should HUD and its recipients use to determine the level of need for accessible housing?

Please see our response to Question #2, which is relevant for Question #4(a). The following responds to: **What factors or sources of data should HUD and its recipients use to determine the level of**

¹⁴ https://www.barbarabush.org/wp-content/uploads/2020/09/BBFoundation_GainsFromEradicatingIlliteracy_9_8.pdf

need for accessible housing?

There is a significant mismatch between the need for accessibility and the number of accessible rental homes. An analysis of the 2019 American Housing Survey found about 5% of households reported that they experienced difficulty navigating or using their homes, amounting to a total of 6.8 million households.¹⁵ According to the Harvard Joint Center for Housing Studies, “[h]omes that include universal design features or are designed to be easily adapted to resident needs are more likely to fit the needs of residents without major interventions. However, the U.S. housing stock does not regularly incorporate accessibility, and includes very few housing units that offer multiple accessibility features. An analysis of the 2011 American Housing Survey home accessibility module found that less than 4 percent of U.S. homes offered a combination of a no-step entry into the home, single-floor living, and wide halls and doors that could accommodate a wheelchair. Only 1 percent of units have these features plus lever-style handles and electrical controls reachable from a wheelchair. Using the same data, [other researchers] found that only 0.15 percent of housing units in the U.S. were fully wheelchair accessible, under 4 percent of housing units could be considered livable by people with moderate mobility difficulties, and only a third of units were potentially modifiable (having some structural features necessary for accessibility but in need of additional modifications).”

The gap for affordable, accessible homes is even wider. A 2022 Urban Institute report¹⁶ found that 84% of disabled people with low incomes in the United States—nearly 18 million people across 15.6 million households—were eligible for housing assistance but did not receive it. The group of 18 million disabled people with low incomes who are not receiving housing assistance may face other significant financial barriers to accessing housing. For example, 14% of this population receives SSI, but SSI payments are not enough for people to afford rent in any U.S. housing market. Without housing assistance, this group will continue to struggle to meet their housing needs. Disabled people who are eligible for housing assistance— especially those at the lowest income thresholds—are also more racially and ethnically diverse than the noneligible disabled population.

We recommend that HUD develop a request to Congress for a new source of funds for home modifications that can be provided to entities providing affordable housing to disabled persons needing accessible features. Such a program would need to be more significant than the very limited, “boutique” programs currently available to older adults and veterans. We would be pleased to work with HUD on developing such a request and working to secure funds from Congress.

Moreover, HUD should specifically consider and provide guidance regarding the needs of people with autism who need sensory accommodations by addressing indoor air quality and soundproofing, the costs of which can be diminished if considered at initial construction.

HUD should also consider specific guidance regarding the access needs of people with chemical sensitivities who are often discriminated against in securing housing and whose needs are misunderstood by public and private owners and managers.

We note that addressing all of these accessibility needs at the front end, at design and construction, is more efficient, cost-effective, and prevents problems for people with disabilities.

We recommend HUD review the data sources listed below in determining need. We urge HUD not to

¹⁵

https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_housing_stock_accessibility_scheckler_2022_0.pdf

¹⁶ <https://www.urban.org/research/publication/people-disabilities-living-us-face-urgent-barriers-housing>

rely on any single source but to secure as much data as possible. For example, a nonexistent or short waiting list for two-bedroom accessible units may indicate a lack of need, but it could just as easily mean potential applicants are not aware of the property, the property has not advertised the availability of these units, or the property has provided disincentives for applicants to complete applications. We recommend HUD include the following data sources in a review to determine accessibility need:

- review of waiting lists for accessible units in public and HUD-assisted housing and LIHTC properties in the same region
- review of state-funded housing search databases used by many state housing agencies and which include information about accessible housing (assisted and unassisted)
- review the U.S. Census, ACS data
- review of Coleman Institute's State of the States in Development Disability; Technical Assistance Collaborative's Priced Out report; NRI
- identify whether there are any outstanding complaints or lawsuits regarding residential accessibility
- reach out to organizations such as: local disability commissions; state Medicaid Offices; state Money Follows the Person programs; Centers for Independent Living, Area Agencies on Aging, legal aid and Protection & Advocacy agencies.

Lastly, we note that while some disabled people require only physical or sensory accessibility, many people, including older adults with disabilities, have cross-disability accessibility needs. HUD should be able to provide guidance to support recipients in developing cross-disability access to their programs using up-to-date building technology and creative technology solutions, including through operations, to meet the needs of people with disabilities.

(b) Is there information that HUD should consider to clarify, strengthen, and encourage compliance by recipients with program accessibility obligations?

Self-evaluation and transition plan requirements: Every HUD recipient presents a different situation. Some HUD-assisted properties are part of a large portfolio; if there is no accessible unit in Property A, there may be one in Property B, C, or D. Another recipient might be a smaller, single site with older construction and limited reserves. Some PHAs have both public housing and voucher programs. Some have only one or the other. Some HUD-funded emergency shelters might be part of an organization that has several shelters, rapid rehousing, and permanent supportive housing. Others might be a single program leasing from a local church.

In order to support each individual organization in meeting their obligations, we recommend that HUD renew the requirements for covered entities to conduct a self-evaluation (§ 8.51) and transition plan (§ 8.21). The current regulation was promulgated over 30 years ago. Many current programs, activities, and projects that receive or have received federal funding were not in place in 1988 and may never have conducted these critical activities. Other programs have undergone significant transformation, such as the large number of public housing units that transitioned through the RAD program. Other entities may have conducted these activities 25 years ago, but the plans have been misplaced over time as staff have come and gone. All recipients should review policies and procedures to ensure nondiscrimination. Further, we recommend that all covered entities, regardless of the number of employees, ensure designation of a Section 504 coordinator (§ 8.53); the vast majority of PHAs, for example, do not have 15 employees. Given what we have learned about the difficulty covered entities have in identifying households for accessible units and providing reasonable accommodations, we urge HUD to require the adoption of grievance procedures (§ 8.51) and notice requirements (§ 8.54) for entities of any size. These are requirements that should be part of any federally-funded program in order to ensure nondiscrimination of disabled households.

LIHTC and Section 504 compliance: According to HUD, the LIHTC program is “the largest federal production subsidy for the creation of affordable housing units”¹⁷ across the U.S. Unfortunately, as a tax credit program overseen by the IRS and not HUD, these projects are generally covered by the Fair Housing Act but not by S. 504. That said, a large number of LIHTC-funded projects across the country receive HUD and state funding such as HOME, HOME-ARP, National Housing Trust Fund, Community Development Block Grant, CoC funds, project based rental assistance and/or other funds to make these deals “pencil out” or to provide deeper affordability than that created by the LIHTC program alone. When these federal or state funds are included in projects,¹⁸ S. 504 regulations will apply, including regulations on accessibility, reasonable accommodations, and other requirements. Often, however, managers at these properties are not aware that S. 504 applies and have not received S.504 training. Disabled applicants are not aware the property is covered by S.504 because neither the project nor the funder advertises the receipt of federal funds. And finally, enforcement can be difficult because disability advocates cannot always readily determine whether a project was developed with federal funds, and while HUD’s CPD, PIH or Housing departments may know they have funded a particular project, HUD FHEO does not.

Because the LIHTC program is the source of much of the new affordable, accessible, permanent housing stock being created across the country, it is critical that (1) HUD engage these properties in training and technical assistance efforts around S.504 requirements, including the obligation to pay for reasonable modifications; and (2) HUD require states to widely advertise in ways that are accessible all of the federal and state funding sources provided to each LIHTC property, thus allowing easier identification of LIHTC properties that are covered by Section 504. HUD should also issue guidance to FHIP organizations, which investigate and enforce disability discrimination claims under the Fair Housing Act, about databases and resources that may be used to determine whether (in addition to the FHA) Section 504 applies to a LIHTC property.

Question for Comment 5: Tenant-based housing choice voucher (HCV) and other tenant-based rental assistance programs are crucial to enable individuals with disabilities to secure affordable, accessible, and integrated housing opportunities of their choice. HUD’s regulation at 24 CFR 8.28 provides examples of specific safeguards to ensure individuals with disabilities have access to these programs.

(a) What challenges exist in using an HCV or other tenant-based rental assistance in the private rental market to secure a unit that meets a household’s disability-related needs? For example, is the process for households with members with disabilities to seek an extension of the search term due to the lack of accessible housing effective or is the process for seeking exception rent under the exception payments standard for accessible housing units effective, and/or what other difficulties exist for individuals with disabilities in securing a suitable unit? Do households with members with disabilities encounter issues using HCVs or other tenant-based rental assistance due to the need for live-in caregivers? Is there information that HUD should consider on various methods or approaches that have proven effective in helping individuals with disabilities access these types of programs in order to provide equal access?

As HUD is aware, the rental market overall across the country is very tight and competitive, and the competition for units with rents within HUD’s fair market rents is particularly high. Further, disabled

¹⁷ See HUD’s FY22-26 Strategic Plan

¹⁸ See for example this Massachusetts 2023 RFP that includes HOME-ARP and LIHTC funds: <https://www.mass.gov/doc/mini-round-2023-nofa/download>. See this example in Philadelphia <https://www.phila.gov/media/20190820090515/Affordable-Housing-Rental-Special-Needs-LIHTC-RFP-2019.pdf>

people with vouchers are competing in these tight markets with other voucher holders who may not have disabilities and have assistance through VASH, FUP, EHV, Housing Stability and state rental assistance programs. We provide the following recommendations to address common barriers for disabled people in the HCV program.

- **Ensure voucher holders with disabilities can compete for units:** Some of the special voucher programs have funds that help participants leverage units. These include funds for landlord incentives, mitigation funds, and security deposits. HUD should ensure that Mainstream, NED and those programs targeted to disabled households have equal access to these types of incentives. CCD notes that HUD provided an additional \$500 per unit to PHAs administering the Mainstream program, but this amount was far less than the \$2,500 available to EHV participants. HUD should request that Congress adequately fund administrative fees to support these kinds of activities.

The competition for units means that when a participant is required to take extra steps and extra time to let a landlord know they want to apply for a unit, they are that much more likely to lose the unit to another housing seeker. For example, in accordance with § 8.28(a)(3), PHAs should be aware of the rents for accessible units in their region. If it is apparent that these rents (perhaps even the rents for the units on the list the PHA is required to provide participants under § 8.28) are higher than the FMR, HUD should pre-approve exception rents in order to ensure that participants can secure units in a timely fashion. Similarly, if the PHA's data indicates, for example, that disabled people with vouchers are on average taking 25% longer to find units and are regularly having to request extensions, the PHA should pre-approve extensions for these households. HUD should also require PHAs to provide search times of at least 120 days rather than the current 60-day minimum, as well as require PHAs to collect and report data about vouchers expiring due to disability-related barriers.

- **Provide clear guidance on the provision of an extra bedroom for caregivers:** Many disabled households require an additional bedroom for a caregiver, such as a live-in aide. HUD PIH Notice 2008-20 made some PHAs more wary of allowing an extra bedroom for caregivers. Some PHAs require the completion of unnecessarily burdensome paperwork in order to request an extra bedroom (or any reasonable accommodation) and/or deny requests. HUD should discourage over-documentation and amend §8.28 to clarify that PHAs must approve an extra bedroom as a reasonable accommodation.
- **Provide clear guidance on disability-related extended absences:** People with disabilities who have HCVs are sometimes forced to be absent from their unit for weeks or months after experiencing medical emergencies and temporary hospitalization or institutionalization. These absences put these tenants at risk of eviction from their homes and termination from the HCV program for violating extended absence policies. Even when these tenants request reasonable accommodations, landlords and PHAs often deny the requests and continue to pursue eviction/termination. HUD should provide clear guidance on this issue and include in §8.28 the obligation to grant reasonable accommodations for disability-related extended absences.
- **Model regulations and guidance on best practices from the Emergency Housing Voucher (EHV) program:** As described above, the EHV program leased up more quickly than previous HUD-funded voucher programs. The characteristics of this program that appear to have led to this success and could be considered best practices include (but are not limited to):
 - Waivers that remove many eligibility and access barriers that vulnerable populations experience when trying to access the HCV program. The full use of the waivers and alternative requirements aids in centering equity in a community's EHV program and

- creates a more equitable program overall.
- Administrative fee funding to PHAs for expenses that are not normally eligible under the HCV program, as well as fees designated for the cost of administering the EHV program generally. PHAs receive the following fees as part of their EHV allocation: Preliminary Fee, Issuance Fee, Placement Fee, Ongoing Administrative Fee, and Service Fees.
- A requirement for PHAs to work with community partners to determine the best use and targeting for the vouchers to ensure EHV's assist households who are most in need.
- Waivers that allow PHAs to establish a separate waiting list for the EHV program and to accept direct referrals from the local continuum of care and/or victim service providers.
- Funding for service fees to pay for some short-term service needs to obtain housing.

We recommend that HUD move towards incorporating similar policies and procedures in the HCV program and, to the extent possible, the S.504 regulation to better serve disabled households in the program.

(b) Please provide details about the availability of affordable accessible units in different areas of the United States (e.g., urban areas, suburban areas, and rural areas, including geographically isolated and remote areas) in the private rental market and any proven strategies that encourage landlords to participate in the tenant-based HCV program.

We understand that as part of identifying barriers to utilization of the Mainstream vouchers, HUD conducted a number of Community of Practices (CoP). HUD published a “lessons learned” brief¹⁹ based on these CoPs. The brief indicates that “[i]n competitive rental markets, PHAs can level the playing field for people with disabilities including those transitioning from institutions or homelessness by leveraging landlord incentives. [The brief] includes examples of financial and nonfinancial resources that PHAs or their service providers may be able to offer, and that can act as incentives for the landlords in your community.” These include financial incentives such as lease-signing bonuses, extra security deposits, holding/vacancy fees, help with minor repairs, and risk mitigation funds (reimbursement for repairing damages), as well as non-financial incentives such as a landlord liaison position to respond to questions and tenancy issues, a quick inspection process to reduce turnover time, quick and timely processing of checks, tenancy education for clients, proactive check-ins to prevent and resolve tenancy issues, tenancy support to avoid eviction, and community impact and recognition. We recommend HUD to request that Congress provide funding for these activities in order to increase leasing rates for participant households with disabilities. For example, Congress could make the Mainstream program eligible for the flexible pool of administrative fees in the regular voucher administrative fee account that HUD uses to provide special fees for FUP and VASH programs or create a new pot of special administrative funds for the Mainstream program.

Question for Comment 10: A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with disabilities to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces, or to participate in a HUD-assisted program or activity. For purposes of Section 504, this also includes recipients providing structural changes to a unit or public or common use area when they may be needed as a reasonable accommodation. Generally, the failure to provide reasonable accommodation is a form of discrimination under Section 504. HUD anticipates further addressing the concept of what constitutes a reasonable accommodation in its Section 504 regulations. HUD is aware that it may be useful to its recipients to understand the broad array of the types of accommodations that may be useful to individuals with different types of

¹⁹ <https://www.hudexchange.info/resources/documents/Mainstream-Vouchers-Lessons-Learned-from-Communities-of-Practice.pdf>

disabilities, such as individuals who are blind or have low vision, individuals who are deaf or hard of hearing, individuals with intellectual, cognitive, or developmental disabilities, individuals with mental health disabilities or substance use disabilities, and individuals with mobility disabilities. The Department is interested in comments on these issues.

The legal requirement that HUD-funded programs provide reasonable accommodations for disabled persons is fundamental to ensuring people with disabilities have equal access to those programs. Whether ensuring a person using a service animal can apply to and be accepted at a property that has a “no-pets” policy or ensuring that someone with a history of substance use disorder is afforded an accommodation in the form of modifying a property’s background screening policy, reasonable accommodation policies are the key to the proverbial door to housing, ensuring disabled people can access and participate in HUD programs, services, and activities.

Through policy and regulation, HUD encourages its housing, services, and crisis response programs to develop clear policies in order to treat applicants, participants, and tenants “fairly and equally.” For example, HUD requires most programs to maintain a waiting list and to serve applicants on a “first-come, first-served” basis. On its face, such a policy appears fair and equal. But in practice, we know that such policies discriminate against people with disabilities when reasonable accommodations are not provided. We regularly learn about programs that:

- require the applicant to come to the property/program in person when the office is not physically accessible or on a bus route for those who cannot drive;
- advertise the opening of a waiting list for a program only in print or on a web page that is not 508-compliant for those with visual or cognitive disabilities; or
- provide a program application online where a website is not accessible to those who have visual or other cognitive disabilities.

In addition, HUD-assisted housing providers not only fail to provide physical accommodations, but also also fail to provide reasonable accommodations in the form of waiving administrative policies. In particular, housing providers tend to have more difficulty understanding that they may need to provide reasonable accommodations to account for the practical impact of a disability (vs. the immediate manifestations of a disability), such as the waiver of a no-cosigner policy for an applicant whose disability limits their ability to work and meet minimum income requirements.²⁰

Without HUD’s **on-going training, enforcement** (plus publicizing of enforcement activity), and **technical assistance**, HUD-funded programs will not consistently provide reasonable accommodations as required by law, and exclude people with disabilities from participation. An unfortunately excellent illustration of this is HUD’s Office of Inspector General’s February 7, 2022 report releasing the results of their review of HUD’s assurance of public housing agencies’ processing of reasonable accommodation requests.²¹ The results determined that “HUD did not have adequate policies and procedures for ensuring that PHAs properly addressed, assessed, and fulfilled requests for reasonable accommodation”. As outlined in a letter to the Secretary,²² the co-chairs of the CCD Housing Task Force shared their concerns about the report’s findings, as they evidenced significant violations of both 24 CFR Part 8 as well as Part 9. They agreed with OIG’s recommendations and provided the Secretary

²⁰ See *Giebeler v. M & B Assocs.*, 343 F.3d 1143 (9th Cir. 2003)(finding that the Fair Housing Act required a landlord to accommodate a disabled housing applicant’s request to have his mother serve as a co-signer for a lease).

²¹ <https://www.hudoig.gov/reports-publications/report/hud-did-not-have-ade-quate-policies-and-procedures-ensuring-public>

²² <https://www.c-c-d.org/fichiers/CCD-Housing-TaskForce-Recommendations-Office-of-Inspector-General-Audit-Report.pdf>

with some additional feedback. We reiterate these recommendations here because **clearly regulatory requirements to provide reasonable accommodations are not sufficient**. Training and technical assistance for both HUD-funded programs and HUD staff, as well as broad enforcement across all HUD-funded programs and all departments, are necessary to ensure HUD and its programs comply with the requirement to provide reasonable accommodations.

The HUD OIG report recommends:

“1A. Update HUD’s compliance monitoring guidance to include a requirement for personnel to review PHA’s reasonable accommodations policies and procedures.”

- We agree and recommend this across all HUD departments and programs. We further recommend that a policy and procedure review checklist and/or sample policy be developed so all personnel have specific guidance as they conduct their review. We recommend that staff receive training on reasonable accommodations and how to review the requests received by PHAs and agency responses.

“1B. Update and consolidate requests for reasonable accommodation policies and procedures to ensure that there is centralized guidance available for the field offices and PHAs.”

- We agree with the recommendation and recommend this for all HUD departments and programs. Reasonable accommodation policy should be consistent across the country.

“1C. Conduct additional outreach efforts to educate tenants and PHAs on their rights and responsibilities related to requests for reasonable accommodation, including technical assistance, webinars, and external communications to inform PHAs about their responsibilities and how to evaluate requests for reasonable accommodation and help families understand their rights.”

- We agree with the recommendation and recommend this for all HUD departments and programs. We recommend the right to a reasonable accommodation be included and highlighted in every key document that is provided to tenants at every stage, from outreach to application to occupancy to eviction or termination.

“1D. Require that PHAs track requests for reasonable accommodation, including the date of the request, the type of request, and the disposition and date of any action taken that should be made available to HUD at its request.”

- We agree with this recommendation and recommend this for all HUD departments and programs. We urge HUD to determine how and when HUD will review and use this information, including but not limited to the occasional monitoring visits. We recommend that HUD headquarters, perhaps the Quality Assurance Division, conduct random reviews of the data. We recommend that HUD-funded programs be required to submit to an automatic review after 10 requests for accommodations have been denied. We recommend that clear timeframes be set for all HUD reviews of reasonable accommodation requests. Lack of timeliness may impact an individual’s access to housing, health, and safety. For example, if a request for HUD approval of rent above 120% of FMR as a reasonable accommodation is not

reviewed quickly, it is likely the participant will lose a unit that was hard to find in tight markets across the country.

“1E. Review the joint agreement between HUD PIH and FHEO, including the Section 504 checklist, and modify, update, or recommit to it to ensure that the role of PIH and the responsibility for conducting civil rights front-end reviews are clearly defined.”

- We agree with the recommendation and recommend such an agreement, policies, and procedures for all HUD departments and programs.

“1F. Ensure that personnel receive training on how to conduct the civil rights front-end reviews, including a review of PHA's reasonable accommodation policies and procedures.”

- We agree with the recommendation and recommend this for all HUD departments and programs. We recommend basic reasonable accommodation training be part of onboarding for all HUD personnel working with HUD programs, including but not limited to public housing. Training should occur in all HUD programs across Housing, PIH, and CPD. We recommend that people with personal disability experience should inform and be included in the training. We recommend that in conducting front-end reviews or program compliance reviews, reasonable accommodation requests related to physical accessibility be reviewed in the context of the number of accessible units in the public housing program and overall S.504 compliance of the program and agency.

While these recommendations are specific to OIG's review of the public housing program, we know that similar lack of compliance can be found across other HUD programs and that similar recommendations must apply. Access to HUD-funded permanent housing programs, including HUD-assisted private housing, public housing, and rental assistance programs is of utmost concern because access to affordable, accessible permanent housing is what allows people with significant disabilities, including older adults and people who are among the lowest income in our country, to avoid homelessness and institutionalization.

We note that since 1988 when these regulations were promulgated, Congress has established and funded many new HUD programs including but not limited to:

- McKinney-Vento Continuum of Care (CoC) program
- Emergency Solutions Grant (ESG) program
- Section 811 Project Rental Assistance
- National Housing Trust Fund
- HOME program
- Funding for special voucher programs including: Mainstream, VASH, FUP, EHV and Housing Stability vouchers

Most recently, through the CARES Act, Congress provided HUD with significant funding to safeguard people experiencing homelessness during COVID, including funds referred to as ESG-CV, CDBG-CV, and HOME-ARP. Training, technical assistance, and enforcement are necessary for all of these and other HUD-funded programs.

We are particularly concerned that HUD-funded crisis systems across the country do not provide equal access to persons with physical, communication and cognitive disabilities because programs, including

shelters and transitional and permanent supportive housing, are not physically accessible and do not provide reasonable accommodations. We recognize the critical work these systems do with very limited funding. Nonetheless, HUD must ensure equal access to and participation in these systems. These programs are the gateway to many permanent supportive housing programs as well as HUD-funded permanent housing programs that provide a preference specifically to persons experiencing homelessness as defined in the McKinney Vento Act, and as encouraged by HUD, for example in PIH Notice 2023-15 and the HUD Exchange webpage for MF homeless preference.²³

We reiterate that drafting regulations is simply not enough. Training and technical assistance for HUD-funded programs, as well as HUD staff, are critical. To oversee such a process, we recommend HUD hire a Senior Advisor to the Secretary who has personal disability experience and is provided with leadership responsibilities related to disability policy at HUD. HUD should designate Headquarters staff who can review reasonable accommodation policies and procedures as well as specific requests across HUD-funded programs as part of increasing training, technical assistance, and enforcement.

Finally, HUD should clarify that under S.504, recipients who have notice about a person's disability and need for an accommodation may be required to provide reasonable accommodations even in the absence of an express request. Courts have determined that S.504 does not place a burden on individuals with disabilities to actively make a request in all situations where they need accommodations. See, e.g., *Greer v. Richardson Indep. Sch. Dist.*, 472 F. App'x 287, 296 (5th Cir. 2012)(holding that a disabled person's failure to expressly "request" an accommodation is not fatal to a Section 504 claim where the defendant had knowledge of the individual's disability and needs but took no action).

Questions for Comments 6-9: For these questions, we refer HUD to the comments of fellow CCD member organizations who have specific expertise in accessibility design, including The Kelsey, Paralyzed Veterans of America, and United Spinal Association.

Question for Comment 11: HUD undertakes two types of investigations under its Section 504 regulations—complaint-based investigations and compliance reviews. Any person, or their authorized representative, who believes that they have been subjected to discrimination by a recipient of HUD financial assistance may file a Section 504 complaint with HUD. Similarly, persons may file a complaint with HUD on behalf of specific classes of individuals who have been subjected to discrimination by a recipient.

HUD may conduct periodic compliance reviews of recipients that include a review, including an on-site review of recipients' policies, practices, and procedures, to determine whether recipients are complying with HUD's Section 504 regulations. Recipients are also subject to program compliance reviews and monitoring procedures by HUD in its oversight of program requirements designed to further compliance with HUD's Section 504 regulations. 24 CFR 8.56. Are there any clarifications or changes HUD should consider in procedures for initiating and conducting investigations and/or enforcement mechanisms with respect to individual complaints or compliance reviews?

With regard to compliance, HUD should require recipients to take proactive measures to prevent discriminatory conduct. As noted in the response to Question 3, we urge HUD to update its S.504 regulations in ways that are similar to HHS' Section 1557 rule. HHS issued a Section 1557 NPRM last

²³<https://www.hudexchange.info/homelessness-assistance/multifamily-housing-owners-managers/#assisted-multifamily-housing-owners-and-managers>

year,²⁴ for which members of the CCD Health Care, Long Term Services and Supports, and Rights Task Forces provided extensive comments.²⁵ The proposed Section 1557 regulations prohibit discrimination – including on the basis of disability – for health programs receiving federal financial assistance, and they include various provisions designed to prevent potential compliance issues and need for future enforcement actions. These provisions include:

1. outlining the responsibilities of coordinators;
2. requiring recipients to develop and implement written policies and procedures to facilitate compliance;
3. requiring recipients to train relevant employees on these policies and procedures;
4. requiring recipients to provide a notice of nondiscrimination; and
5. requiring recipients to notify the public of the availability of language assistance services and auxiliary aids and services in different languages.

In terms of program accessibility, HUD should not adopt a concept of “overall accessibility” that allows recipients to assess the accessibility of a program or activity “in its entirety.”²⁶ Instead, it should clarify that “subparts” of programs must also comply with S.504’s nondiscrimination prohibitions.²⁷

HUD should also consider changing the 180-day deadline for filing S.504 complaints to one year to align with the deadline for filing administrative fair housing complaints. Alternatively, HUD should automatically waive the 180-day filing deadline for good cause when the same complaint includes a Fair Housing Act claim and is timely under the FHA.

Question for Comment 13: The Department recognizes that individuals with disabilities who are also members of other protected class groups (e.g., race, color, national origin, sex (including sexual orientation and gender identity), familial status, religion, age, etc.) may be uniquely impacted by revisions to HUD's Section 504 regulations and is interested in receiving public comment on unique considerations related to intersectionality.

a) Are there unique barriers or other forms of discrimination in housing or HUD assisted programs against individuals with disabilities who are also members of other specific protected class groups?

- In 2020, one in four disabled Black adults lived in poverty compared to just over one in seven of their white counterparts.²⁸ The high rates of poverty and struggle to afford housing have only been exacerbated during the pandemic. One year after the pandemic, nearly 40% of renters with a disability experienced housing insecurity, in that they either deferred paying their rent or reported no or slight confidence in their ability to pay next month’s rent. This is substantially higher than the national average of 25%. Disabled Black and Hispanic renters were especially likely to be housing insecure, at 52% and 50%.²⁹ Therefore, HUD must consider the disproportionality of disability across its non-white resident population and compounding experiences of discrimination based on disability, race, and often, source of income.

²⁴ See <https://www.federalregister.gov/documents/2022/08/04/2022-16217/nondiscrimination-in-health-programs-and-activities>

²⁵ See https://www.c-c-d.org/fichiers/Final_CCD-1557-Comments_10-3-22.pdf

²⁶ 45 C.F.R. §§ 84.22(a), 85.42(a).

²⁷ See CCD 1557 Comments at 13.

²⁸ [Economic Justice Is Disability Justice](#), Century Foundation

²⁹ [Recognizing and Addressing Housing Insecurity for Disabled Renters](#), Center for American Progress

- Because people in marginalized communities are disproportionately policed, many have criminal records impacting their ability to be fairly considered for housing and housing assistance programs. Additionally, HUD should also consider the use of artificial intelligence, or AI, as a unique barrier faced by multiply-marginalized disabled people attempting to access housing. AI software is often used by housing administrations to determine who is “appropriate” for housing. AI pulls unfair predictors, such as credit, education, and criminal history, and this practice disproportionately impacts multiply-marginalized people with disabilities.³⁰
- Nuisance ordinances³¹ disproportionately impact renters with disabilities, especially renters with mental health disabilities who may have disproportionate contact with law enforcement or emergency response services. Nuisance ordinances tend to define “nuisance” violations broadly to include not just serious criminal activity, but also calls to 911 or noise. Under these ordinances, property owners are required to “abate the nuisance” – to effectively evict or remove nuisance-causing tenants from the property. Numerous cities have been found to weaponize nuisance ordinances against people with mental health disabilities, especially in heavily-policed Black and Latinx neighborhoods, thus placing people of color with disabilities especially at risk. For tenants with mental health disabilities, nuisance ordinances pose the impossible choice between risking eviction and forgoing help. We recommend that HUD consider this issue in updating S.504 regulations.
- LGBTQ+ elders sit at the intersection of two communities long overlooked, willfully ignored, or openly discriminated against when it comes to accessing long-term affordable housing. Both the LGBTQ+ community and the disability community face barriers that can build up over a lifetime, making it almost impossible to achieve the financial stability needed for a secure retirement. Nearly one-third of LGBTQ+ elders ages 65 and older live at or below 200% of the federal poverty level, compared to a quarter of non- LGBTQ+ elders. Bisexuals 65 and older have shocking poverty rates: 47% for bisexual older men and 48% for bisexual women. In addition, transgender elders have similar rates, with 48% living at or below 200% of the federal poverty level. Unfortunately, these challenges are further compounded for LGBTQ+ individuals of color. LGBTQ+ Hispanics endure the same inequities present in the LGBTQ+ older adult population as a whole, but for LGBTQ+ Hispanics, these inequities are felt at a disproportionate rate. Black elders reported the highest levels of lifetime LGBTQ+-related discrimination, and reported lower levels of household income, education, affirmation of their identities, and social support compared to white LGBTQ+ older adults. When it comes to housing, LGBTQ+ elders face discrimination at an alarming rate. According to research done by the Equal Rights Center, in 48% of tests, the LGBTQ+ tester with a same-sex spouse experienced at least one type of adverse, differential treatment when compared to the heterosexual tester with an opposite-sex spouse. Further, at least 23% of transgender older people have faced some form of housing discrimination, and more than 26% of those who experienced homelessness in the past year avoided staying in a shelter because they feared being mistreated as a transgender person. These challenges only increase for LGBTQ+ individuals with disabilities. Research from the Movement Advancement Project estimated that 3 to 5

³⁰ [HUD's new housing rule has an AI loophole that's bad for America](#)

³¹ Local laws that often hold property owners liable for activity on their property that is considered to be a “nuisance.” <https://www.nhlp.org/wp-content/uploads/CFNO-information-sheet-general-information.pdf>

million LGBTQ+ people live with one or more disabilities, but unfortunately, individuals can often feel out of place in both communities. There is a need for culturally competent services and an inclusive environment from both providers and fellow residents, but LGBTQ+ people with disabilities who live at the intersection of these two identities can face compounded discrimination and stigmatization. The HRC Foundation analyzed the disability core questions in the 2020 Behavioral Risk Factor Surveillance System (BRFSS), a nationally representative survey of adults across the United States, and found that LGBTQ+ adults, and transgender adults in particular, were significantly more likely than non-LGBTQ+ adults to self-report having at least one disability. Disabled LGBTQ+ people are also more likely to face adverse economic outcomes, such as poverty, due to earning less for equal work, facing higher unemployment or lacking access to inclusive workplace benefits. Implementation of S.504 must take into account that individuals are often members of multiple communities. Failure to provide LGBTQ+ people with disabilities access to culturally competent services that affirm their sexual orientation and gender identity, and respect their other communities, can create as formidable a barrier to housing as outright discrimination. As more states take steps to attack or erase the LGBTQ+ identity, finding services and housing that affirm an individual's identity will only become more difficult. This is especially true for LGBTQ+ individuals with disabilities. The community should not have to choose between finding housing that can meet their needs, and navigating potentially discriminatory providers that may force them to hide their sexual orientation or gender identity.

- Finally, many disabled people who are members of multiply-marginalized communities may have difficulties understanding their rights and what services they are legally entitled to. This must be understood as a barrier to fair and accessible housing for this population, particularly those who are disabled and experience other forms of marginalization. A historic lack of trust in government officials and federal agencies should also be considered when attempting to share information with multiply-marginalized disabled people. Many people may be reluctant to utilize the services available to them because of these barriers in trust.
- Native Americans, Native Alaskans, and Native Hawaiians with disabilities:
 - A disproportionate number of American Indians and Alaska Natives have a disability. According to the U.S. Census, 24% of American Indians and Alaska Natives have a disability, compared to 19% of the general population. Some barriers to accessing services within housing are inadequate funding and personnel shortages. HUD can make regulatory changes that improve coordination among agencies and that help identify persons eligible for services.
 - Native Hawaiians were three times less likely to have access to mental health resources than their white counterparts, on top of experiencing increasing housing crises and gentrification in Hawaii.
 - 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 fact and seek to incorporate varying perspectives in the definition of “person with a disability.” In fact, most Native languages do not include a word equivalent to “disability.”
 - Colonial context frames attitudes around federally- administered and financed programs and services for tribal governments and individual Native Americans with disabilities. HUD should explicitly recognize that tribal governments are distinct sovereign entities that should have increased flexibility around implementing their funding and 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.

- HUD has been tasked with the responsibility to carry out trust obligations between the federal government and Native Nations in the housing realm, but government officials are not well versed in disability issues and need culturally-informed training. Conversely, national disability organizations are knowledgeable about disability, but not about Native culture. This problem hinders the development of successful policies and services for Native people with disabilities.
- Many Native tribes and individuals believe that mental illness is a disruption of one's spirituality or spiritual belonging and therefore need spiritual support and interventions. HUD should make it clear that Native people (and other individuals from non-western religions) may request reasonable accommodations or modifications based on their religious beliefs. For example, a person who has a mental health condition may submit a reasonable accommodation to use medicinal sage in their home or a reasonable modification to build a sweat lodge on their property if their community does not provide one. Cultural renewal and deepened connection to one's spirituality has been shown to be an effective strategy in addressing negative health outcomes.
- Despite the disproportionate rate of disability among Native people, they are less likely to seek institutional or formal services and supports, primarily because of a lack of trust in the U.S. healthcare system because it has historically been a source of discrimination and violence (e.g., forced sterilizations). HUD should issue guidance stating that Native people should be able to choose their own service providers to ensure they are receiving culturally appropriate care. For example, the organization Assist! to Independence provides services on the Navajo, Hopi, and Southern Paiute reservations to help people improve functional skills and enhance their overall quality of life.
- Due to the ongoing legacy of colonial violence and other systemic injustices, Native Americans have higher rates of alcohol use disorders compared with other racial groups (10.7% versus 7.6%), and as a result are at risk of higher rates of discrimination based on this disability. Additionally, the 2018 NSDUH revealed that nearly 1 in 5 Native American young adults (aged 18-25 years) has a substance use disorder, with 11% using illicit drugs and 10% using alcohol. Non-tribal grantees and other entities need guidance on how to adequately provide accommodations and other supports to these individuals without perpetuating long-standing stereotypes and harm.
- Native disabled people also need equal access to cultural spaces that the tribe provides (e.g. sweat lodges, community houses).

b) In particular, is there information that HUD should consider regarding how disability discrimination affects persons of color, LGBTQ+ persons, families with children, older adults, and individuals with limited English proficiency who also require appropriate auxiliary aids and services necessary to ensure effective communication?

Many housing providers covered by S.504 fail to provide language assistance services for people with limited English proficiency (LEP) as required under Title VI. HUD should make clear that the provision of auxiliary aids and services in English only for people with disabilities who also have LEP may violate S.504 (as well as Title VI and the Fair Housing Act).

In addition, while complaint forms are available in non-English languages, locating them can be incredibly difficult because government agency websites are often in English only.

Final Comment: The Integration Mandate

We support permanent supportive housing (PSH) but are concerned about the potential for some of these communities to develop into “mini-institutions.” While some 100% PSH properties may be appropriate as communities look to provide a range of housing options for those experiencing homelessness, including people with disabilities experiencing homelessness, these should not be the primary option available. HUD must prioritize integrated, affordable, accessible housing options consistent with the most integrated setting as defined by DOJ.³²

HUD must support communities by simultaneously offering people experiencing homelessness non-congregate sheltering and permanent options and developing long-term permanent and PSH options that are integrated in the community. Housing options that do not meet CMS’s “HCBS settings rule” will not be eligible for Medicaid funding for home and community-based services. HUD, CMS, ACL and DOJ should assure mutual understanding of what constitutes qualities of community-based settings that distinguish them from institutional settings and issue guidance to all its recipients and grantees, including but not limited to PHAs, CoCs, ESG-recipients, state housing agencies, local community development organizations, and other recipients of federal housing funds.

The Integration Mandate contained in S.504 and reinforced by the ADA and the Supreme Court decision in *Olmstead* is critical to our vision of providing every disabled person with the opportunity to live in the community in integrated, affordable, accessible permanent housing. We strongly encourage HUD to work with the HHS Office for Civil Rights (OCR) and other federal partners to serve people with disabilities in the most integrated setting. As HUD states in its *Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead*³³:

“Within the context of housing, integrated settings enable individuals with disabilities to live like individuals without disabilities. Integrated settings also enable individuals with disabilities to live independently with individuals without disabilities and without restrictive rules that limit their activities or impede their ability to interact with individuals without disabilities. Examples of integrated settings include scattered-site apartments providing permanent supportive housing, tenant-based rental assistance that enables individuals with disabilities to lease housing in integrated developments, and apartments for individuals with various disabilities scattered throughout public and multifamily housing developments. By contrast, segregated settings are occupied exclusively or primarily by individuals with disabilities. Segregated settings sometimes have qualities of an institutional nature, including, but not limited to, regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, limits on individuals’ ability to engage freely in community activities and manage their own activities of daily living, or daytime activities primarily with other individuals with disabilities.”

Part of S.504 training, technical assistance, and enforcement must be a review of HUD programs to ensure all HUD-funded programs are providing the opportunity for disabled people to choose and participate in integrated programs.

³² https://www.ada.gov/olmstead/q&a_olmstead.htm

³³ <https://www.hud.gov/sites/documents/OLMSTEGUIDNC060413.PDF>

Thank you for the opportunity to comment on the **ANPRM on Nondiscrimination on the Basis of Disability: Updates to HUD's Section 504 Regulations.**

Sincerely,

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