

U. S. Department of Housing and Urban Development

Office of Public and Indian Housing

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Special Attention of:	NOTICE PIH 2003-31 (HA)
Regional Directors; State and Area Coordinators; Public Housing Hub Directors; Program Center Coordinators; Troubled Agency Recovery Center Directors; Special Applications Center Director; Administrators, Offices of Native American Programs; Public Housing Agencies; Housing Choice Voucher/Section 8 Public Housing Agencies; Tribally Designated Housing Entities; Indian Tribes; Resident Management Corporations	Issued: November 26, 2003 Expires: November 30, 2004 Cross Reference: Notice PIH 2002-01 (HA)

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Subject: Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

This Notice updates Notice PIH 2002-01, which expired January 31, 2003.

1. Purpose: The purpose of this Notice is to remind recipients of Federal funds of their obligation to comply with pertinent laws and implementing regulations which provide for non-discrimination and accessibility in Federally funded housing and non-housing programs for people with disabilities. Additionally, this Notice provides information on key compliance elements of the relevant regulations and examples and resources to enhance recipients' compliance efforts, however, specific regulations must be reviewed in their entirety for full compliance.
2. Applicability: This Notice applies to the following programs and activities under the jurisdiction of the Office of Public and Indian Housing (PIH):
  - a. Existing Public Housing Developments
  - b. Public Housing Development
  - c. Capital Fund Program
  - d. Public Housing Modernization
  - e. **Section 8 Housing Assistance Programs**
    - **Tenant-based and Project-based Housing Choice Voucher programs**
    - **Project-Based Rental Certificates/Voucher**
    - **Moderate Rehabilitation**
  - f. Indian Housing - For Indian housing coverage, see Section IF of this Notice.
  - g. HOPE VI Revitalization and Demolition
  - h. Other programs and activities funded now or in the future by PIH, including:

- Family Self Sufficiency
  - Crime Prevention/Safety Grants/Youth Violence Prevention Activities
  - Drug Elimination Programs
  - Lead Based Paint Hazard Control Programs
  - Youth build
  - Tenant Opportunities Program (Top), Economic Development and Supportive Services (EDSS) and Service Coordinator Programs
  - Resident Management Corporations
  - Miscellaneous Training/Technical Assistance Activities
- i. Contractors or other agents of recipients performing covered work or conducting covered activities on behalf of recipients including Resident Management Corporations, consultants, etc.
3. Background: Although the Department is aware that many HUD recipients are doing an excellent job of providing accessibility in their programs for persons with disabilities, it has been brought to the Department's attention that other HUD recipients may not be in compliance with the subject laws and implementing regulations. As part of an effort to achieve maximum compliance, this Notice will serve to emphasize the importance of compliance.
4. Notifications: It is recommended that Public housing agencies (PHAs) and other recipients of Federal PIH fund provide this Notice to all **current** and **future** contractors, agents and housing choice voucher program owners participating in covered programs/activities or performing work covered under the above subject legislation and implementing regulations.
5. **Additional guidance will be provided on Indian Housing in the near future to avoid any confusion.**

### **I. Statutory/Regulatory Requirements**

Some statutory and regulatory provisions overlap others. Where there is a conflict, the most stringent provision applies including any State or local laws/regulations/codes, which may be more stringent than Federal requirements.

#### **A. Self-evaluations/Needs Assessments/Transition Plan**

1. Section 504/24 CFR 8.24(d), 8.25(c) and ADA/28 CFR 35.105-35.107, 35.150(c) and (d)]. Initially, with the issuance of Section 504 implementing regulations at 24 CFR 8 on June 2, 1988, PHAs were required to conduct needs assessments and develop transition plans to address identified needs of residents and applicants with disabilities. The transition plan and the needs assessment are required to be available for public review pursuant to 24 CFR 8.25(c).

The Department's Office of Fair Housing and Equal Opportunity will continue, as a matter of routine, to request copies of any self-evaluations, needs assessments or transition plans in every compliance review and complaint investigation conducted of a HUD recipient. These documents may also be reviewed by other HUD offices in conjunction with funding applications and addressing non-compliance issues that may arise. Likewise, a PHA self-evaluation was required by the ADA/28 CFR 35.105-35.107 and 35.150(c) and (d) effective January 26, 1992. If a PHA completed a Section 504/24 CFR 8.24(d) and 8.25(c) transition plan - to address the ADA requirement, a PHA needed only to cover those barriers to accessibility that were not addressed by the Section 504 transition plan [see Notice PIH 95-48 (HA) - Americans with Disabilities Act and ADA 35.105(d)]. Both the Section 504 transition plan and the ADA self-evaluation will enhance PHA efforts to demonstrate compliance with the laws and regulations.

PHA plan regulations pursuant to the Public Housing Reform Act of 1998 at 24 CFR 903.7(a)(1)(ii) require the submission of a statement addressing the housing needs of low-income and very low-income families, including such families with disabilities, who reside in the jurisdiction served by the PHA and families who are on the public housing and housing choice voucher program waiting list.

Additionally, to assure continued compliance, PHAs are encouraged to conduct needs assessments and self-evaluations, at least yearly, working with people/residents with disabilities and local advocacy groups for people with disabilities, (see 24 CFR 8.25© and 24 CFR 8.51, respectfully, for additional information). Transition plans should be updated as a result of such needs assessments and self-evaluations. The transition plan must be available for public review.

#### **B. Section 504/24 CFR 8 - Major Provisions.**

1. New Construction [24 CFR 8.22 (a) and (b)]. A minimum of 5% or at least one unit (whichever is greater) is required for mobility impaired persons. An additional minimum of 2% or at least one unit (whichever is greater) is required for people with hearing or vision impairments. Also, see visitability recommendations in Section IIF of this Notice.
2. Substantial Rehabilitation [24 CFR 8.23(a)]. If alterations are undertaken to a project that has 15 or more units and the cost of the alterations is 75% or more of the replacement cost of the completed facility, then the provisions of 24 CFR 8.22(a) and (b) for new construction apply **except that load bearing structural members are not required to be removed or altered. For guidance on determining the 75% threshold at 24 CFR 8.22 (a) and (b), see Memorandum**

**dated November 2, 1992 from the Assistant Secretary for Public and Indian Housing and the Assistant Secretary for Fair Housing and Equal Opportunity sent to Field Offices.** Also, see visitability recommendations in Section II, F, of this Notice.

3. Other Alterations [24 CFR 8.23(b)]. When other alterations are undertaken, including, but not limited to modernization, such alterations are required to be accessible to the maximum extent feasible; up until a point where at least 5% of the units in a project are accessible unless HUD prescribes a higher number or percentage pursuant to 24 CFR 8.23(b)(2). Also, see visitability recommendations in Section IIF of this Notice. PHAs should also include up to 2% of the units for persons with hearing and vision impairments. See 24 CFR 8.23(b)(1) for exceptions due to undue financial and administrative burden and 24 CFR 8.32(c) for exception regarding load-bearing structural members (note: these exceptions do not relieve the recipient from compliance utilizing other units/buildings or other methods).
4. Reasonable Accommodations [24 CFR 8.4(b)(i), 8.24 and 8.33]. When a family member requires an accessible feature(s) or policy modification to accommodate a disability, PHAs may provide such feature(s) or make policy modification unless doing so would result in a fundamental alteration in the nature of its program or an undue financial and administrative burden. If providing such feature(s) would result in a financial and administrative burden, the PHA is required to take any other action that would not result in an undue burden. PHAs and other recipients of Federal financial assistance are required to make reasonable adjustments to their rules, policies, practices, and procedures in order to enable an applicant or resident with a disability to have an equal opportunity to **use** and enjoy the unit, the common areas of a dwelling or participate in or access other activities conducted/sponsored by the recipient.

For example, a PHA that does not allow residents to have pets must modify its policies and allow a tenant with a disability to have an assistive animal if the animal is needed as a reasonable accommodation, **5.303(a)**. If the recipient provides transportation to functions or activities or if transportation is necessary for a disabled person to participate in such functions or activities, a recipient must ensure that accessible transportation is provided to accommodate persons with disabilities and their aides including the reasonable accompaniment of relative(s) or acquaintance(s). PHAs and other recipients of Federal financial assistance are required to make and pay for structural modifications to dwelling units and common areas when needed as a reasonable accommodation for tenants or applicants with disabilities. For example, a PHA may be required to install a ramp to allow a tenant in a wheelchair access to a dwelling unit. In addition, a PHA may be required to transfer a family to an available accessible unit or one that can be modified without causing an undue financial and administrative burden or alteration in the nature of a program rather than modifying an existing unit. If

providing a requested accommodation would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden, then the PHA need not provide that accommodation. However, the PHA is required to provide any other accommodation that would not result in an undue financial and administrative burden or fundamental alteration of the program. See 24 CFR 8.24 for a variety of compliance methods. (Note: once a PHA has made its programs accessible in compliance with 24 CFR 8.23(b) and 8.25 there is no requirement to make structural changes to existing housing facilities where other methods are effective in achieving compliance).

5. Distribution of Accessible Dwelling Units (24 CFR 8.26). Required accessible dwelling units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that people with disabilities have choices of living arrangements comparable to that of other families eligible for assistance under the same program.
6. Occupancy of Accessible Dwelling Units (24 CFR 8.27). PHAs shall adopt suitable means to assure that information regarding the availability of accessible units reaches people with disabilities. PHAs shall also take reasonable nondiscriminatory steps to maximize the utilization of accessible units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, before offering such units to a non-disabled applicant, the PHA shall:
  - (a) First, offer the unit to a current occupant who requires the accessibility features of the vacant unit (if the current occupant does not have such accessibility features in their current unit). **PHAs must pay moving expenses related to transferring a tenant to an accessible unit as an accommodation to the tenant's disability,**
  - (b) Second, offer the accessible unit to a qualified applicant on the waiting list who requires the accessibility features.

Note: A PHA may not prohibit an eligible disabled family from accepting a non-accessible unit that the family is eligible for which may become available before an accessible unit. The PHA is required to modify such a non-accessible unit as needed, unless the modification would result in an undue financial and administrative burden. When offering an accessible unit to applicants without disabilities, the PHA may require such applicants to agree to move to a non-accessible unit when available - or when the accessible unit is needed by a disabled family. Such an agreement may be incorporated into the lease.

7. PHA Requirements for the Housing Choice Voucher Program (24 CFR 8.28).  
**In carrying out the requirements of 8.28, a recipient administering a Housing Choice Voucher program shall:**

- (1) **In providing notice of the availability and nature of housing assistance for low-income families under program requirements, adopt a suitable means to assure that the notice reaches eligible individuals with disabilities;**
  - (2) **In its activities to encourage participation by owners, include encouragement of participation by owners having accessible units;**
  - (3) **When issuing a Housing Voucher to a family which includes an individual with disabilities include a current listing of available accessible units known to the PHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit;**
  - (4) **Take into account the special problem of ability to locate an accessible unit when considering requests by eligible individuals with disabilities for extensions of Housing Choice Vouchers; and**
- (b) **In order to ensure that participating owners do not discriminate in the recipient's federally assisted program, a recipient shall enter into a HUD-approved contract with participating owners, which contract shall include necessary assurances of non-discrimination.**

8. Non-housing Facilities (24 CFR 8.21). Newly constructed non-housing facilities shall be designed to be readily accessible to and usable by people with disabilities. Alterations to existing facilities shall be accessible to the maximum extent feasible - defined as not imposing an undue financial and administrative burden on the operations of the recipient's program or activity. For existing non-housing facilities, PHAs shall operate each program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and useable by individuals with disabilities. There are a number of methods included in the regulation at 24 CFR 8.21(c)(2) which may be used to accomplish accessibility in existing non-housing programs and activities.
9. Accessibility Standards (24 CFR 8.32). The design, construction or alteration of buildings in conformance with the Uniform Federal Accessibility Standards (UFAS) are deemed to comply with accessibility requirements of 24 CFR 8.21, 8.22, 8.23 and 8.25 with respect to those buildings. This does not require building alterations to remove or alter a load-bearing or structural member, however, this does not alleviate the PHA's responsibility for making its programs and units accessible to people with disabilities. The below UFAS notes in Section IC1 of this Notice also apply to activities conducted under 24 CFR 8.

### **C. Architectural Barriers Act (ABA) of 1968/24 CFR 40 – Major Provisions**

1. Accessibility Standards for Design, Construction and Alteration of Publicly Owned Residential Structures (24 CFR 40.4). Establishes the UFAS as the standard for the design, construction or alteration of residential structures to ensure that people with disabilities have access to, and use of these structures. This applies to a residential structure constructed or altered by or on behalf of the United States (see 24 CFR 40.2).

UFAS Notes:

- The Architectural, Transportation Barriers Compliance Board (the Access Board) is responsible for the ABA and UFAS. Although, HUD is responsible for enforcement through 24 CFR 40 and 41.
- The exception for bathrooms found at section 4.22.3 of UFAS cannot be used for Dwelling Unit bathrooms.
- Figure 47(a) in UFAS does not permit the water closet to encroach on the clear (unobstructed per UFAS 3.5) floor space required to provide an unobstructed turning radius of 60” [see UFAS 4.34.2(2)].
- UFAS includes a definition of structural impracticability that does not require changes, if such changes would result in the removal or alteration of a load-bearing structural member and/or an increased cost of 50% or more of the value of the element of the building or facility (see UFAS 3.5). This does not alleviate the recipient’s responsibility for making its programs and units accessible to people with disabilities.
- 24 CFR 8.4(b)(1)(ii) prohibits recipients, including PHAs, from providing housing that is not equal **to** that afforded others and (iii) prohibits recipients, including PHAs, from providing qualified individuals with disabilities housing that is not as effective in affording the individual an equal opportunity to obtain the same benefit, or to reach the same level of achievement as that provided to others. Therefore, in addition to the UFAS standard at 4.34(15)(c), all sleeping areas must be on an accessible route. The regulatory provisions cited above override the UFAS standard which permits the possibility of inaccessible sleeping spaces in otherwise accessible housing units. **Likewise in accordance with 24 CFR 8.4(b)(1)(ii)**, for new construction and substantially rehabilitated accessible units, when more than one bathroom is provided, additional bathrooms must be accessible.

**D. Americans with Disabilities Act of 1990/28 CFR 35 for Title II (available from the Department of Justice)**

1. Applicability. Applies to public entities - State and local governments which includes PHAs - see 28 CFR 35.102.
2. Maintenance of Accessible Features. A public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities (28 CFR 35.133).

3. Non-discrimination. A public entity shall operate each service, program or activity so that when viewed in its entirety, each service, program or activity is readily accessible to and usable by individuals with disabilities (28 CFR 35.150).
4. Design and Construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such a manner that the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992 [28 CFR 35.151(a)].
5. Alterations. Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that effects or could effect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992 [28 CFR 35.151(b)].
6. Accessibility standards. Design, construction, or alteration of facilities in conformance with the UFAS or with the ADA Accessibility Guidelines (ADAAG) shall be deemed to comply with requirements of 28 CFR 35.151 except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(j) of ADAAG shall not apply [28 CFR 35.151(c)].

(Note: 24 CFR 35 contains a number of other requirements that apply to public entities and should be reviewed in its entirety to assure compliance. Other areas covered include employment and communications).

#### **E. The Fair Housing Act of 1988/24 CFR 100**

##### **1. Illegal Inquiries (24 CFR 100.202) - it is unlawful for a housing provider to:**

- **Ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or**
- **Ask about the nature or severity of a disability of such persons.**

##### **2. Reasonable Modification to Existing Premises (24 CFR 100.203) - applies to private owners participating in housing choice voucher programs **or other tenant-based programs.****

PHAs shall follow the more stringent requirements of 24 CFR 8.4, 8.24, 8.23(b)(1) and 8.33 which requires PHAs to pay the cost of modifications unless such modifications are determined to be an undue financial and administrative burden (in such cases, other alternatives for providing the accommodation must be implemented by PHAs).

It is unlawful for an owner to refuse to permit a person with a disability, at their own expense, to make reasonable modifications of existing premises occupied or

about to be occupied by a person with a disability, if such modification may be necessary to afford the person with a disability full enjoyment of the premises. Under certain circumstances the owner may require the tenant to pay into an escrow account funds necessary to restore the **interior of the unit to its original condition, if the modification would interfere with the owner or next resident's full enjoyment of the premises (see regulation for further requirements and guidance.) An owner may not require that a resident restore modifications to common areas.**

3. Reasonable Accommodation (24 CFR 100.204) - Applies to private owners participating in Housing Choice Voucher programs and PHAs as well as all housing providers that are recipients of Federal financial assistance. PHAs are also covered under Section 504/24 CFR 8.4. This Section states that it is unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford people with disabilities equal opportunity to use and enjoy a dwelling unit, including public and common use areas (see regulation for further requirements and guidance).
4. Applicability (100.205) - Covered multifamily dwelling units available for first occupancy on or after March 13, 1991 (applies to PHAs and private owners):
  - a. dwellings in buildings with four or more units served by one or more elevators, and
  - b. ground floor units in other buildings with four or more units.
5. Accessibility requirements (24 CFR 100.205) - applies to PHAs and private owners. Covered multifamily dwellings shall be designed and constructed so that:
  - a. At least one building entrance is on an accessible route unless impractical due to terrain [24 CFR 100.205(a)],
  - b. Public and common use areas are accessible [24 CFR 100.205(c)(1)],
  - c. All doors into and within all premises are wide enough for wheelchairs [24 CFR 100.205(c)(2),
  - d. All premises within covered multifamily dwelling units contain the following features of adaptable design:
    - (i) An accessible route into and through the dwelling unit [24 CFR 100.205(c)(3)(i)]
    - (ii) Light switches, outlets, controls, etc. are in accessible locations [24 CFR 100.205(c)(3)(ii)]
    - (iii) Reinforcements in bathroom walls for grab bars [24 CFR 100.205(c)(3)(iii)]
    - (iv) Usable kitchens and bathrooms for people using wheelchairs [24 CFR 100.205(c)(3)(iv)]

On March 6, 1991, the Department published Fair Housing Accessibility Guidelines to give the building industry a safe harbor for compliance with the

accessibility requirements of the Act. See 56 Federal Register 9472-9515, March 6, 1991. These Guidelines were supplemented by a notice, Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, published in the Federal Register on June 28, 1994 (59 Federal Register 33362-33368, June 28, 1994). These Guidelines and the Supplemental Notice apply ONLY with respect to the accessibility requirements of the Fair Housing Act.

Note: In many cases properties constructed with Federal financial assistance must meet both the Section 504 new construction requirements applicable to PHAs at 24 CFR 8.22 as well as the Fair Housing Act design and construction requirements. For example:

- An elevator building constructed with Federal financial assistance would be required to have 5% of its units meet the Section 504 accessibility requirements at 24 CFR 8.22 and the remaining 95% of the units would be required to comply with the Fair Housing Act design and construction requirements at 24 CFR 100.205. Note: an additional 2% of the units are required to be accessible for people with vision and hearing impairments.
- A newly constructed 100 unit two-story apartment building with no elevator and constructed with Federal financial assistance is required to have a total of five accessible units (5% of 100 = 5). If half the units are on the ground floor and half on the second floor, all 5 units would be required to be on the ground floor and built to comply with the Section 504 accessibility requirements at 24 CFR 8.22. Under Section 504, 5% of 100 units, or 5 units, must be accessible, and must be located on the ground floor, to comply with 24 CFR 8.22.

In addition, the remaining 45 ground floor units are covered by the Fair Housing Act's accessibility requirements, and therefore, these 45 ground floor units must meet the Fair Housing Act accessibility requirements at 24 CFR 100.205.

Note: an additional 2% of the units are required to be accessible for people with vision and hearing impairments.

- *A development consisting entirely of multistory townhouses constructed with Federal financial assistance is not a covered multifamily dwelling for purposes of the design and construction requirements at 24 CFR 100.205, but also would have to meet the Section 504 5% + 2% accessibility requirements at 24 CFR 8.22. (A townhouse development of 4 or more single story units would still have to comply with the Fair Housing Act design and construction requirements).*

**There are currently seven documents recognized by HUD as providing a safe harbor for accessibility requirements of the Fair Housing Act. These documents do not apply to the accessibility requirements for public housing. These safe harbors can only be used in connection with 95% of the units in a development not covered**

**by section 504/8.22(a)(b). The safe harbors cannot be used in connection with 5% of the units in a public housing development covered by Section 504/8.22(a)(b).**

#### **F. Universal Design**

- **Universal Design is a design concept that encourages the construction or rehabilitation of housing and elements of the living environment in a manner that makes them usable by all people, regardless of ability, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products and the built environment more usable to as many people as possible at little or no extra cost. Universal design should strive for social integration and avoidance of discrimination, stigma, and dependency. By designing housing that is accessible to all there will be an increase in the availability of affordable housing for all, regardless of age or ability.**

#### **G. Accessibility Requirements for Indian Housing**

1. Before the enactment of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), most housing for Native Americans was funded under assistance to Indian housing authorities pursuant to the U.S. Housing Act of 1937. This housing was subject to the requirements of Section 504 and implementing regulations in 24 CFR 8, as generally discussed in IB of this Notice. The development and modernization of low-rent housing was subject to the requirements in 24 CFR 8 for new construction, substantial rehabilitation, or other alterations. Indian housing under the Mutual Self-Help program was subject to the requirements for homeownership programs in 24 CFR 8.29. Under Section 502 of NAHASDA, the housing is no longer subject to the requirements of the U.S. Housing Act of 1937 or annual contributions contract, but shall be considered and maintained as affordable housing for purposes of NAHASDA.
2. Under NAHASDA, Indian Housing Block Grant (IHBG) funds are allocated by formula to Indian tribes who can choose to administer the program or to designate a tribally designated housing entity (TDHE) to do so. IHBG funds are Federal financial assistance and subject to the requirements of 24 CFR 8. IHBG funds may be used for a wide range of housing activities, including the construction or rehabilitation of rental or homeownership housing and tenant-based rental assistance. Eligible rehabilitation includes alterations to make housing accessible for persons with disabilities. Accordingly, the applicable sections of 24 CFR 8, Subpart C—Program Accessibility will depend on the type of activities funded by the IHBG recipient.

3. Title II of the Americans with Disabilities Act of 1990 (ADA) and implementing regulations at 28 CFR 35 do not apply to Indian tribes. However, TDHEs that are agencies or instrumentalities of a State, e.g., State-created Indian housing authorities, are covered by the ADA and implementing regulations. Section ID of this Notice summarizes the major requirements.
  
4. The Federal Fair Housing Act and implementing regulations at 24 CFR 100 do not apply to federally-recognized Indian tribes and their TDHEs. The Act and regulations apply to State-recognized Indian tribes and their TDHEs. See section IE of this Notice for a summary of the major requirements.

Note: For further information or questions on Indian housing coverage, contact the nearest HUD Office of Native American Programs. Locations of these offices are available on HUD's internet site at [www.HUD.gov](http://www.HUD.gov).

## **II. Program Specific Compliance/Activities**

### **A. Housing Choice Voucher Program**

1. PHAs **may** give preference in admission to applicants with disabilities based on local needs and priorities. However, the PHA may not give a preference for admission of persons with a specific disability, 24 CFR 982.207(b)(3).
  
2. A person with disabilities **may** choose a suitable unit from among units available for rent in the local rental market.
  
3. The HUD field Office **may** approve an exception payment standard amount within the upper range (between 110 and 120 percent of the FMR) if required as a reasonable accommodation for a family that includes a person with disabilities. Any exceptions to the payment standards would be granted as a reasonable accommodation after the family with a person with disabilities locates a unit if needed as a reasonable accommodation, 24 CFR 982.503©(ii).
  
4. A PHA **may** approve the leasing of a unit from a relative to provide reasonable accommodation for persons with disabilities. This provision does not apply to shared housing.
  
5. Owners of private rental units leased with voucher assistance must make reasonable accommodations in rules, policies, practices or services if necessary for a person with disabilities to use the housing, 24 CFR 100.204 (a).

### **B. Section 8/ Homeownership Option**

6. A disabled family meets the first-time homeowner requirement even if the family owned a home within the last three years, if use of the homeownership option is needed as a reasonable accommodation so that the housing choice voucher program is readily accessible to and usable by the family **member with a disability**.
7. The PHA must count welfare assistance for a disabled family in determining whether the family meets the minimum **annual income used to determine if a family member qualifies for commencement of home ownership assistance, (982.627©(2)(ii))**.
8. The full-time employment eligibility requirement does not apply to a disabled family.
9. The limit on the length of time a family may receive homeownership assistance does not apply to disabled families.
10. Covered homeownership expenses may include principal and interest on mortgage debt incurred by the family to finance the cost of making the home accessible for a disabled family member if the PHA determines the allowance of such costs is needed as a reasonable accommodation.
11. HUD published an interim rule on June 22,2001, to implement the three-year pilot program authorized by section 302 of the American Homeownership and Equal Opportunity Act of 2000. Under the pilot program, PHAs may admit disabled families whose annual income is greater than 80 percent of the area median into the pilot program. (However, if the annual income of a disabled family participating in the pilot program exceeds 80 percent of the area median income, the amount of assistance the family would normally receive under the subsidy formula for the basic homeownership option is reduced.) Under the pilot, the PHA may also permit the family to move to a new unit with continued homeownership assistance if the PHA determines that the default is due to catastrophic medical reasons or due to the impact of a federally declared major disaster or emergency.

### **C. Project-based Voucher Program**

1. PHAs, at their discretion, may choose to use up to 20% of their tenant-based assistance for project-based subsidies to encourage the development of projects for persons with disabilities.
2. Under the new law governing project-based assistance, only 25% of the units in a building may be subsidized. However, the law allows an exception for projects for disabled families, **elderly families** and for families who receive supportive services.

Occupancy of project based units serving persons with disabilities may not be limited to persons with specific types of disabilities.

### **C. D. Capital Fund Program**

1. Planning. PHAs are required to include in their five-year Action Plan [24 CFR 968.315(e)(5)] and Annual Statement [(24 CFR 968.325(e))] the regulatory and statutory requirements for people with disabilities for all developments to be modernized.

The five-year Action Plan and Annual Statement shall address the following and PHAs under 250 units shall ensure compliance with these requirements in conducting modernization activities as well as other applicable accessibility requirements:

- (a). Substantial Alterations. The requirements for new construction at 24 CFR 8.22(a)(b) are applicable for all units that are substantially altered [see definition of substantial alteration at 24 CFR 8.23(a)].
  - (b). Other Alterations. If alterations are not substantial, then PHAs are required to provide accessible units up to 5% of the units in the development or replace the elements being modernized with accessible elements in all units of the project [see 8.23(b)]. PHAs should provide up to 2% of the units for people with hearing or vision impairments.
  - (c). Reasonable Accommodations. PHAs should include in their projections of modernization needs, amounts to cover known and projected alterations to units and facilities to address reasonable accommodation requests on a case by case basis.
  - (d). Common Areas. All PHA common areas such as community buildings, playgrounds, child care centers, training centers and recreational areas being modernized must also be made accessible in compliance with Section 504/24 CFR 8.21 and the ADA/28 CFR 35.
2. Annual Plan Review. HUD Field offices, when reviewing PHA five-year Action Plans and Annual statements, are required to make sure accessibility requirements are included in action plans for statutory and regulatory compliance.
  3. Residents/Advocacy Consultation. PHAs should ensure that, at least yearly, residents with disabilities and advocates for people with disabilities have an opportunity to provide input on modernization plans and activities.

Capital Fund Program Note: HUD intends to publish a proposed rule on all aspects of the new Capital Fund Program which will replace the Comprehensive Grant Program (CGP) and the Comprehensive Improvement Assistance Program (CIAP). Until completion of such rulemaking, the regulations at 24 CFR 968 continue to apply to assistance made available through the CGP and the CIAP. The provisions of 24 CFR 968, with respect to a PHA's annual statement/action plan, has been replaced by the Public Housing Agency Plan rule at 24 CFR 903.

The housing needs of people with disabilities, accessible units and compliance with Section 504, the ADA, and the FHA are required to be addressed in accordance with

24 CFR 903.7. Also, see other parts of 24 CFR 903 for additional related requirements.

Also note that modernization activities covered by statutory civil rights requirements such as Section 504, the ABA, the FHA and the ADA take precedent over non-emergency modernization activities.

**Note: where there are conflicting requirements between ADA and Section 504, the most stringent requirement is applicable.**

#### **D. E. HOPE VI**

1. HOPE VI Notice of Funding Availability (NOFA) Accessibility Requirements. The design of proposed new construction and/or rehabilitation of housing must conform to the civil rights statutes and regulations delineated in each Grantee's Grant Agreement.
2. Accessible For-Sale Units. The HOPE VI Program encourages PHAs to include 5% of for-sale units accessible for people with mobility impairments and 2% for people with hearing and vision impairments.
3. Visitability. The HOPE VI Program strongly encourages making as many units as possible visitable. Visibility standards **recommended** by HUD apply to units that are not otherwise covered by accessibility requirements. The elements of visibility are also described in the Glossary of HOPE VI terms, which is posted to the HOPE VI website ([www.hud.gov/hopevi](http://www.hud.gov/hopevi)).
4. Advocacy Consultation/Participation. The HOPE VI Program encourages PHAs to work with local advocacy groups that represent people with disabilities, the elderly and other special needs populations in developing HOPE VI plans.
5. Relocation Units. HOPE VI and capital funds can be used to modify units to be occupied by families in the housing choice voucher program to make them accessible for residents with disabilities. The Department has determined that the costs of accessibility modification in rental units which are necessary for people with disabilities who receive tenant-based relocation assistance under the voucher program in connection with a HOPE VI project are eligible HOPE VI expenditures. The method of implementation is to be determined by each individual locality.
6. Homeownership Design Handbook. To order a copy of strategies for providing accessibility and visitability for HOPE VI and mixed finance homeownership, go to the publications and resources page of the HOPE VI website.
7. **Designated Housing Plans**. All allocation plan applications (for designated housing) are now on HUD's web site at [www.hud.gov/pih](http://www.hud.gov/pih) for public review. Special Application Center (SAC) staff received disability sensitivity training, relative to allocation plans. Continued training for SAC personnel is projected.

8. Single People with Disabilities. The HOPE VI program encourages 1 bedroom units for single people with disabilities.
8. Accessible Townhouse Design. Hope VI will continue to explore design alternatives to townhouse dwellings in addition to the designs already available and in use.

F. Admission/Occupancy

1. Application Process. PHAs must make sure that all employees who are involved in the application process understand how to conduct tenant selection and screening without discriminating on the basis of any protected class, in particular applicants with disabilities.

All application offices must be accessible. The PHA should provide accessible materials for sight and hearing impaired persons. A PHA must make special arrangements to take the application of persons who are unable to come to the PHA because of a disability. At the initial point of contact with each applicant, the PHA should inform all applicants of alternative forms of communication that can be used other than plain language paperwork.

Some examples of alternative forms of communication are sign language interpretation; having material explained orally by staff; providing large type materials; or having a third party representative (a friend, relative or advocate, named by the applicant) to receive, interpret and explain housing materials and be present at all meetings. If **paid accessibility professionals** are used, the PHA **must pay** for such services.

2. Live-in-Aides. In some cases, individuals with disabilities may require a live-in-aide. A PHA should consider a person a live-in-aide if the person (1) is determined by the PHA to be essential to the care and well being of a family member who is disabled; (2) is not obligated to support the family member; and (3) would not be living in the unit except to provide the supportive services. A live-in-aide should not be required to share a bedroom with another member of the household [see 24 CFR 966.4(d)(3) **and 982.316**].
3. Verification. The PHA may verify a person's disability only to the extent necessary to ensure that applicants are qualified for the housing for which they are applying; that applicants are qualified for deductions used in determining adjusted income; that applicants are entitled to any preference they may claim; and that applicants who have requested a reasonable accommodation have a need for the requested accommodation. A PHA may not require applicants to provide access to confidential medical records in order to verify a disability nor may a PHA require specific details as to the disability. A PHA may require documentation of the manifestation of the disability that causes a need for a specific accommodation or accessible unit. A PHA may not ask what the specific disability is.
4. Vacant Accessible Units. If an appropriate size accessible unit is not available, a

PHA may want to slightly over house an applicant needing an accessible unit in a larger accessible unit in order to maximize the use of the accessible features. Also, UFAS adaptable units which can be easily converted into UFAS compliant units count as accessible units (see 24 CFR 8.3). Such adaptable units are helpful when there is no demand for accessible units since adaptable units are more marketable to families without disabilities.

The PHA should include a provision in the lease requiring a family without a disability to move from an adaptable or accessible unit if a family with a disability needing that size accessible unit applies and there is an appropriate unit available or one that will become available for relocation of the non-disabled family originally admitted. PHAs should maintain an adequate pool of eligible applicants needing accessible units so that when such a unit becomes available there is an eligible applicant ready and willing to rent the unit.

This can best be accomplished by targeting outreach efforts towards people with disabilities, including publicity/advertising, contacts with advocacy groups representing people with disabilities and other entities that come in contact with people with disabilities such as social service agencies, medical providers, etc. Reminder - 24 CFR 8.27 requires that accessible units be offered first to current PHA occupants in need of the accessible features of the available accessible unit and secondly, to a qualified applicant needing the accessible unit on the PHA's waiting list.

5. Screening/Reasonable Accommodations. Many applicants with disabilities will pass screening, will not need a reasonable accommodation, will not need special features, and will be admitted in exactly the same manner as other applicants. Applicants who fail screening are sent a rejection letter. This letter must provide all applicants information concerning the PHA's informal review process and their right to request a hearing. The letter must also state that applicants with disabilities have the right to request reasonable accommodations to participate in the informal hearing process. The PHA is obligated to provide such reasonable accommodation if it does not cause the PHA to make a fundamental alteration to the nature of its program. Housing providers must, if requested by the applicant, consider whether any mitigating circumstances could be verified to explain and overcome any problematic behavior related to a previous tenancy. If a reasonable accommodation will allow an applicant with a disability to meet the requirements, a housing provider must make the accommodation.

A reasonable accommodation allows the applicant with a disability to meet essential requirements of tenancy; it does not require reducing or waiving essential requirements. Examples of reasonable accommodations include, but are not limited to, physical alteration of units, making services and programs accessible, and revising policies and procedures. The focus should be on finding a reasonable accommodation that will permit the applicant to comply with the essential obligations of tenancy. A PHA is not required to excuse the applicant from meeting those requirements. All applicants should be provided information about how to request a reasonable accommodation at the time they apply for admission and at

every re-certification. Each PHA must have a reasonable accommodation policy. The requirement to provide a reasonable accommodation is present at all times, including during lease enforcement.

6. Unit Size. In public housing, a family may need a unit that is larger than the occupancy standards allowed by the PHA because of a family member with a disability. It is unlawful to fail to provide a reasonable accommodation which denies such a family the opportunity to apply for and obtain a larger unit if the disability of the family member requires this type of accommodation.
7. Unit Location. In public housing, a family applying for a unit or requesting a transfer may need a first floor unit due to a disability.
8. Pets. Regular PHA pet policies do not apply to animals that are used to assist persons with disabilities and are necessary as a reasonable accommodation. However, all provisions of the lease apply, such as maintaining the premises in clean and sanitary condition and ensuring that neighbors enjoy their premises in a safe and peaceful manner.

#### **G. Crime Prevention in Public Housing**

1. Crime Prevention. Crime Prevention Through Environmental Design, training and technical assistance focuses on the design, redesign or renovation of problematic physical features to reduce opportunities for crime and reduce residents' fear of crime. Special safety concerns of people with disabilities may be addressed through targeted technical assistance to PHAs by the Department. All activities under this and other Federally funded PIH programs must be conducted in compliance with the applicable statutory/regulatory requirements for accessibility and non-discrimination.
2. Drug Elimination Grants for Technical Assistance for PHAs. HUD provides short-term expert consultant services to assist a wide variety of anti-drug and anti-crime related activities. Special assistance can be provided to address the needs of people with disabilities residing in HA units. Also, all activities conducted under this and other Federally funded PIH programs must be conducted in compliance with the applicable statutory/regulatory requirements for accessibility and non-discrimination.
3. New Approach Anti-Drug Program. This program provides funding for owners and operators of government or nonprofit subsidized low-income multifamily housing to build partnerships at the neighborhood level to make developments and neighborhoods safer. This funding may be used to address crime/safety issues for people with disabilities. Also, all activities conducted under this program and other Federally funded PIH programs must comply with the applicable statutory/regulatory requirements for accessibility.
4. Youth Violence Prevention and Intervention Strategies for Public Housing. Workshops are conducted by experts in youth violence prevention including a 500

page curriculum. All activities conducted under this and other Federally funded PIH programs must comply with the applicable statutory/regulatory requirements for accessibility and non-discrimination.

#### **H. TOP, EDSS, Service Coordinator and Family Self Sufficiency Programs.**

1. Section 504 Non-Compliance. Applicants for Federal funding that have received a letter of noncompliance due to findings under Section 504 and have not resolved the outstanding violations or entered into an agreement with the Department are not accepted for processing.
2. Applicants. Applicants for Federal funding are required to certify that they will comply with the requirements of Section 504 if they receive an award under the Notice of Fund Availability. In the application selection process, there is a threshold requirement that proposed grant activities will be administered or conducted in an accessible community facility. These community facilities must be accessible in accordance with the requirements of Section 504 and Title II of the Americans with Disabilities Act or the application will be determined ineligible.
3. The Family Self Sufficiency Program (FSS), administered by PHAs provides PHA residents and housing choice voucher holders opportunities for educational training, job training, counseling and other social services to help with employment or advancement. A PHA may assign tasks that measure interest and motivation for participant family members. In determining tasks, PHAs shall not inquire into the nature and severity of a person's disability nor shall it ask questions of people with disabilities that it does not ask all FSS participants. Also, PHAs may not make judgments as to an individual's ability to perform a task based on a person's disability.

#### **I. Visitability**

1. Visitability Concept. Although not a requirement, it is recommended that all design, construction and alterations incorporate, whenever practical, the concept of visitability **in addition** to the requirements under Section 504, the Architectural Barriers Act, Title II of the Americans with Disabilities Act and the Fair Housing Act.

Visitability is a design concept, for very little or no additional cost, that enhances the ability of people with disabilities to interact with their neighbors, friends and associates in the community.

2. Design Considerations. Visitability design incorporates the following in all construction or alterations, in addition to other requirements, whenever practical and possible for as many units as possible within a development:

- a. Provide a 32” clear opening in all bathroom and interior doorways.
  - b. Provide at least one accessible means of egress/ingress for each unit.
3. Benefits of Visitability. Visitability also expands the availability of housing options for individuals who may not require full accessibility. It will assist PHAs in making reasonable accommodations and reduce, in some cases, the need for transfers when individuals become disabled in place. Visitability will also improve the marketability of units.

**J. Accessibility Funding Sources**

1. PHA Capital funds, PHA operating budgets, PHA operating reserves, PHA Housing Choice Voucher administrative fees and administrative fee reserves, State or local Community Development Block Grant funds, Indian Housing Block Grant Program, State and local HOME Program funds, Corporate donations, non-profit contributions from organizations such as Rotary Clubs, Lions Clubs, sororities/fraternities, etc.

For further information about this Notice, contact the nearest HUD Office of Public Housing within your State. Tribes and TDHE’s should contact the nearest HUD Office of Native American Programs. Location of these offices is available on HUD’s internet site at [www.HUD.gov](http://www.HUD.gov).

\_\_\_\_\_/s/ William Russell for \_\_\_\_\_  
Michael Liu, Assistant Secretary  
for Public and Indian Housing